

ORDINANCE NO. 7573

AN ORDINANCE OF THE CITY OF KEARNEY, NEBRASKA TO AMEND THE CODE OF THE CITY OF KEARNEY BY ADDING A NEW ARTICLE 16 ENTITLED "CONSTRUCTION AND POST-CONSTRUCTION STORMWATER CODE" TO CHAPTER 9 "PUBLIC WORKS" PROVIDING A PURPOSE AND INTENT; PROVIDING DEFINITIONS; SETTING FORTH LIABILITY RESPONSIBILITIES; SETTING FORTH RESPONSIBILITY FOR ADMINISTRATION; PROVIDING SEVERABILITY, APPLICABILITY AND PROHIBITIONS; PROVIDING GENERAL REQUIREMENTS FOR CONSTRUCTION ACTIVITIES; PROVIDING REQUIREMENTS FOR THE BUILDING PHASE OF DEVELOPMENT; REQUIRING CONSTRUCTION STORMWATER POLLUTION PREVENTION PLAN; PROVIDING REQUIREMENTS FOR UTILITY CONSTRUCTION; PROVIDING POST-CONSTRUCTION REQUIREMENT OF PERMANENT BMPs; PROVIDING CERTIFICATE OF PERMANENT BMPs; REQUIRING ONGOING INSPECTION AND MAINTENANCE OF PERMANENT BMPs; SETTING FORTH TECHNICAL STANDARDS, SPECIFICATIONS, AND GUIDANCE; AUTHORIZATION OF ENFORCEMENT PERSONNEL; PROVIDING FOR RIGHT OF ENTRY AND SAMPLING; SETTING FORTH VIOLATIONS, ENFORCEMENT AND PENALTIES; SETTING FORTH ACTION WITHOUT PRIOR NOTICE AND OTHER LEGAL ACTION; TO PROVIDE THAT THIS ORDINANCE SHALL BE MADE A PART OF THE CODE OF THE CITY OF KEARNEY; TO REPEAL ALL ORDINANCES AND RESOLUTIONS OR PARTS THEREOF IN CONFLICT HEREWITH; AND TO PROVIDE FOR PUBLICATION IN PAMPHLET FORM BY AUTHORITY OF THE CITY COUNCIL AND EFFECTIVE DATE OF THIS ORDINANCE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF KEARNEY, NEBRASKA:

Section 1. The Code of the City of Kearney, Nebraska, is hereby amended by adding a new Article 16, "Construction and Post-Construction Stormwater Code" to Chapter 9 "Public Works" which reads as follows:

ARTICLE 16. CONSTRUCTION AND POST-CONSTRUCTION STORMWATER CODE

DIVISION I. GENERAL PROVISIONS

9-1601 PURPOSE/INTENT.

The intent of this Article is to protect and enhance the water quality of local receiving waters in a manner pursuant to and consistent with the Federal Clean Water Act and also to provide for the health, safety, and general welfare of the citizens of Kearney through the regulation of non-stormwater discharges to the municipal separate storm sewer system (MS4) according to locally approved standards as required by federal and state law. The objectives of this Article are:

- A. To regulate the contribution of pollutants to the MS4 by stormwater discharges from construction activity and development;
- B. To reduce pollutants in stormwater discharges from construction activity by guiding, regulating, and controlling the design, construction, use, and maintenance of any development or other activity that disturbs or breaks the topsoil or results in the movement of earth on land;
- C. To require the construction of locally-approved, permanent stormwater runoff controls to protect water quality and maintain non-erosive hydrologic conditions downstream of construction activity and development;
- D. To require responsibility for and long-term maintenance of structural stormwater control facilities and nonstructural stormwater management; and
- E. To enable legal authority to carry out all inspection, surveillance, monitoring and enforcement procedures necessary to ensure compliance with this Article.

9-1602 DEFINITIONS.

For the purposes of this Article, the following words and phrases shall have the meaning set forth in this Section.

Best Management Practices (BMPs): Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, and drainage from raw materials storage.

Building Phase of Development: Period of construction activity when a portion(s) of a common plan of development or sale requires a building permit.

Common Plan of Development or Sale: A contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times, on different schedules, but under one proposed plan which may include, but is not limited to, any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot.

Construction Activity: Such activities include but are not limited to clearing and grubbing, grading, excavating, demolition and other land disturbing actions.

Construction Site: Any location where construction activity occurs.

Contractor: Any person performing or managing construction work at a construction site, including, but not limited to, any construction manager, general contractor or subcontractor, and any person engaged in any one or more of the following: earthwork, pipe work, paving, building, plumbing, mechanical, electrical, landscaping or material supply.

Clearing: Any activity that removes the vegetative surface cover.

Disturbed Area: Area of the lands surface disturbed by any work or activity upon the property by means including, but not limited to, grading; excavating; stockpiling soil, fill, or other materials; clearing; vegetation removal; removal or deposit of any rock, soil, or other materials; or other activities which expose soil. Disturbed area does not include the tillage of land that is zoned for agricultural use.

Earthwork: The disturbance of soil on a site associated with construction activities.

Erosion: The detachment and movement of soil or rock fragments by water, wind, ice or gravity.

Erosion Control: Measures that prevent soil erosion to the maximum extent practicable.

Erosion and Sediment Control Plan: A plan that indicates the specific measures and sequencing to be used for controlling sediment and erosion on a development site during construction activity according to locally approved standards, specification, and guidance.

Final Drainage Plan: A plan that indicates the characteristics of the complete project. The plan will also indicate the future conditions post-construction BMPs will be maintained under.

Final Stabilization: When all soil disturbing activities at the site have been completed, and vegetative cover has been established with a uniform density of at least seventy (70) percent of pre-disturbance levels, or equivalent permanent, physical erosion reduction methods have been employed. For purposes of this Article, establishment of a vegetative cover capable of providing erosion control equivalent to pre-existing conditions at the site is considered final stabilization.

Grading: Excavation or fill of material, including the resulting conditions thereof.

Municipal Separate Storm Sewer System (MS4): Publicly-owned facilities by which stormwater is collected and/or conveyed, including, but not limited to, any roads with drainage systems, municipal streets, gutters, curbs, catch basins, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage ditches/channels, reservoirs, and other drainage structures.

Land Development: Any land change, including, but not limited to, clearing, digging, grubbing, stripping, removal of vegetation, dredging, grading, excavating, transporting and filling of land, construction, paving, and any other installation of impervious cover.

Land Disturbance Activity: Any land development that may result in soil erosion from wind, water and/or ice and the movement of sediments into or upon waters, lands, or right-of-way

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit: A permit issued by the EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b) i.e. Nebraska Department of Environmental Quality) that authorizes the discharge of pollutants to waters of the State.

Non-stormwater Discharge: Any discharge to the storm drain system that is not composed entirely of stormwater.

Operator: The individual who has day-to-day supervision and control of activities occurring at the construction site. This can be the owner, the developer, the general contractor or the agent of one of these parties. It is anticipated that at different phases of a construction project, different types of parties will satisfy the definition of "operator" and the pertinent portions of any applicable permit authorization from the State of Nebraska will be transferred as the roles change.

Owner: The person who owns a facility, development, part of a facility, or land.

Person: Means any individual, association, organization, partnership, firm, corporation, cooperative, limited liability company or other entity recognized by law.

Phasing: Clearing a parcel of land in distinct phases, with the stabilization of each phase before the clearing of the next.

Pollutant: Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coli form and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; wastes and residues that result from mobile washing operations; and noxious or offensive matter of any kind.

Pollution: The presence in waters of the State of any substances, contaminants, pollutants, or manmade or man-induced impairment of waters or alteration of the chemical, physical, biological, or radiological integrity of water in quantities or at levels which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property or which unreasonably interfere with the enjoyment of life or property, including outdoor recreation unless authorized by applicable law.

Post-construction: The general time period referenced in perpetuity from the approval for final acceptance of the construction phase of any construction activity.

Premises: Any building, lot, parcel or tract of land, or portion thereof, whether improved, or unimproved, and including adjacent sidewalks and parking strips.

Receiving Water: Any water of the State of Nebraska, including any and all surface waters that are contained in or flow in or through the State of Nebraska, all watercourses, even if they are usually dry, irrigation ditches that receive municipal stormwater, and storm sewer systems owned by other entities.

Redevelopment: Any construction, alteration or improvement performed on a previously developed site.

Sediment: Soil (or mud) that has been disturbed or eroded and transported naturally by water, wind or gravity, or mechanically by any person.

Sediment Control: Measures that prevent eroded sediment from leaving the site.

Site: The land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

Spill: A release of solid or liquid material, which may cause pollution of the MS4 or waters of the State.

Stabilization: The use of practices that prevent exposed soil from eroding.

Stormwater: Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Stormwater Pollution Prevention Plan (SWPPP): A document which describes the Best Management Practices and activities to be implemented by a person during the construction activities, which identifies sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters.

Subdivision Development: Includes activities associated with the platting of any parcel of land into two or more lots and all construction activity taking place thereon.

Utility Agency/Contractor: Private utility companies, public utility departments, or other utility providers contractors working for such private utility companies, or public entity utility departments, or other utility providers engaged in the construction or maintenance of utility lines and services, including water, sanitary sewer, storm sewer, electric, gas, telephone, television and communication services.

Wastewater: Any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

Watercourse: A natural or artificial channel through which water can flow.

Waters of the State: Any and all surface and subsurface waters that are contained in or flow in or through the State of Nebraska. The definition includes all watercourses, even if they are usually dry.

9-1603 LIABILITY.

The standards set forth herein and promulgated pursuant to this Article are minimum standards that shall apply to all construction activities which require an approval according to Section 9-1606 of this Article. Compliance with this Article does not act as a waiver or defense to any person for operating a construction site in a manner that allows or causes stormwater contamination, pollution, or unauthorized discharge of pollutants. The owner and operator of any approved construction activity shall be responsible for ensuring all activity; including the actions of all contractors, subcontractors, trade professionals, delivery personnel and others present at a construction site; are in compliance with all requirements of this Article. An owner shall be responsible for notifying the City when any transfer of ownership and liability under this Article occurs.

9-1604 RESPONSIBILITY FOR ADMINISTRATION.

The City shall administer, implement, and enforce the provisions of this Article. Any powers granted or duties imposed upon the City may be delegated by the Mayor or City Manager to persons or entities acting in the beneficial interest of or in the employ of the City.

9-1605 SEVERABILITY.

The provisions of this Article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Article.

9-1606 APPLICABILITY.

A. This Article shall be applicable to all construction activity and land developments requiring; including, but not limited to site plan applications, subdivision applications, building applications, and right-of-way applications from the City, unless exempt pursuant to Paragraph B of this Section below. These provisions apply to all portions of any common plan of development or sale which would cause the disturbance of at least one acre of soil even though multiple, separate and distinct land development activities may take place at different times on different schedules.

B. The following activities are exempt from this Article:

(1) Any emergency activity that is necessary for the immediate protection of life, property, or natural resources; and

(2) Construction activity that provides maintenance and repairs performed to maintain the original line and grade, hydraulic capacity, or original purpose of a facility.

9-1607 PROHIBITIONS.

A. Except as provided in Article 15 entitled "City of Kearney Illicit Discharge Detection and Elimination Code" of Chapter 9 of the City Code, it is unlawful for any person to discharge non-stormwater into the City MS4.

B. It is unlawful for any person or representative at a construction site to cause or allow to be caused the impact, damage and/or removal of any approved stormwater pollution control measure without the owner's knowledge and consent.

C. Stormwater discharges from construction activities shall not cause or threaten to cause pollution, contamination or degradation of waters of the State.

9-1609 – 9-1615 RESERVED.

DIVISION II. CONSTRUCTION

9-1616 GENERAL REQUIREMENTS FOR CONSTRUCTION ACTIVITIES.

A. Except for construction activity relating to the Building Phase of Development, the City shall require proof of coverage by a NDEQ general permit authorization for Stormwater Discharges from Construction Sites before providing approval for construction activity covered in Section 9-1606 of this Article.

B. A pre-construction meeting shall be scheduled with an appointed official with the City to review the installation of all temporary erosion and sediment control BMPs included on the approved erosion and sediment control plan at least two (2) business days before any construction activities are scheduled to start.

C. Solid waste, industrial waste, yard waste and any other pollutants or waste on any construction site shall be controlled through the use of BMPs. Waste or recycling containers shall be provided and maintained by the owner or contractor on construction sites where there is the potential for release of waste. Uncontained waste that may blow, wash or otherwise be released from the site is prohibited. Sanitary waste facilities shall be provided and maintained in a secured manner.

D. Ready-mixed concrete, or any materials resulting from the cleaning of vehicles or equipment containing such materials or used in transporting or applying ready-mixed concrete, shall not be allowed to discharge from any construction site.

E. Cover or perimeter control shall be applied within fourteen (14) days to any soil stockpiles, which will remain undisturbed for longer than thirty (30) calendar days.

F. Disturbed soil shall be managed with BMPs that are adequately designed, installed, and maintained according to locally-approved technical standards, specifications and guidance for the duration of the construction activity to minimize erosion and contain sediment within the construction limits.

G. Sediment tracked or discharged onto public right-of-way shall be removed immediately.

H. Bulk storage structures for petroleum products and other chemicals shall have adequate protection to contain all spills and prevent any spilled material from entering the MS4 or waters of the State.

I. Temporary BMPs shall be removed and disturbed areas shall be stabilized with permanent BMPs at the conclusion of all approved construction activity.

9-1617 REQUIREMENTS FOR THE BUILDING PHASE OF DEVELOPMENT.

Any person who engages in construction activity is responsible for compliance with this Article and all applicable terms and conditions of the approved construction activity and SWPPP as it relates to the building phase of development. The following information shall be included with the application for a building permit and be submitted to the Chief Building Official:

- A. Either the legal description and NPDES permit number for the Larger Common Plan of Development; OR
- B. The location of the property where the building phase of development is to occur; AND
- C. A certification that the building phase of development for the property described on the application for a building permit will be conducted in conformance with this Article and the Construction Activity SWPPP.

9-1618 CONSTRUCTION STORMWATER POLLUTION PREVENTION PLAN (SWPPP).

A. A SWPPP shall be prepared and updated in accordance with locally-approved technical standards, specification, and guidance for construction activity within the City and shall include an erosion and sediment control plan for land disturbance.

B. The SWPPP shall include a description of all potential pollution sources, temporary and permanent BMPs that will be implemented at the site as approved by the City.

C. The erosion and sediment control plan shall be submitted to the City for review with any application covered in Section 9-1606 of this Article.

D. Land disturbing activities may not proceed until approval of the erosion and sediment control plan is provided by the City.

E. The owner or operator is required to have a copy of the SWPPP readily available for review with content that reflects the current condition of the construction activity and all records that demonstrate compliance and are required by this Article.

F. The SWPPP shall include a description of routine site inspections.

(1) The owner or their representative shall inspect all BMPs at intervals of no greater than fourteen (14) calendar days and within twenty-four (24) hours after any precipitation event of at least one half (1/2) inch.

(2) Inspections of BMPs shall be conducted by an individual who person knowledgeable in the principles and practice of erosion and sediment controls who possesses the skills to assess conditions at the construction site that could impact stormwater quality and to assess the effectiveness of any erosion and sediment control measures selected to control the quality of stormwater discharges from the construction activity.

(3) Inspection reports shall provide the name and qualification of the inspector, date of the evaluation, risks to stormwater quality identified, and all corrective actions necessary to prevent stormwater pollution.

(4) The owner or operator of a construction activity may be requested to submit copies of inspection reports for review on a periodic basis by the City.

G. Based on inspections performed by the owner, operator, authorized City personnel, State or Federal regulators modifications to the SWPPP will be necessary if at any time the specified BMPs do not meet the objectives of this Article. In this case, the owner shall meet with an appointed official of the City to determine the appropriate modifications. All required modifications shall be completed within seven (7) calendar days of receiving notice of inspection findings, and shall be recorded in the SWPPP.

H. The owner or operator of a construction site shall be responsible for amending the SWPPP whenever there is a significant change in design, construction, operation, or maintenance, which has a significant effect on the potential for discharge of pollutants to the MS4 or receiving waters, or if the SWPPP proves to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with land disturbance.

I. Records of inspection are to be maintained with the SWPPP for the life of the project. Inspection records are to be available to City inspectors upon request. Delay in providing a copy of the SWPPP or any requested records shall constitute a violation of this Article.

9-1619 REQUIREMENTS FOR UTILITY CONSTRUCTION.

A. Utility agencies or their representatives shall develop and implement BMPs to prevent the discharge of pollutants on any site of utility construction within the City. The City may require additional BMPs on utility construction activity. If the utility construction disturbs greater than one (1) acre, the utility

agency must comply with the requirements of Section 9-1616 and Section 9-1617 of this Article.

B. Utility agencies or their representatives shall implement BMPs to prevent the release of sediment from utility construction sites. Disturbed areas shall be minimized, disturbed soil shall be managed and construction site exits shall be managed to prevent sediment tracking. Sediment tracked onto public right-of-way shall be removed immediately.

C. Prior to entering a construction site or subdivision development, utility agencies or their representatives shall obtain and comply with any approved erosion and sediment control plans for the project. Any impact to construction and post-construction BMPs resulting from utility construction shall be evaluated prior to disturbance by the developer and utility company. Repairs to the disturbed BMPs must be completed within forty-eight (48) hours, by individuals agreed upon during the design phase or at a preconstruction meeting.

9-1620 – 9-1625 RESERVED.

DIVISION III. POST-CONSTRUCTION

9-1626 POST-CONSTRUCTION REQUIREMENT OF PERMANENT BMPs.

A. Land development that meets the requirements of Section 9-1606 of this Article must address stormwater runoff quality through the use of permanent BMPs. Permanent BMPs shall be provided for in the drainage plan for any subdivision plat, annexation plat, development agreement, subdivision agreement or other local development plan.

B. Structural BMPs located on private property shall be owned and operated by the owner(s) of the property on which the BMP is located; unless the City agrees in writing that a person or entity other than the owner shall own or operate such BMP. As a condition of approval of the BMP, the owner shall also agree to maintain the BMP in perpetuity to its design capacity unless or until the City shall relieve the property owner of that responsibility in writing. The obligation to maintain the BMP shall be memorialized on the subdivision plat, annexation plat, development agreement, subdivision agreement or other form acceptable to the City and shall be recorded with the City of Kearney Public Works Department.

9-1627 CERTIFICATION OF PERMANENT BMPs.

Upon completion of a project, and before a Certificate of Occupancy shall be granted, the City shall be provided a written certification stating that the completed project is in compliance with the approved Final Drainage Plan. All applicants are required to submit "as built" plans for any permanent BMPs once final construction is completed and must be certified by a professional engineer licensed in the State of Nebraska. A final inspection by the City of all post-construction BMPs shall be required before a Certificate of Occupancy will be issued or any public infrastructure is accepted.

9-1628 ONGOING INSPECTION AND MAINTENANCE OF PERMANENT BMPs.

A. The owner of site must, unless an on-site stormwater management facility or practice is dedicated to and accepted by the City, execute an inspection and maintenance agreement, that shall be binding on all subsequent owners of the permanent BMPs.

B. Permanent BMPs included in a Final Drainage Plan which are subject to an inspection and maintenance agreement must undergo ongoing inspections to document maintenance and repair needs and to ensure compliance with the requirements of the agreement, the plan and this Article.

9-1629 – 9-1632 RESERVED.

DIVISION IV. TECHNICAL STANDARDS, SUBMISSIONS, INSPECTION AND MONITORING

9-1633 TECHNICAL STANDARDS, SPECIFICATIONS, AND GUIDANCE.

All BMPs designed to meet the requirements of this Article shall reference the appropriate technical standards, specifications and guidance as follows:

A. City Standards and Specifications for Construction.

B. Nebraska Department of Roads Drainage Design and Erosion Control Standards, Specifications and Guidance.

C. Any other alternative methodology approved by the City of Kearney Engineering Department, which is demonstrated to be effective.

9-1634 SUBMISSIONS FROM THE GENERAL PUBLIC.

The City will consider information from the public as it pertains to the implementation and enforcement of this Article.

9-1635 AUTHORIZATION OF ENFORCEMENT PERSONNEL.

The City shall designate appointed personnel with authority to conduct inspections, issue notices of violations and implement other enforcement actions under this Article as provided by the City.

9-1636 RIGHT OF ENTRY AND SAMPLING.

Whenever the City has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this Article, the owner or operator shall provide access to the premises at any reasonable time to determine if there exists an actual or potential violation requirements of this Article. In the event that the owner or occupant refuses entry after a request to enter has been made, the City is hereby empowered to seek assistance from a court of competent jurisdiction in obtaining such entry.

The City shall have the right to employ such devices and undertake such an inspection, on or off premises, as are necessary to determine whether the requirements of this Article are met. The inspection may include, but is not limited to the following: sampling of any discharge and/or process waters, the taking of photographs, interviewing staff on alleged violations, and access to any and all facilities or areas within the premises that may have any effect on the discharge.

9-1637 – 9-1642 RESERVED.

DIVISION V. ENFORCEMENT

9-1643 VIOLATIONS, ENFORCEMENT AND PENALTIES.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Article. Any person who violates any of the provisions of this Article, shall be subject to one or more of the enforcement actions outlined in this Section. Any violation or threatened violation may be restrained by injunction or otherwise abated in a manner provided by law.

In the event the violation constitutes an immediate danger to public health or public safety, the City representative is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The City is authorized to seek costs of abatement as outlined below in Section 9-1643 F of this Article.

A. Compliance Directive. In addition to any other remedy available to the City, City inspectors may issue compliance directives at the time of inspection to require a person to implement actions that will correct any violation of this Article.

B. Notice of Violation. Whenever the City finds that a person has violated a prohibition or failed to meet a requirement of this Article, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (1) The performance of monitoring, analyses, and reporting;
- (2) The elimination of illicit connections or discharges;
- (3) That violating discharges, practices, or operations shall cease and desist;
- (4) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
- (5) Payment of a fine to cover administrative and remediation costs; and
- (6) The implementation of source control or treatment BMPs.

If abatement of a violation or the restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to complete the remediation or restoration within the established deadline, the

work may be done by the authorized enforcement agency or its designee and the expense thereof shall be charged to the violator.

C. Appeal of Notice of Violation.

Any person receiving a Notice of Violation may appeal the determination of the authorized enforcement agency. The notice of appeal must be received within ten (10) days from the date of the Notice of Violation. Hearing on the appeal before the appropriate authority or its designee shall take place within fifteen (15) days from the date of receipt of the notice of appeal. The decision of the municipal authority or their designee shall be final.

D. Enforcement Measures after Appeal.

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within ten (10) days of the decision of the municipal authority upholding the decision of the authorized enforcement agency, then representatives of the authorized enforcement agency and its designees are authorized to enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the City or designated agent to enter upon the premises for the purposes set forth above.

E. Stop Work Order.

Whenever the City determines that any activity is occurring which is not in compliance with the requirements of this Article, the City may order such activity stopped upon service of written notice upon the owner and/or operator responsible for or conducting such activity. Such owner and/or operator shall immediately stop all activity until authorized in writing by the City to proceed. If the appropriate owner and/or operator cannot be located, the notice to stop shall be posted in a conspicuous place upon the area where the activity is occurring. The notice shall state the nature of the violation. The notice shall not be removed until the violation has been cured or authorization to remove the notice has been issued by the City. It shall be unlawful for any owner and/or operator to fail to comply with a stop work order.

F. Cost of Abatement of the Violation.

If the authorized enforcement agency abates a violation, then within ten (10) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. Such notice shall be given by personal delivery or by mail to the last known address of the owner as shown in the records of the County Assessor. Such notice shall be effective upon the date of mailing or personal delivery. The property owner may file a written protest objecting to the amount of the assessment within ten (10) days of the effective date of the notice. If no protest is filed, then the charges shall become due and payable on the date set forth in the notice, which date shall be after the expiration of the time in which to file an appeal, and such charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. In the event a protest is filed, a hearing on such protest shall be held before the appropriate authority or its designee within fifteen (15) days from the date of receipt of the written protest. If any charges are upheld upon completion of such hearing, then such charges shall become due and payable ten (10) days after the issuance of the order upon such protest and if not timely paid, such charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Such charges may also be recovered in a civil action against the owner or other person in control of the premises for which such charges were incurred, and any person violating any of the provisions of this Article shall be liable to the City for all costs, fees, charges and expenses, including but not limited to administrative costs and legal fees and costs, by reason of such violation.

G. Civil Penalties.

In the event the alleged violator fails to take the remedial measures set forth in the Notice of Violation or otherwise fails to cure the violations described therein within ten (10) days after the City has taken the actions described above, the City may impose a penalty not to exceed one thousand dollars (\$1,000), depending on the severity of the violation, for each day the violation remains unremedied after the receipt of the Notice of Violation.

H. Criminal Penalties; Enforcement Costs.

Any person who violates any provision of this Article shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of up to one thousand dollars (\$1,000) per violation per day and/or imprisonment for a period of time not to exceed one (1) year.

The City may recover all attorneys' fees court costs and other expenses associated with enforcement of this Article, including sampling and monitoring expenses.

I. Injunctive Relief.

The authorized enforcement agency may petition for a preliminary or permanent injunction restraining any person from undertaking any activities which would result in a violation or continued violation of this Article, and may seek mandatory injunctive relief compelling the person to perform abatement or remediation of any violation of this Article.

J. Violations Deemed a Public Nuisance.

In addition to the enforcement processes and penalties provided herein, any condition caused or permitted to exist in violation of any of the provisions of this Article is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, or may be subject of a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance.

K. Remedies Not Exclusive.

Except as expressly provided above, the remedies in this Section are cumulative and the exercise of any one (1) or more remedies shall not prejudice any other remedies that may otherwise be pursued for a violation of this Article. The remedies listed in this Article are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

9-1644 ACTION WITHOUT PRIOR NOTICE.

Any person who violates a prohibition or fails to meet a requirement of this Article will be subject, without prior notice, to one (1) or more of the enforcement actions identified Section 9-1643 of this Article, when attempts to contact the person have failed and the enforcement actions are necessary to stop an actual or potential discharge which presents or may present imminent danger to the environment, or to the health or welfare of persons, or to the MS4.

9-1645 OTHER LEGAL ACTION.

Notwithstanding any other remedies or procedures available to the City, if any person discharges into the MS4 in a manner that is contrary to the provisions of this Article, the City Attorney may commence an action for appropriate legal and equitable relief including damages and costs in the County Court. The City Attorney may seek a preliminary or permanent injunction or both which restrains or compels the activities on the part of the discharger.

Section 2. It is the intention of the City Council, and it is hereby ordained, that the provisions of this Ordinance shall become and be made part of the Code of the City of Kearney, Nebraska, and the sections of this Ordinance may be renumbered to accomplish such intention.

Section 3. That all ordinances and resolutions or parts of ordinances and resolutions in conflict herewith are hereby repealed.

Section 4. This Ordinance shall be in full force and effect from and after its passage, approval and publication according to law and shall be published in pamphlet form by the authority of the City Council.

INTRODUCED BY COUNCIL MEMBER *Lammers*
PASSED AND APPROVED THIS 23RD DAY OF FEBRUARY, 2010.

CITY OF KEARNEY
ATTEST:
Michelle E. Trembly
MICHAELLE E. TREMBLY
CITY CLERK
BUFFALO COUNTY, NEBRASKA

Stanley A. Clouse
STANLEY A. CLOUSE
PRESIDENT OF THE COUNCIL
AND EX-OFFICIO MAYOR

CERTIFICATE

STATE OF NEBRASKA)
COUNTY OF BUFFALO) ss
CITY OF KEARNEY)

I, Michaëlle E. Trembly, City Clerk of the City of Kearney, Buffalo County, Nebraska, hereby certify that the attached is a true and correct copy of Ordinance No. 7573 amending the City Code by adding a new Article 16 entitled "Construction and Post-construction Stormwater Code" to Chapter 9 "Public Works" providing a purpose and intent; providing definitions; setting forth liability responsibilities; setting forth responsibility for administration; providing severability, applicability and prohibitions; providing general requirements for construction activities; providing requirements for the building phase of development; requiring construction stormwater pollution prevention plan; providing requirements for utility construction; providing post-construction requirement of permanent BMPs; providing certificate of permanent BMP's; requiring ongoing inspection and maintenance of permanent BMPs; setting forth technical standards, specifications, and guidance; authorization of enforcement personnel; providing for right of entry and sampling; setting forth violations, enforcement and penalties; setting forth action without prior notice and other legal action, which was passed and approved by the President and City Council on the 23rd day of February, 2010, and ordered published in pamphlet form by the authority of the Council on February 24, 2010, with copies being made available to the public on such date at the Office of the City Clerk, the Police Department and the Public Library.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal this 24th day of February, 2010.


MICHAËLLE E. TREMBLY, CITY CLERK



