

CITY OF WINCHESTER, KENTUCKY  
ORDINANCE NO. 14-2011

SUMMARY OF ORDINANCE

**AN ORDINANCE STATING THE POST-CONSTRUCTION  
STORMWATER RUNOFF REQUIREMENTS FOR THE CITY OF  
WINCHESTER , KENTUCKY**

The entire ordinance is available for public review at the City Clerk's office at City Hall.

I hereby certify that the foregoing is an accurate summary of the contents of the above-entitled Ordinance.

/s/ William A. Dykeman

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**William A. Dykeman**  
**City Attorney**

**CITY OF WINCHESTER, KENTUCKY**

**ORDINANCE NO. 14-2011**

**AN ORDINANCE STATING THE POST-CONSTRUCTION  
STORMWATER RUNOFF REQUIREMENTS FOR THE CITY OF  
WINCHESTER, KENTUCKY**

**WHEREAS**, the City of Winchester now operates under the requirements of the Kentucky Pollutant Discharge Elimination System (KPDES), and

**WHEREAS**, the City of Winchester has a stormwater permit which provides authorization to discharge under the KPDES general permit for small municipal separate storm sewer systems, and

**WHEREAS**, one of the six (6) minimum control measures required is Post Construction Stormwater Management in New Development and Redevelopment, and

**WHEREAS**, the City of Winchester is required to implement and enforce the use of structural and non-structural controls that are required to obtain permanent stormwater management over the life of the property's use, and

**WHEREAS**, the City of Winchester must be compliant with the MS4 stormwater permit and finds it necessary to enact an ordinance to provide permanent post-construction stormwater runoff control from active construction sites that disturb at least one acre, or projects less than one acre that are part of a larger common plan of development.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF WINCHESTER, KENTUCKY AS FOLLOWS:**

**Section 1. Authority**

This Ordinance is adopted pursuant to the powers granted and limitations imposed by Kentucky laws, including the statutory authority granted to Kentucky cities and counties in Kentucky Revised Statutes (KRS), Chapters 67 and 100.

This Ordinance is adopted pursuant to the powers granted and limitations by the Federal Clean Water Act, and in particular those parts that authorize local governments to require any state or federal department or agency to comply with all local water pollution control requirements.

## Section 2. Purpose and Scope

The City of Winchester establishes this ordinance in order to establish a set of water quality and quantity policies applicable to all surface waters to provide reasonable guidance for the regulation of stormwater runoff in all public and private developments for the purpose of protecting local water resources from degradation and to protect and maintain the native vegetation in riparian stream and wetland areas. This ordinance seeks to meet that purpose through the following objectives:

1. To protect the general health, safety, and welfare of the citizens, property owners, and businesses in the City of Winchester;
2. To protect and enhance the municipal separate storm sewer system (MS4), community waters and waters of the Commonwealth by inhibiting the deterioration of water resources resulting from development;
3. To maintain after development, as nearly as possible, the predevelopment runoff characteristics, and to reduce stream channel erosion, pollution, siltation and sedimentation, and local flooding; and
4. To provide long-term responsibility for and maintenance of stormwater BMPS.

These regulations for stormwater management apply to the development or redevelopment of land for residential, commercial, industrial, or institutional use, but do not apply to agricultural land management practices.

## Section 3. Definitions

For the purposes of this Ordinance, the following terms, phrases, words, and their derivatives shall have the meaning stated below:

- 1 **Accelerated Erosion** means erosion caused by development activities that exceeds the natural processes by which the surface of the land is worn away by the action of water, wind, or chemical action.
- 2 **Applicant** means a property owner or agent of a property owner who has filed an application for a stormwater management permit.
- 3 **Best Management Practices (BMPs)** schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the Commonwealth. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.
- 4 **Buffer** A vegetated area, including trees, shrubs and herbaceous vegetation, which exists or is established to protect a stream system, lake, reservoir or coastal estuarine area. Alteration of this natural area is strictly limited.
- 5 **Building** means any structure, either temporary or permanent, having walls and a roof, designed for the shelter of any person, animal, or property, and occupying more than 100 square feet of area.
- 6 **Channel** means a natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

- 7 **City of Winchester** is the municipal agency designated to enforce this ordinance. Agencies with enforcement may include public works, engineering technician, code enforcement, or Winchester Municipal Utility.
- 8 **Dedication** means the deliberate appropriation of property by its owner for general public use.
- 9 **Detention** means the temporary storage of storm runoff in a stormwater management practice with the goals of controlling peak discharge rates and providing gravity settling of pollutants.
- 10 **Detention Facility** means a detention basin or alternative structure designed for the purpose of temporary storage of stream flow or surface runoff and gradual release of stored water at controlled rates.
- 11 **Developer** is any person, firm, corporation, sole proprietorship, partnership, state agency, or political subdivision thereof engaged in the development or re-development of property.
- 12 **Development** 1) The improvement of property for any purpose involving building; 2) Subdivision, or the division of a tract or parcel of land in to 2 or more parcels; 3) the combination of any two or more lots, tracts, or parcels of property for any purpose; 4) the preparation of land for any of the above purposes.
- 13 **Drainage Easement** means a legal right granted by a landowner to a grantee allowing the use of private land for stormwater management purposes.
- 14 **Erosion Prevention and Sediment Control (EPSC)** is the prevention of soil erosion and control of solid material during land disturbing activity to prevent its transport out of the disturbed area by means of air, water, gravity, or ice.
- 15 **Fee in Lieu** means a payment of money in place of meeting all or part of the stormwater performance standards required by this ordinance.
- 16 **High quality waters or HQW** means those “waters of the Commonwealth” that have been categorized by the Kentucky Division of Water as high quality pursuant to the requirements of 401 KAR 10:030, Section 1(3).
- 17 **Hotspot** means an area where land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in stormwater.
- 18 **Impervious Cover** means those surfaces that cannot effectively infiltrate rainfall (e.g., building rooftops, pavement, sidewalks, driveways, etc).
- 19 **Industrial Stormwater Permit** means a National Pollutant Discharge Elimination System permit issued to a commercial industry or group of industries which regulates the pollutant levels associated with industrial stormwater discharges or specifies on-site pollution control strategies.
- 20 **Infiltration** means the process of percolating stormwater into the subsoil.
- 21 **Infiltration Facility** means any structure or device designed to infiltrate retained water to the subsurface. These facilities may be above grade or below grade.
- 22 **Land Disturbance Activity** means any activity which changes the volume or peak flow discharge rate of rainfall runoff from the land surface. This may include the grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity which bares soil or rock or involves the diversion or piping of any natural or man-made watercourse.
- 23 **Landowner** means the legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

- 24 Maintenance Agreement** means a legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of stormwater management practices.
- 25 Nonpoint Source Pollution** means pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.
- 26 Offset Fee** means a monetary compensation paid to a local government for failure to meet pollutant load reduction targets.
- 27 Off-Site Facility** means a stormwater management measure located outside the subject property boundary described in the permit application for land development activity.
- 28 On-Site Facility** means a stormwater management measure located within the subject property boundary described in the permit application for land development activity.
- 29 Pollutant** means and includes dredged spoil, solid waste, incinerator residue, sewage, sewage sludge, garbage, chemical, biological or radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, industrial, municipal or agricultural waste, and any substance resulting from the development, processing, or recovery of any natural resource which may be discharged into water.
- 30 Private Development/Redevelopment** means developments that are not the responsibility of the state or local municipality to provide maintenance on including storm sewers, stormwater facilities, and roads.
- 31 Public Development/Redevelopment** means developments that are the responsibility of the state or local municipality to provide maintenance on including storm sewers, stormwater facilities, and roads.
- 32 Redevelopment** means any construction, alteration or improvement involving land disturbance performed in areas where existing land use is high density commercial, industrial, institutional or multi-family residential.
- 33 Runoff** is rainfall, snowmelt, or irrigation water flowing over the ground surface.
- 34 Sediment** means soils or other surficial materials transported or deposited by the action of wind, water, ice, or gravity as a product of erosion.
- 35 Stop Work Order** means an order issued which requires that all construction activity on a site be stopped.
- 36 Stormwater Management** means the use of structural or non-structural practices that are designed to reduce stormwater runoff pollutant loads, discharge volumes, peak flow discharge rates and detrimental changes in stream temperature that affect water quality and habitat.
- 37 Stormwater** means stormwater run-off, snow melt run-off, and surface run-off and drainage.
- 38 Stormwater Pollution Prevention Plan (SWPPP)** is a site-specific document required for submission of the KPDES Notice of Intent (NOI) and this Ordinance. The SWPPP is utilized during construction and for post-construction conditions to identify potential sources of pollution, describe practices to reduce pollutants in stormwater discharges, and identify implementation procedures to maintain compliance with the current general permit.
- 39 Stormwater Treatment Practices (STPs)** means measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and

water bodies.

**40 Water Pollution** means the alteration of the physical, thermal, chemical, biological, or radioactive properties of the waters of the Commonwealth in such a manner, condition, or quantity that will be detrimental to the public health or welfare, to animal or aquatic life or marine life, to the use of such waters as present or future sources of public water supply or to the use of such waters for recreational, commercial, industrial, agricultural, or other legitimate purposes.

**41 Watercourse** means a channel, which gathers or carries surface water.

## **Section 4. General Provisions**

### **4.1. Applicability**

This ordinance shall be applicable to all subdivision or site plan applications, unless eligible for an exemption or granted a waiver by the City of Winchester under the specifications of Section 1.5 of this ordinance. This ordinance also applies to land development activities that are smaller than one (1) acre if such activities are part of a larger common plan of development.

When a site development plan is submitted that qualifies as a redevelopment project as defined in Section 2 of this ordinance, decisions on permitting and on-site stormwater requirements shall be made after a review by the City of Winchester. Each redevelopment project shall have no net increase in imperviousness.

### **4.2 Exemptions and Waivers to Stormwater Management Requirements**

#### **4.2.A. Exemptions for Providing Stormwater Management**

Post-construction stormwater management measures must be implemented at construction sites disturbing one or more acres of land or sites less than one acre that are from a common plan of development. The following activities may be exempt from the post-construction stormwater performance criteria in this ordinance:

1. Any logging and agricultural activity which is consistent with an approved soil conservation plan or a timber management plan prepared or approved by the City of Winchester, as applicable.
2. Additions or modifications to existing single family structures
3. Developments that do not disturb more than one (1) acre of land, provided they are not part of a larger common development plan;
4. Repairs to any stormwater treatment practice deemed necessary by City of Winchester;
5. Any emergency project that is immediately necessary for the protection of life, property or natural resources;
6. Linear construction projects, such as pipeline or utility line installation, that do not result in the installation of any impervious cover, as determined by the City of Winchester;
7. Any part of a land development that was approved by the City of Winchester prior to the effective date of this ordinance.

#### **4.2.B. Waivers for Providing Stormwater Management**

The minimum requirements for stormwater management may be waived in whole or in part upon written request of the applicant, provided that at least one of the following conditions applies:

1. It can be demonstrated that the proposed development is not likely to impair attainment of the objectives of this ordinance;
2. Provisions are made to manage stormwater by an off-site facility. The off-site facility is required to be in place, to be designed and adequately sized to provide a level of stormwater control that is equal to or greater than that which would be afforded by on-site practices and there is a legally obligated entity responsible for long-term operation and maintenance of the stormwater practice;
3. The City of Winchester finds that meeting the minimum on-site management requirements is not feasible due to the natural or existing physical characteristics of a site.

#### **4.2.C. Procedure for Exemptions and Waivers**

Exemptions or waivers from stormwater management requirements shall not result in development or re-development that undermines the purpose of this ordinance as stated in Section 2. Written requests for exemptions per Section 4.2.A or waivers per Section 4.2.B shall be submitted to the City of Winchester for approval.

For any waiver request, the applicant must demonstrate to the satisfaction of the City of Winchester that the construction project will not result in the following impacts to downstream waterways:

- Deterioration of existing culverts, bridges, dams, and other structures;
- Degradation of biological functions or habitat;
- Accelerated streambank or streambed erosion or siltation;
- Increased threat of flood damage to public health, life, or property.

#### **4.2.D. Mitigation Measures for Stormwater Management Practices**

Where the City of Winchester waives all or part of the minimum stormwater management requirements, or where the waiver is based on the provision of adequate stormwater facilities provided downstream of the proposed development, the applicant may be required to provide one of the following mitigation options as determined by the City of Winchester.

- A monetary contribution may be required in-lieu of the stormwater management practices as established by the City of Winchester in the Winchester Stormwater Manual. All of the monetary contributions shall be credited to an appropriate capital improvements program project, and shall be made by the developer prior to the issuance of any Building Permit for the development.
- In lieu of a monetary contribution, an applicant may obtain a waiver of the required stormwater management by entering into an agreement with the City

of Winchester for the granting of an easement or the dedication of land by the applicant, to be used for the construction of an off-site stormwater management facility. The agreement shall be entered into by the applicant and the City of Winchester prior to the recording of plats or, if no record plat is required, prior to the issuance of the Building Permit.

#### **4.3. Compatibility with Other Permit and Ordinance Requirements**

The requirements of this Ordinance should be considered minimum requirements, and where any provision of this ordinance imposes restrictions different from those imposed by any other applicable ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

#### **4.4. Severability**

If the provisions of any article, section, subsection, paragraph, subdivision or clause of this ordinance shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this ordinance.

### **Section 5. Permit Procedures and Requirements**

#### **5.1. Grading Permit Submittals**

Any land owner or operator desiring a permit for a land disturbance activity shall submit to the City of Winchester a completed Grading Permit application. Unless otherwise exempted by this ordinance, a Grading Permit application must be accompanied by the following in order that the permit application be considered for review:

- (1) Grading Permit Application.
- (2) Completed Storm Water Pollution Prevention Plan (SWPPP) per the City of Winchester's Erosion and Sediment Control Ordinance.
- (3) All fees for said permit shall be paid according to the established Permitting Fee Schedule.
- (4) Stormwater Management Plan (SWMP) and maintenance agreement per the Section 7 of this Ordinance.

#### **5.2. Application Review Fees**

The fee for submittal and review of any Grading Permit application is non-refundable. All of the monetary fees shall be credited to a local budgetary category to support local plan review, inspection and program administration, and shall be made prior to the issuance of any Grading Permit.

#### **5.3. Review and Approval**

Permit applications may be filed with the City of Winchester on any regular business day.

Within 20 business days of the receipt of a complete permit application, including all documents as required by this ordinance, the City of Winchester shall inform the applicant whether the application, SWMP, SWPPP, and maintenance agreement are

approved, disapproved, or in need of revision.

Failure of the City of Winchester to act on an original or revised application within 20 working days after receipt of a complete application shall not authorize the applicant to proceed, regardless of whether all other local, state and federal permits have been obtained. The time period for the City of Winchester to review the application shall start anew with each resubmittal.

No permits shall be issued until the SWMP and maintenance agreements are approved by the City of Winchester.

## **Section 6. Stormwater Management Measures**

### **6.1. Stormwater Management Site Performance Criteria**

Unless judged by the City of Winchester to be exempt or granted a waiver, the following performance criteria shall be addressed for stormwater management at all sites:

- (A) All site designs shall establish stormwater management practices to control the peak flow rates of stormwater discharge and reduce the generation of stormwater runoff. These practices should seek to utilize pervious areas for stormwater treatment and to infiltrate stormwater runoff from driveways, sidewalks, rooftops, parking lots, and landscaped areas to the maximum extent practical.
- (B) Stormwater management measures shall be required that are designed, built, and maintained to treat, filter, flocculate, infiltrate, screen, evapo-transpire, harvest and reuse stormwater runoff in order to manage stormwater runoff quality and quantity.
- (C) Structural and non-structural controls may be used to obtain permanent stormwater management over the life of the property's use. Structural stormwater controls include, but are not limited to, grass swales, filter strips, infiltration basins, detention ponds, stormwater wetlands, natural filtration areas, sand filters, and rain gardens. Non-structural BMPs include, but are not limited to, open spaces, vegetated conveyances and buffers, natural infiltration, and low impact development.
- (D) Areas of development and re-development that result in new or expanded discharge to high quality waters (HQWs) shall follow the "Standards for Protection of HQWs" in Winchester's Stormwater Manual in order to protect existing in-stream water uses and the level of water quality necessary to protect existing uses.
- (E) Recommended BMP resources include EPA's National Menu of Stormwater Best Management Practices (<http://cfpub.epa.gov/npdes/stormwater/menuofbmps/>).
- (F) Prepare and implement a Stormwater Pollution Prevention Plan (SWPPP) and file a Notice of Intent (NOI) under the provisions of the National Pollutant Discharge Elimination System (NPDES) general or individual permit. The SWPPP requirement applies to both existing and new development sites.
- (G) Stormwater discharges from land uses or activities with higher potential pollutant loadings, known as "hotspots", may require the use of specific structural Stormwater Treatment Practices (STPs) and pollution prevention practices.
- (H) Stormwater design calculations shall follow the current Subdivision Regulations for Winchester/Clark County and incorporate the "Stormwater Runoff Quality Treatment Standard" accepted by the City of Winchester in Winchester's Stormwater Manual.

## **6.2. Maintenance Agreements**

All stormwater treatment practices shall have an enforceable Operation and Maintenance Agreement to ensure the system functions as designed. This agreement will include any and all maintenance easements required to access and inspect the stormwater treatment practices, and to perform routine maintenance as necessary to ensure proper functioning of the stormwater treatment practice. In addition, a legally binding covenant specifying the parties responsible for the proper maintenance of all stormwater treatment practices shall be secured prior to issuance of any permits for land disturbance activities.

### **6.2.1. Maintenance Easement**

Prior to the issuance of any permit that has a stormwater management facility as one of the requirements of the permit, the applicant or owner of the site must execute a maintenance easement agreement that shall be binding on all subsequent owners of land served by the stormwater management facility. The agreement shall provide for access to the facility at reasonable times for periodic inspection by the City of Winchester, or their contractor or agent to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this ordinance. The easement agreement shall be recorded by the City of Winchester in the land records.

### **6.2.2. Operation and Maintenance Agreements**

Maintenance of all stormwater management facilities shall be ensured through the creation of a formal operation and maintenance agreement that must be approved by the City of Winchester and recorded into the land record prior to final plan approval. As part of the agreement, a schedule shall be developed for when and how often maintenance will occur to ensure proper function of the stormwater management facility. The agreement shall also include plans for annual inspections to ensure proper performance of the facility between scheduled cleanouts and submittal of annual reports to the City of Winchester. An example maintenance covenant can be found at <http://publicworks.winchesterky.com/>.

The City of Winchester, in lieu of a maintenance agreement, may accept dedication of any existing or future stormwater management facility for maintenance, provided such facility meets all the requirements of this chapter and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

## **6.3 Construction Inspection**

The applicant must notify the City of Winchester in advance before the commencement of Post-Construction BMPs or Stormwater Management System. It shall be the responsibility of the contractor to conduct regular inspections of stormwater management system BMPs by qualified inspectors who has been approved by the City of Winchester. All inspections shall be documented and written reports prepared that contain the following information:

1. The date and location of the inspection;
2. Whether construction is in compliance with the approved Stormwater Management Plan;
3. Variations from the approved construction specifications;

4. Installation date of all stormwater measures since the previous inspection; and
5. Any violations that exist.

If any violations are found, the property owner shall be notified in writing of the nature of the violation and the required corrective actions. No added work shall proceed until any violations are corrected and all work previously completed has received approval by the City of Winchester.

#### **6.4. As Built Plans**

All applicants are required to submit actual “as built” plans for any stormwater management practices located on-site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and must be certified by a professional engineer. A final inspection by the City of Winchester is required before the release of any performance securities can occur.

### **Section 7. Requirements for Stormwater Management Plan Approval**

No application for development will be approved unless it includes a Stormwater Management Plan detailing in concept how runoff and associated water quality impacts resulting from the development will be controlled or managed. This plan must indicate whether stormwater will be managed on-site or off-site and, if on-site, the general location and type of practices.

The Stormwater Management Plan(s) must be signed by a licensed professional engineer (PE), who will verify that the design of all stormwater management practices meet the current Subdivision Regulations for Winchester/Clark County. No Grading Permit shall be issued until a satisfactory final Stormwater Management Plan, or a waiver thereof, has been reviewed and approved by the City of Winchester after determining that the plan or waiver is consistent with the requirements of this Ordinance.

#### **7.1. Stormwater Management Plan Requirements**

The Stormwater Management Plan must be submitted for approval and shall include all of the following required information:

1. *Contact Information*  
The name, address, and telephone number of all persons having a legal interest in the property and the tax reference number and parcel number of the property or properties affected.
2. *Topographic Base Map*  
A topographic base map of the site which extends a minimum of 100 feet beyond the limits of the proposed development and indicates existing surface water drainage including streams, ponds, culverts, ditches, karst features, and wetlands; current land use including all existing structures; locations of utilities, roads, and easements; and significant natural and manmade features not otherwise shown.
3. *Calculations*  
Hydrologic and hydraulic design calculations for the pre-development and post-development conditions for the design storms specified in the current Subdivision Regulations for Winchester/Clark County. Such calculations shall include (i) description

of the design storm frequency, intensity and duration, (ii) time of concentration, (iii) Soil Curve Numbers or runoff coefficients, (iv) peak runoff rates and total runoff volumes for the watershed associated with a stormwater control measure, (v) infiltration rates (as applicable), (vi) culvert capacities, (vii) flow velocities, (viii) data supporting the design of each stormwater control measure, and (ix) documentation of sources for all computation methods and field test results.

4. *Soils Information*

If a stormwater management control measure depends on the hydrologic properties of soils (e.g., infiltration basins), then a soils report shall be submitted. The soils report shall be based on on-site boring logs, soil pit profiles, or other methods approved in advance by the City of Winchester. The number and location of required soil borings or soil pits shall be determined based on what is needed to determine the suitability and distribution of soil types present at the location of the control measure.

5. *Maintenance and Repair Plan*

The design and planning of all stormwater management facilities shall include detailed maintenance and repair procedures to ensure their continued function. These plans will identify the parts or components of a stormwater management facility that need to be maintained and the equipment, skills, or training necessary. The Plan shall make provisions for the periodic review and evaluation of the effectiveness of the maintenance program and require the installer to document such activity and provide the information to the responsible party. Parties responsible for the operations and maintenance shall retain all related records for at least three (3) years.

163159136. *Landscaping Plan*

The applicant must present a detailed plan for management of vegetation at the site after construction is finished, including who will be responsible for the maintenance of vegetation at the site and what practices will be employed to ensure that adequate vegetative cover is preserved.

163159137. *Maintenance Easements*

The applicant must ensure access to all stormwater treatment practices (i.e. Right-of-Entry granted by property owner to City of Winchester) at the site for the purpose of inspection and repair (if necessary due to non-compliance) by securing all the maintenance easements needed on a permanent basis. These easements will be recorded with the plan and will remain in effect even with transfer of title to the property.

163159138. *Operations and Maintenance Agreement*

The applicant must execute an operation and maintenance agreement binding on all subsequent owners of land served by an on-site stormwater management measure in accordance with the specifications of this Ordinance.

163159139. *Erosion and Sediment Control Plans for Construction of Stormwater Management Measures*

The applicant must prepare a SWPPP, as applicable to the project, per the City of Winchester's Erosion and Sediment Control Ordinance, for all construction activities related to implementing any on-site stormwater management practices.

163159140. *Stormwater Management Costs*

The total estimated costs for stormwater management practices.

163159141. *Other Environmental Permits*

The applicant shall assure that all other applicable environmental permits have been acquired for the site prior to approval of the final Stormwater Design Plan.

## **7.2. Performance Bond/Security**

The City of Winchester may, at its discretion, require the submittal of a performance security or bond prior to issuance of a permit in order to ensure that the stormwater practices are installed by the permit holder as required by the approved Stormwater Management Plan. The amount of the installation performance security shall be the total estimated construction cost of the stormwater management practices approved under the permit, plus 25%. The performance security shall contain forfeiture provisions for failure to complete work specified in the Stormwater Management Plan.

The installation performance security shall be released in full only upon submission of "as built plans" and written certification by a registered professional engineer that the stormwater practice has been installed in accordance with the approved plan and other applicable provisions of this Ordinance. The City of Winchester will make a final inspection of the stormwater practice to ensure that it is in compliance with the approved plan and the provisions of this Ordinance. Provisions for a partial pro-rata release of the performance security based on the completion of various development stages can be done at the discretion of the City of Winchester.

## **Section 8 Enforcement**

1. The City of Winchester shall be responsible for the enforcement of this Ordinance. Duly authorized representatives have the authority to issue notices of violation, citations and levy fines as described below.
2. A notice of violation (NOV) and/or citation may be posted for the entire project or any specified part thereof if any of the following conditions exist:
  - Structural and/or non-structural BMPs are not being installed or maintained per manufacturer's specifications and/or City of Winchester.
  - Construction is not in compliance with the approved Stormwater Management Plan.
  - Any of the conditions of this article are not being met.
3. For the purposes of this section, a NOV and/or citation is official by posting a copy of the notice of violation and/or citation on the construction site in reasonable proximity to a location where the violation is taking place. Additionally, a copy of the violation and/or order shall be mailed by first class mail, postage pre-paid, to the address listed by the responsible party on the Operation and Maintenance Agreement. In the case of work for which there is no Operation and Maintenance Agreement, a copy of the violation and/or order shall be mailed to the person listed as the landowner of the property.
4. NOVs are the first level of enforcement and do not include a penalty, or fine. Only one NOV will be issued for an offense before citations are utilized. An offense of the same nature as a previous offense, even if previously corrected under a NOV, will constitute a second offense to be enforced through a citation. Offenses enforced through a NOV must be

corrected within five (5) calendar days of the date of issuance or a citation will be issued.

5. Citations shall include a penalty, or fine, for each occurrence and payable to the Issuing Authority prior to release.
  - a. First Citation = \$1000.00 fine.
  - b. Second Citation = \$2000.00 fine and Notice of Intent letter.
5. For violations where no Operation and Maintenance Agreement has been recorded, the City of Winchester will notify the property owner or Responsible Party and cooperate for resolution prior to enforcement. Should the Responsible Party not provide stormwater structure maintenance or demonstrate a history of non-compliance of the same nature, the City of Winchester may request the City Attorney to seek to obtain injunctive relief.
6. Six (6) calendar days after issuing a citation, the City of Winchester may issue a notice of intent to the Responsible Party, landowner, or land user stating the City of Winchester's intent to perform work necessary to comply with this Ordinance. The City of Winchester may go on the land and commence work after fourteen (14) days from issuing the notice of intent. The costs incurred by the City of Winchester to perform this work shall be paid by the property owner or Responsible Party. The cost, plus interest at the rate authorized by the City of Winchester, plus a reasonable administrative and attorneys fee shall be billed to the property owner. Failure to reimburse the City within thirty (30) days of billing will result in a lien being placed on the property.
7. Compliance with the provisions of this Ordinance may also be enforced by injunction.
8. The City of Winchester is authorized to require immediate abatement of any violation of this Ordinance that constitutes an immediate threat to the health, safety or well-being of the public. If any such violation is not abated immediately, the City of Winchester is authorized to enter onto private or public property and to take any and all measures required to remediate the violation. Any expense related to such remediation undertaken by the City of Winchester shall be fully reimbursed by the property owner and/or responsible party. The cost, plus interest at the rate authorized by the City of Winchester, plus a reasonable administrative and attorneys fee shall be billed to the property owner. Failure to reimburse the City within thirty (30) days of billing will result in a lien being placed on the property.
9. Any person, firm, corporation or agency acting as principal, agent, employee or otherwise, who fails to comply with the provisions of this Ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not less than one hundred dollars (\$100.00) and not more than five hundred dollars (\$500.00), or by imprisonment for not more than ninety (90) days, or both, for each separate offense. Each day there is a violation of any part of this Ordinance shall constitute a separate offense.

For the purpose of this ordinance, the ultimate party responsible for assuring compliance with the conditions set forth is the property owner.

## **Section 9. Permits and Fees**

The fees for permits and inspections associated with this ordinance shall be as provided for in the City of Winchester's Stormwater Manual.

**Section 10.** All Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are repealed to the extent of such conflict.

**Section 11.** All portions of this Ordinance amending the Code designate words and figures, which are deleted by including such words and figures stricken with dashed lines through the center. Words and figures added by the amendment are underlined with solid lines. The codifier is instructed to omit the words and figures deleted and the solid underlining when codifying this Ordinance.

**Section 11. Adoption of Ordinance**

Introduced and given first reading at a meeting of the Board of Commissioners of the City of Winchester, Kentucky, held on June 21, 2011 and finally adopted, after second reading at a meeting of the said Board held on June 28, 2011.

**/s/ Edallen York Burtner**

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**\_ Edallen York Burtner, Mayor**

**ATTEST:**

**/s/ Marilyn Rowe**

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**Marilyn Rowe, City Clerk**

Reviewed by City Attorney William A. Dykeman: June 17, 2011