

Section 122 POST-CONSTRUCTION STORMWATER MANAGEMENT

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Section 122-1 AUTHORITY.

A. This section (122) is adopted by the City of Nixa (heretofore known as the City), the Governing body deemed the Authority Having Jurisdiction (AHJ).

B. The provisions of this section are deemed not to limit any other lawful regulatory powers of the same governing body.

C. This City hereby designates the Director to administer and enforce the provisions of this section.

D. The requirements of this section do not preempt more stringent stormwater management requirements that may be imposed by the following:

(1) Missouri Department of Natural Resources administrative rules, permits or as authorized under State Statute.

(2) Environmental Protection Agency regulations

Section 122-2 FINDINGS OF FACT.

The City finds that uncontrolled, post-construction runoff has a significant impact upon water resources and the health, safety and general welfare of the community and diminishes the public enjoyment and use of natural resources. Specifically, uncontrolled post-construction runoff can:

A. Degrade physical stream habitat by increasing stream bank erosion, increasing streambed scour, diminishing groundwater recharge, diminishing stream base flows and increasing stream temperature.

B. Diminish the capacity of lakes and streams to support fish, aquatic life, recreational and water supply uses by increasing pollutant loading of sediment, suspended solids, nutrients, heavy metals, bacteria, pathogens and other urban pollutants.

C. Reduce the quality of groundwater by increasing pollutant loading.

D. Threaten public health, safety, property and general welfare by overtaxing the storm drainage system as a whole.

E. Threaten public health, safety, property and general welfare by increasing major flood peaks and volumes.

F. Undermine floodplain management efforts by increasing the incidence frequency and levels of flooding.

Section 122-3 PURPOSE AND INTENT.

A. Purpose. The general purpose of this section is to establish long-term post-construction runoff management requirements that will diminish the threats to public health, safety, welfare and the aquatic environment. Specific purposes are to:

(1) Further the maintenance of safe and healthful conditions.

(2) Prevent and control the adverse effects of stormwater; prevent and control soil erosion; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth.

(3) Control the safe capacity of existing storm drainage facilities and receiving water bodies; prevent undue channel erosion; control increases in the scouring and transportation of particulate matter; and prevent conditions that endanger downstream property.

B. Intent. It is the intent of the City that this section regulates post-construction stormwater discharges to waters of the City and the State.

The preferred method of achieving the stormwater performance standards set forth in this section is through the preparation and implementation of comprehensive, systems-level Post Construction Stormwater Management Plans that cover hydrologic units, such as watersheds, on a municipal and regional scale.

Such plans may prescribe regional stormwater devices, practices or systems, any of which may be designed to treat runoff from more than one site prior to discharge to waters of the state. It is the intent of this section that the approved plan be used to identify Post-Construction Stormwater Management Practices (PCBMPs) acceptable for the community.

Section 122-4 APPLICABILITY AND JURISDICTION.

A. Applicability.

- (1)** Where not otherwise limited by law, this section applies after final stabilization to a site of land disturbance construction activity that results in one or more acres of land disturbance.

- (2)** A site that meets any of the criteria in this subsection is exempt from the requirements of this section:
 - (a)** A redevelopment post-construction site with no increase in exposed parking lots or roads.

 - (b)** Nonpoint discharges from agricultural facilities and practices.

 - (c)** Nonpoint discharges from silviculture activities (the growing and cultivation of trees).

 - (d)** Emergency maintenance/repair of any underground utility such as water, sewer, electric, cable, fiber optic, etc. whether City owned or owned by a private utility.

- (3)** Notwithstanding the applicability requirements in Subsection **A (1)**, this section applies to post-construction sites of any size that, in the opinion of the Director, is likely to result in runoff that exceeds the safe capacity of the existing storm drainage facilities or receiving body of water; that causes undue channel erosion, that increases water pollution by scouring or the transportation of particulate matter or that endangers property or public safety.

B. Jurisdiction. This section applies to post-construction sites within the corporate City boundaries and jurisdiction of the City of Nixa, Mo. deemed to be the Authority Having Jurisdiction (AHJ).

C. Exclusions. This section is not applicable to activities conducted by a Missouri state agency or federal agency.

Section 122-5 TECHNICAL STANDARDS AND DESIGN METHODS.

A. Design criteria, standards and specifications. All Post Construction Best management Practices required to comply with this section shall incorporate technical standards and design methods specified in the City's Technical Specification Manual, the Stormwater Management Plan and/or the Best Management Practices (BMP) Manual for Land Disturbance Activities (2016).

B. Where not superseded by stricter requirements in the City's, Erosion Control and Stormwater Management Requirements, the following standards are also incorporated for reference:

(1) Applicable design criteria, standards and specifications identified in the City's "Best Management Practices (BMP) Manual for Land Disturbance Activities" (2016)

(2) Design guidance and technical standards identified or developed by the Missouri Department of Natural Resources.

(3) Other standards. Other technical standards not identified or developed in Subsection **B (1) & (2)** may be used, provided that the methods have been approved by the Director.

Section 122-6 PERFORMANCE STANDARDS.

A. Responsible party. The entity holding title to the property shall be responsible for either developing and implementing a post-construction stormwater management plan, or causing such plan to be developed and implemented through contract or other agreement. This plan shall be developed in accordance with 122-8, which incorporates the requirements of this section.

B. Plan. A written Post Construction Stormwater Management Plan in accordance with 122-8 shall be developed and implemented for each post-construction site.

C. Stormwater management performance standards. All PCBMP(s) required to comply with this section shall meet performance standards specified in this ordinance, the City's Technical Specification Manual, the Stormwater Management Plan, and/or the Best Management Practices (BMP) Manual for Land Disturbance Activities (2016).

D. Location and regional treatment option.

(1) Stormwater management facilities required to meet this section may be located on-site or off-site as part of a regional stormwater device, practice or system.

(2) The Director may approve off-site management measures, provided that all of the following conditions are met:

(a) The Director determines that the post-construction runoff is covered by a stormwater management plan that is approved by the City and that contains BMP requirements consistent with the purpose and intent of this section.

(b) The off-site facility meets all of the following conditions:

[1] The facility will be in place before the need for the facility arises as a result of on-site construction activities.

[2] The facility is designed and adequately sized to provide a level of stormwater control equal to or greater than that which would be afforded by on-site practices meeting the performance standards of this section.

[3] The facility has a legally obligated entity responsible for its long-term operation and maintenance.

[4] Where a regional treatment option exists such that the Director may exempt the applicant from all or part of the minimum on-site stormwater management requirements, the applicant shall be required to pay a fee in an amount determined **in negotiation with the Director. In determining the fee for post-construction runoff, the Director shall consider an equitable distribution of the cost for land, engineering design, construction, and maintenance of the regional treatment option.**

Section 122-7 PERMITTING REQUIREMENTS AND PROCEDURES.

A. Permit required. No person(s) may undertake a land-disturbing construction activity without first obtaining a MODNR General Operating Permit and a City of Nixa Land Disturbance Permit.

B. Permit application. Unless specifically excluded by this section, any responsible party desiring a City Land Disturbance Permit(s) shall submit to the Director a permit application(s) made on a form provided by the City for that purpose.

(1) Unless otherwise excepted by this section, a permit application must be accompanied by a Post Construction Stormwater Management Plan and a Post Construction Maintenance Agreement (where required).

(2) The Post Construction Stormwater Management Plan shall be prepared to meet the requirements of 122-6 and 122-8, the Post Construction Maintenance Agreement shall be prepared to meet the requirements of 122-9 and the financial guarantee shall meet the requirements of 122-10.

C. Review and approval of permit application. The Director shall review any permit application that is submitted with a Post Construction Stormwater Management Plan and a Post Construction Maintenance Agreement. The following approval procedure shall be used:

(1) The Director may request additional information if required for a complete application within 10 business days of receipt of any permit application. Within 15 business days of the receipt of a complete permit application, including all items as required by Subsection **B**, the Director shall inform the applicant whether the application, plan and maintenance agreement are approved or disapproved based on the requirements of this section.

(2) If the post-construction stormwater permit application, plan and maintenance agreement are approved, the Director shall issue the permit.

(3) If the stormwater permit application, plan or maintenance agreement is disapproved, the Director shall detail in writing the reasons for disapproval.

(4) The Director may request additional information from the applicant. If additional information is submitted, the Director shall have 15 business days from the date the additional information is received to inform the applicant that the plan and maintenance agreement are either approved or disapproved.

(5) Prior to commencing the land development activity, the project may be subject to additional approvals as required by City ordinance.

D. Permit requirements. All permits issued under this section shall be subject to the following conditions, and holders of permits issued under this section shall be deemed to have accepted these conditions. The Director may suspend or revoke a permit for violation of a permit condition, following written notification of the responsible party. An action by the Director to suspend or revoke this permit may be appealed in accordance with 122-13.

(1) Compliance with this permit does not relieve the responsible party of the responsibility to comply with other applicable federal, state, and local laws and regulations.

(2) The responsible party shall design and install all structural and nonstructural stormwater best management practices in accordance with the approved stormwater management plan and this permit.

(3) The responsible party shall notify the Director at least two business days before commencing any work in conjunction with the stormwater management plan, and within three business days upon completion of the installation of all stormwater BMPs. If required as a special condition under Subsection E, the responsible party shall make additional notification according to a schedule set forth by the Director so that BMP installations can be inspected during construction.

(4) Completed BMPs must pass a final inspection to determine if they are in compliance with the approved stormwater management plan and this section. The Director shall notify the responsible party in writing of any changes required in such BMPs to bring them into compliance with the conditions of this permit.

(5) The responsible party shall notify the Director of any significant modifications they intend to make to an approved stormwater management plan. The Director may require that the proposed modifications be submitted for approval prior to incorporation into the stormwater management plan and execution by the responsible party.

(6) The responsible party shall maintain all stormwater BMPs in accordance with the stormwater management plan until the practices either become the responsibility of the City, or are transferred to subsequent private owners as specified in the approved maintenance agreement.

(7) If so instructed by the Director, the responsible party shall repair at their own expense all damage to adjoining municipal facilities and drainage ways caused by runoff, where such damage is caused by activities that are not in compliance with the approved stormwater management plan.

(8) The responsible party shall permit property access to the Director for the purpose of inspecting the property for compliance with the approved stormwater management plan and this permit.

(9) Where site development or redevelopment involves changes in direction, increases in peak rate and/or total volume of runoff from a site, the Director may require the responsible party to make appropriate legal arrangements with affected property owners concerning the prevention of endangerment to property or public safety.

(10) The responsible party is subject to the enforcement actions and penalties detailed in 122-12, if the responsible party fails to comply with the terms of this permit.

E. Permit conditions. Permits issued under this subsection may include conditions established by the Director in addition to the requirements needed to meet the performance standards in 122-6 or a financial guarantee as provided for in 122-10.

F. Permit duration. Permits issued under this section shall be valid from the date of issuance through the date the Director notifies the responsible party that all stormwater BMPs have passed the final inspection required under Subsection **D (4)**. The permit shall be invalid if work is not commenced within one year of permit issuance.

Section 122-8 POST-CONSTRUCTION STORMWATER MANAGEMENT PLAN.

A. Plan requirements. A Post Construction Stormwater Management Plan shall be prepared and submitted to the Director. The Post Construction Stormwater Management Plan shall include, at a minimum, information required in the City's Technical Specifications Manual, previous sections of this Land Disturbance, Illicit Discharge & Erosion Control ordinance, the City's Stormwater Management Plan Requirements and a Stormwater Pollution Prevention Plan (SWPPP).

B. Alternate requirements. The Director may prescribe alternative submittal requirements for applicants seeking an exemption to on-site stormwater management performance standards under 122-6E.

Section 122-9 POST CONSTRUCTION MAINTENANCE AGREEMENT.

A. Maintenance agreement required. The maintenance agreement required under 122-7B for stormwater BMPs shall be an agreement between the City and the responsible party to provide for maintenance of stormwater BMPs beyond the duration period of this permit. The maintenance agreement shall be filed with the Christian County Recorder of Deeds as a property deed restriction so that it is binding upon all subsequent owners of the land served by the stormwater BMPs.

B. Agreement provisions. The maintenance agreement shall contain the following information and provisions and be consistent with the maintenance plan required by 122-7B:

(1) Identification of the stormwater facilities and designation of the drainage area served by the facilities.

(2) A schedule for regular maintenance of each aspect of the stormwater management system consistent with the stormwater management plan required under 122-6b.

(3) Identification of the responsible party(s), responsible for long-term maintenance of the stormwater BMPs identified in the stormwater management plan required under 122-6B.

(4) Requirement that the responsible party(s), shall maintain stormwater BMPs in accordance with the schedule included in Subsection **B (2)**.

(5) Authorization for the Director to access the property to conduct inspections of stormwater management practices as necessary to ascertain that the practices are being maintained and operated in accordance with the agreement.

(6) A requirement of the Director to maintain public records, the results of the site inspections, to inform the responsible party responsible for maintenance of the inspection results, and to specifically indicate any corrective actions required to bring the stormwater BMPs into proper working condition.

(7) Agreement that the party designated under Subsection **B (3)**, as responsible for long-term maintenance of the stormwater BMPs, shall be notified by the Director, of maintenance problems which require corrective action.

(8) Authorization of the Director to perform the corrected actions identified in the inspection report if the responsible party designated under Subsection **B (3)** does not make the required corrections in the specified time period.

Section 122-10 FINANCIAL GUARANTEE.

A. Establishment of the guarantee. The City may require the submittal of a financial guarantee, **the form and type of which shall be acceptable to the Director. The financial guarantee shall be in an amount determined by the City to be the estimated cost of construction and the estimated cost of maintenance of the stormwater BMPs during the period which the designated party in the maintenance agreement has maintenance responsibility.** The financial guarantee shall give the Director the authorization to use the funds to complete the stormwater BMPs if the responsible party defaults or does not properly implement the approved stormwater management plan, upon written notice to the responsible party by the Director that the requirements of this section have not been met.

B. Conditions for release. Conditions for the release of the financial guarantee are as follows:

(1) The City shall release the portion of the financial guarantee established under this section, less any costs incurred by the City to complete installation of practices as required by the approved storm water management plan.

(2) The City shall release the portion of the financial guarantee established under this section to assure maintenance of stormwater BMPs, less any costs incurred by the City, at such time that the responsibility for BMP maintenance is passed on to another entity via an approved maintenance agreement.

Section 122-11 FEE SCHEDULE.

The fees referred to in other portions of this section shall be established by the City and may from time to time be modified as needed. A schedule of the fees established and approved by City council shall be available for review at the Public Works Offices and on-line at www.nixa.com.

Section 122-12 ENFORCEMENT: VIOLATIONS AND PENALTIES.

A. Any land-disturbing construction activity or post-construction runoff initiated after the effective date of this section by any person, firm, association, or corporation subject to the section provisions shall be deemed a violation unless conducted in accordance with the requirements of this section.

B. The Director shall notify the responsible party by certified mail of any noncomplying land-disturbing construction activity or post-construction runoff. The notice shall describe the nature of the violation, remedial actions needed, a schedule for remedial action, and additional enforcement action which may be taken.

C. Upon receipt of written notification from the Director under Subsection **B**, the responsible party shall correct work that does not comply with the stormwater management plan or other provisions of this permit. The responsible party shall make corrections as necessary to meet the specifications and schedule set forth by the Director in the notice.

D. If the violations of a permit issued pursuant to this section are likely to result in damage to properties, public facilities, or waters of the state, the Director may enter the land and take emergency actions necessary to prevent such damage.

The costs incurred by the City, plus interest and legal costs, shall be billed to the responsible party.

E. The Director is authorized to post a stop-work order on all land-disturbing construction activity that is in violation of this chapter, **or to request the City Attorney to obtain a cease-and-desist order in any court with jurisdiction.**

F. The Director may revoke a permit issued under this section for noncompliance with chapter provisions.

G. Any permit revocation, stop-work order, or cease-and-desist order shall remain in effect unless retracted by the Director or until such time that all noted corrections have been made and approved.

H. The Director is authorized to refer any violation of this section, or of a stop-work order or cease-and-desist order issued pursuant to this section, to the City Attorney for the commencement of further legal proceedings.

I. Any person, firm, association, or corporation who does not comply with the provisions of this section shall be subject to citation, each day that the violation exists shall constitute a separate offense.

J. When the Director determines that the holder of a permit issued pursuant to this section has failed to follow practices set forth in the stormwater management plan, or has failed to comply with schedules set forth in said stormwater management plan, the Director may enter upon the land and perform the work or other operations necessary to bring the condition of said lands into conformance with requirements of the approved plan.

The Director shall keep a detailed accounting of the costs and expenses of performing this work. These costs and expenses shall be deducted from any financial security posted pursuant to 122-10. **Where such a security has not been established, or where such a security is insufficient to cover these costs, the costs and expenses shall be entered on the tax roll as a special charge against the property and collected with any other taxes levied thereon for the year in which the work is completed.**

Section 122-13 APPEALS.

A. The Board of Adjustments Appeals, created pursuant to Chapter xx-xx of the City Code of Ordinance shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the Director in administering this chapter. This Board shall also use the rules, procedures, duties, and powers authorized by City Ordinance in hearing and deciding appeals.

Upon appeal, the Board may authorize variances from the provisions of this chapter that are not contrary to the public interest, and where, owing to special conditions, a literal enforcement of the chapter will result in unnecessary hardship.

B. Who may appeal. Appeals may be taken by any aggrieved person affected by any decision of the Director.

Section 122-14 SEVERABILITY.

If any sub-section, clause, provision or portion of this section is judged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the section shall remain in force and not be affected by such judgment.

Section 122-15 EFFECTIVE DATE.

The above and foregoing chapter was duly adopted by the City's Board of Aldermen on the _____ day of _____ 201__.