

SCOTT COUNTY FISCAL COURT ORDINANCE NO. 21- 09

AN ORDINANCE RELATED TO STORMWATER POST-CONSTRUCTION
MAINTENANCE WITHIN SCOTT COUNTY AND AMENDING VARIOUS
ORDINANCES TO COMPLY WITH THESE PROVISIONS

WHEREAS, the existing Subdivision & Development Regulations requirements must be updated to reflect current technologies, engineering principles and best management practices to address stormwater management. Scott County boasts some of the most prestigious streams in Kentucky. The North Elkhorn, South Elkhorn and Eagle Creeks are used extensively for fishing and recreation and provide community assets that are important to the local economy. In addition to these streams, this community obtains the majority of its water from the Royal Spring Aquifer, a natural resource unique in Kentucky, which is fed by groundwater recharge. It is important to safeguard these waterways from pollutants and changes in their ecology; and

WHEREAS, the intent of this ordinance is to provide an appropriate means to maintain the integrity and durability of existing and proposed storm water systems within Scott County; and

WHEREAS, this proposed amendment to the Georgetown-Scott County Subdivision & Development Regulations will be submitted to the citizens through a properly advertised public hearing before the Georgetown-Scott County Planning and Zoning Commission (GSCPC);

NOW THEREFORE, be it ordained by the Scott County Fiscal Court:

SECTION ONE

Section 1105 of the Georgetown/Scott County Subdivision and Development Regulations, entitled Storm Water Management, is repealed in its entirety and re-enacted to read as follows:

Section 1105 - CONTROL OF POST-CONSTRUCTION STORMWATER RUNOFF

1. AUTHORITY

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

(B) This section and all references made herein is adopted pursuant to the powers granted and limitations imposed 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.

(C) The Georgetown Stormwater Quality Division (GSQUAD), or "Issuing Authority," and its duly authorized designees are responsible for implementing and enforcing all the provisions within and referenced by this section.

2. PURPOSE

The regulations set forth in this section are intended to protect the general health, safety, and welfare of the citizens of Scott County by establishing a set of water quality and quantity policies to provide reasonable guidance for the regulation of stormwater runoff from all public and private developments for the purpose of preserving local water resources from degradation. This section seeks to meet that purpose through the following objectives:

- (1) To protect the municipal separate storm sewer system (MS4), community waters and waters of the Commonwealth;
- (2) To maintain after development, as nearly as possible, the predevelopment runoff characteristics, and to reduce the adverse impacts of stream channel erosion, pollution, siltation and sedimentation, and local flooding caused by development;
- (3) To improve stormwater quality through stormwater management controls and to ensure that these management controls are properly maintained and pose no threat to public safety; and
- (4) To provide long-term responsibility for and maintenance of stormwater Best Management Practices (“BMPs”).

3. APPLICABILITY

(A) This section shall be applicable to all new residential, commercial, industrial, or institutional development or redevelopment projects, where redevelopment shall include sites that previously contained structures or parking lots. This section also applies to land development activities that are smaller than one acre if such activities are part of a larger common plan of development as established in KPDES permit number KYG20.

(B) When a site development plan is submitted that qualifies as a redevelopment project under subsection (A), decisions on permitting and on-site stormwater requirements shall be made after a review by the GSCPC. Each redevelopment project shall meet the stormwater requirements set forth in this section.

(C) The regulations in this section apply to the development or redevelopment of land for residential, commercial, industrial, or institutional use, but do not apply to agricultural land management practices or single-family residential development on agricultural parcels, regardless of the number of acres disturbed.

4. STORMWATER BEST MANAGEMENT PRACTICES MANUAL

The Georgetown/Scott County Planning Commission (GSCPC) shall furnish additional policies, criteria and information, including but not limited to specifications and standards for the proper implementation of the requirements for this section in the form of approved BMPs and acceptable stormwater treatment practices and specific design criteria and operation and maintenance

requirements for each stormwater practice. These additional policies shall be set forth in a Stormwater Best Management Practices Manual ("the BMP Manual"). Stormwater treatment practices that are designed and constructed in accordance with the criteria in the BMP Manual will be presumed to meet the minimum water quality performance standards. Supplemental information on stormwater BMPs is available at EPA's National Menu of Stormwater Best Management Practices. However, only BMPs approved by GSCPC may be used to meet the requirements of this section.

5. REQUIREMENTS FOR STORMWATER MANAGEMENT PLAN APPROVAL

(A) No final development plan or, where no final development plan is required, land disturbance permit will be approved unless it includes a stormwater management plan detailing in concept how runoff and associated water quality impacts resulting from the development or redevelopment will be controlled or managed. This plan must indicate whether stormwater will be managed on-site and the general location and type of practices. The BMP Manual shall describe accepted design criteria and the information required for submittal in the stormwater management plan.

(B) The stormwater management plan(s) must be signed by a licensed professional engineer, who will verify that the design of all stormwater BMPs meet the submittal requirements outlined in the BMP Manual. No final development plan or, where no final development plan is required, land disturbance permit shall be issued until a satisfactory final stormwater management plan has been reviewed and approved by the GSCPC or Issuing Authority. By approving a plan under this chapter, the GSCPC or Issuing Authority does not accept responsibility for the design, installation, and operation and maintenance of stormwater BMPs.

6. PERFORMANCE SECURITY

(A) The Issuing Authority may, in its discretion, require the submission 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 approved stormwater management plan, plus 25%. The performance security shall acknowledge forfeiture as a consequence for failure to complete work specified in the approved stormwater management plan.

(B) The installation performance security shall be released in full only upon submission of "as built plans" and written certification by a licensed professional engineer that the stormwater BMP has been installed in accordance with the approved stormwater management plan and other applicable provisions of this section. Prior to release, the GSCPC or Issuing Authority shall make a final inspection of the stormwater BMP to ensure that it is in compliance with the approved stormwater management plan and the provisions of this section. A partial pro-rata release of the performance security based on the completion of various development stages may be permitted at the discretion of the GSCPC or Issuing Authority.

7. LONG-TERM MAINTENANCE OF STORMWATER BEST MANAGEMENT PRACTICES.

(A) Responsibility for operation and maintenance of BMPs subject to this subsection shall be borne proportionally based on the number of lots owned by the property owner over the total number of lots whose stormwater runoff is controlled or treated by the BMPs as specified in the development's stormwater management plan. This shared responsibility shall be governed by a separate legal entity (the "Responsible Entity"), such as a homeowner's association, sufficient to operate, maintain and provide for the revenue necessary to operate and maintain the BMPs. All developments subject to this section shall be platted to indicate those BMPs for which the Responsible Entity is responsible.

(B) The Issuing Authority may waive the requirement of having a separate legal entity, in commercial developments or single lot redevelopments only, where it is in the best interests of the Issuing Authority. In this case, each property owner shall be a Responsible Entity subject to the requirements of this section, and each property owner shall bear proportionate responsibility, as set forth in subsection (A), for the maintenance and operation of the BMPs specified on the stormwater management plan. The Issuing Authority may require additional documentation to determine the viability of issuing such a waiver.

(C) Nothing in this section shall prohibit the owners of property subject to this section from entering into an agreement amongst themselves regarding equitable allocation of costs for operation and maintenance. Any such agreement shall not alter the proportionate responsibility provision of this section. The intent of this subsection is to ensure a mechanism for equitably distributing costs among property owners, not to provide a shield against liability or responsibility for costs to one or more property owners.

(D) All properties within the development shall have legally binding covenants binding said properties to the operation and maintenance requirements and the requirement to participate in and be subject to the governance of the Responsible Entity, if applicable. The covenants must be approved by the Issuing Authority and recorded into the land record prior to final plat approval for new residential developments or issuance of a certificate of occupancy for commercial developments and residential redevelopments. As part of the covenant, a schedule shall be developed for when and how often maintenance will occur to ensure proper function of the stormwater BMP(s). The covenant shall also include plans for periodic inspections to ensure proper performance of the BMP(s) between scheduled cleanouts and/or maintenance activities. The covenant shall be perpetual and run with the land and be binding on all successors and assigns.

(E) The Responsible Entity shall be required to execute an enforceable operation and maintenance agreement to ensure the BMP(s) are maintained to function as designed. This agreement shall include all easements, if applicable, required to access and inspect the stormwater BMPs and to perform routine maintenance as necessary to ensure proper functioning of the BMPs. The

operation and maintenance agreement shall also include provisions on enforcement and penalties consistent with this section.

(F) No application for final plat approval for new residential developments or for issuance of a certificate of occupancy for commercial developments and residential redevelopments shall be approved unless it includes:

1. Declaration of covenants providing for operation and maintenance of BMPs through a homeowner's association or other Responsible Entity or Entities.

2. Articles of incorporation for the Responsible Entity or Entities and proof of filing with the Kentucky Secretary of State.

3. Executed operation and maintenance agreement(s).

8. INSPECTION

(A) Construction Inspection

- (1) The property owner or his or her designee for the development or redevelopment project shall engage a professional engineer or inspector approved by the Issuing Authority to inspect the installation of post-construction BMPs as required in the stormwater management plan. The Issuing Authority reserves the right to make independent inspections as deemed necessary.

- (2) The property owner or his or her designee for the development or redevelopment project shall notify the Issuing Authority twenty-four (24) hours in advance of placing any permanent cover over stormwater infrastructure. In the event the property owner or his or her designee for the development or redevelopment project fails to provide such notice, the Issuing Authority may require excavation, at the property owner or his or her designee's expense, to allow for inspection.

- (3) All inspections shall be documented on a form provided in the BMP Manual, which shall contain at a minimum:

1. The project name, date and location of the inspection;
2. Whether construction is in compliance with the approved Stormwater Management Plan and the BMP Manual.
3. Variations from the approved construction specifications;
4. Installation date of all stormwater measures since the previous inspection, if any; and
5. Any violations that exist.

6. Photographs documenting the BMP as it exists during the inspection

(4) The engineer or inspector shall immediately notify the property owner and the Issuing Authority in writing of any violations found and the required corrective actions. The Issuing Authority reserves the right to require further or alternate corrective actions as it deems necessary.

(5) Upon completion of the construction of the BMP and prior to final plat approval for new residential developments or issuance of a certificate of occupancy for commercial developments and residential redevelopments, the engineer or inspector shall submit a final inspection report and certification of completion on a form provided in the BMP Manual.

(B) Annual Post-Construction Inspection

All Stormwater BMPs subject to this section shall be inspected at least annually by the Responsible Entity or as otherwise noted in the operation and maintenance agreement. General inspection requirements for each BMP shall be set forth in the BMP Manual. Annual inspection requirements for each development or redevelopment project shall be governed by the operation and maintenance agreement referenced in subsection 7 of this section. Annual inspections shall be submitted on a form provided by the Issuing Authority and shall be due no later than September 30th. The Issuing Authority may impose additional inspection requirements for particular BMPs where circumstances warrant, and such additional requirements shall be incorporated in the operation and maintenance agreement. The Issuing Authority reserves the right to inspect any Stormwater Management System or BMP to ensure compliance with this section.

9. ENFORCEMENT

(A) The Issuing Authority and its duly authorized representatives shall be responsible for the enforcement of this section and shall have the authority to issue notices of violation (NOVs), citations, and levy fines as described below.

(B) Enforcement procedures may be utilized if any of the following conditions exist:

1. Structural and/or non-structural BMPs are not being installed or maintained per manufacturer's specifications and/or the Stormwater BMP Manual;
2. Construction is not in compliance with the approved stormwater management plan;
3. Maintenance of permanent stormwater BMPs is not sufficient after construction;
4. Failure to inspect and/or submit an inspection report; or
5. Any of the conditions of this section are not being met.

(C) Enforcement procedures.

(1) 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 BMP 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.

(2) 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 ten calendar days of the date of issuance or a citation will be issued.

(3) Citations shall include a penalty, or fine, for each occurrence and payable to the issuing authority prior to release.

(a) First citation = \$1,000 fine.

(b) Second citation = \$2,000 fine and notice of intent letter.

(4) For violations where no operation and maintenance agreement has been recorded, the Issuing Authority 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 Issuing Authority may request the Scott County Attorney to seek to obtain injunctive relief.

(5) Ten calendar days after issuing the citation, the Issuing Authority may issue a notice of intent to the responsible party, landowner, or land user stating the Issuing Authority's intent to perform work necessary to comply with this section. The Issuing Authority may go on the land and commence work after 14 days from issuing the notice of intent. The costs incurred by Scott County to perform this work shall be paid by the property owner or his or her designee. The cost, plus interest at the rate authorized by Scott County, plus a reasonable administrative and attorneys fee shall be billed to the property owner. Failure to reimburse Scott County within 30 days of billing will result in a lien being placed on the property.

(6) Compliance with the provisions of this section may also be enforced by injunction.

(7) The Issuing Authority is authorized to require immediate abatement of any violation of this section that constitutes an immediate threat to the health, safety or well-being of

the public. If any such violation is not abated immediately, the Issuing Authority 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 Scott County shall be fully reimbursed by the property owner and/or his or her designee. The cost, plus interest at the rate authorized by Scott County, plus a reasonable administrative and attorneys fee shall be billed to the property owner. Failure to reimburse Scott County within 30 days of billing will result in a lien being placed on the property.

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

10. APPEAL OF NOTICE OF VIOLATION

Any person receiving a Notice of Violation (NOV) may appeal the determination of the authorized enforcement agency to the Scott County Appeals Board. The Notice of Appeal must be received within ten (10) calendar days from the date of the service of the NOV. The Board shall hear the appeal at the next regularly scheduled Board meeting but not less than 10 days from the date that the appeal is filed. The decision of the Board shall be final, except to the extent that State law provides the further right to appeal.

11. VIOLATIONS DEEMED A PUBLIC NUISANCE

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance 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, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken. Scott County may recover all attorneys' fees, court costs, and other expenses associated with enforcement of this Ordinance.

12. REMEDIES NOT EXCLUSIVE

The remedies listed in this section are not exclusive of any other remedies available under any applicable federal, state, or local law and it is within the discretion of the Issuing Authority to seek cumulative remedies.

SECTION TWO. APPEALS BOARD.

- (a) Administrative Appeals Board created. There is created a five (5) member board, which shall hear appeals of actions taken by the respective enforcement authorities pursuant to Scott County Fiscal Court Ordinances _____. This Appeals Board will make no policy decisions, but rather execute the duties authorized by the provisions of each ordinance concerning actions of the enforcement authorities and whether those actions are in conformity with the applicable ordinance.

- (b) Appointment. Five (5) members of the Administrative Appeals Board shall be appointed by the Scott County Judge Executive with approval of the Scott County Fiscal Court. An additional (2) members may be appointed as alternates in the same manner. After the initial terms of service, members' terms shall be three (3) years. One (1) of the initial members shall be appointed to a term of one year, two (2) initial members to a term of two (2) years and two (2) initial members to a term of three (3) years. Alternates shall be appointed for an initial term of two (2) years.
- (c) Building Inspection Appeals Board created. There is created a five (5) member board, which shall hear appeals of the actions of the Office of Building Inspection. The Board shall exercise the duties set forth in KRS 198B.070.
- (d) Appointment. Five (5) members of the Building Inspection Appeals Board shall be appointed by the Scott County Judge Executive with approval of the Scott County Fiscal Court. An additional (2) members may be appointed as alternates in the same manner. After the initial terms of service, members' terms shall be three (3) years. Two (2) of the initial members shall be appointed to a term of one year, two (2) initial members to a term of two (2) years and three (3) initial members to a term of three (3) years. Alternates shall be appointed for an initial term of one (1) year. Members and alternates shall possess the qualifications set forth in KRS 198B.070.
- (e) Compensation. There shall be no compensation for service of Administrative Appeals board or Building Inspection Appeals board members.

SECTION THREE

If any portion of this Ordinance is for any reason held invalid or unlawful such portion shall be deemed a separate provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION FOUR

All prior ordinances and parts of ordinances in conflict with this Ordinance are repealed.

SECTION FIVE

This Ordinance shall be in full force and effect upon passage and publication.

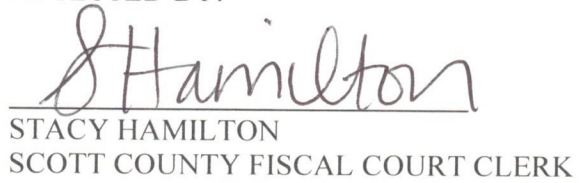
PUBLICLY INTRODUCED AND READ FIRST TIME: July 22, 2021
PUBLICLY READ SECOND TIME AND PASSED: August 13, 2021

APPROVED BY:



JOE PAT COVINGTON
SCOTT COUNTY JUDGE/EXECUTIVE

ATTESTED BY:



STACY HAMILTON
SCOTT COUNTY FISCAL COURT CLERK