

ORDINANCE NO. 2 - 2018 SERIES

AN ORDINANCE AMENDING ORDINANCE NO. 7-2005 SERIES RELATING TO
POST-CONSTRUCTION STORMWATER RUNOFF IN FRANKLIN COUNTY,
KENTUCKY

WHEREAS, The Franklin County Fiscal Court, has been identified by the Commonwealth of Kentucky and the Federal Environmental Protection Agency as a Phase 2, Stormwater community; and

WHEREAS, the aforesaid designation requires that Franklin County Fiscal Court apply for a 5-year permit from the Commonwealth of Kentucky; and

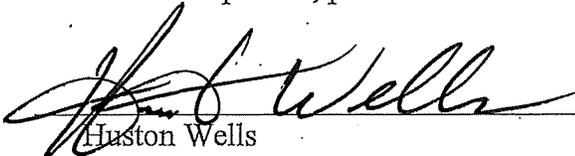
WHEREAS, one of the requirements in the 5-year permit is to prepare and adopt a Post- Construction Stormwater Runoff ordinance;

**NOW; THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF THE
COUNTY OF FRANKLIN, COMMONWEALTH OF KENTUCKY, AS FOLLOWS:**

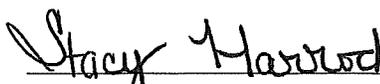
The Post-Construction Stormwater Runoff Ordinance, as provided for in the attached document is hereby adopted.

INTRODUCED AND GIVEN FIRST READING IN SUMMARY at a duly convened meeting of the Fiscal Court of Franklin County, Kentucky, held on the 14 day of December 2017

GIVEN SECOND READING AND APPROVED at a duly convened meeting of the Fiscal Court of Franklin County, Kentucky, held on the 9 day of January 2018 and of record in Fiscal Court Order Book 28, Page 234. This Ordinance shall take effect and be in full force when passed, published and recorded according to law.


Huston Wells
Franklin County Judge/Executive

ATTESTED TO:


Stacy Harrod
Fiscal Court Clerk

**POST-CONSTRUCTION STORMWATER RUNOFF
ORDINANCE**

Franklin County

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.

The Approving Agency for this chapter is the Franklin County Planning and Zoning Director and their duly authorized designees, and is responsible for implementing all the provisions within and referenced by this chapter.

SECTION 2 - PURPOSE AND SCOPE

1. The regulations set forth in this Ordinance are intended to protect the general health, safety, and welfare of the citizens of Franklin County by establishing a set of water quality and quantity policies to provide reasonable guidance for the regulation of stormwater runoff in all public and private developments. This chapter seeks to meet that purpose through the following objectives:
2. To protect and enhance the municipal separate storm sewer system (MS4), community waters and waters of the Commonwealth;
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;
4. 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
5. To provide long-term responsibility for and maintenance of stormwater Best Management Practices (BMP).

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 definitions stated below:

1. *Approving Agency* is the Franklin County Planning and Zoning Director and their duly authorized designees, responsible for review and approval of stormwater management plans.
2. *Best Management Practices (BMP)* is a technique or series of techniques, structural or nonstructural, which are proven to be effective in controlling runoff, erosion, sedimentation and mitigate flooding.
3. *County Planning and Zoning Director* is the Franklin County Planning and Zoning Director and his/her authorized designees.
4. *Detention facility* is a temporary or permanent natural or manmade structure that provides for the temporary storage of stormwater runoff which is designed so as not to create permanent pool of water.
5. *Developer* is any person, firm, corporation, sole proprietorship, partnership, state agency, or political subdivision thereof engaged in the development or re-development of property.
6. *Drainage Area* means that area contributing runoff to a single point measured in a horizontal plane, which is enclosed by a ridge line.
7. *Extended Detention* means a stormwater design feature that provides gradual release of a volume of water in order to increase settling of pollutants and protect downstream channels from frequent storm events.
8. *Flow Attenuation* means prolonging the flow time of runoff to reduce the peak discharge.
9. *Infiltration* means the passage or movement of water into the soil surface.
10. *Land disturbance activity* is any land change that may result in soil erosion from wind, water and/or ice and the movement of sediments into or upon waters, lands, or rights-of-way within Franklin County, including but not limited to building demolition, clearing and grubbing, grading, excavating, transporting and filling of land.
11. *Redevelopment* means any construction, alteration, or improvement involving land disturbance performed on sites where existing land use is commercial, industrial, institutional, or multifamily residential.
12. *Retention Facility* is a temporary or permanent natural or manmade structure that provides for the storage of storm water runoff by means of a permanent pool of water.
13. *Retrofitting* means the construction of a structural BMP in a previously developed area, the modification of an existing structural BMP, or the implementation of a

- nonstructural practice to improve water quality over current conditions.
14. *Runoff* is rainfall, snowmelt, or irrigation water flowing over the ground surface.
 15. *Sediment* means soils or other surficial materials transported or deposited by the action of wind, water, ice, or gravity as a product of erosion.
 16. *Site plan* is a plan or set of plans showing the details of any land disturbance activity of a site including but not limited to the construction of: structures, open and enclosed drainage facilities, stormwater management facilities, parking lots, driveways, curbs, pavements, sidewalks, bikepaths, recreational facilities, ground covers, plantings, and landscaping.
 17. *Stormwater Design Standards* means Franklin County Stormwater Design Standards, latest version that serves as the official guide for stormwater design principle, methods and practices.
 18. *Stormwater Management* means, for:
 - (a) Quantitative control, a system of vegetative and structural measures that control the increased volume and rate of surface runoff caused by man-made changes to the land; and
 - (b) Qualitative control, a system of vegetative, structural, and other measures that reduce or eliminate pollutants that might otherwise be carried by surface runoff.
 19. *Watercourse* is any natural or improved stream, river, creek, ditch, channel, canal, conduit, gutter, culvert, drain, gully, swale, or wash in which waters flow either continuously or intermittently.
 20. *Watershed* means the total drainage area contributing runoff to a single point.
 21. *Wetlands* is a lowland area such as a marsh that is saturated with moisture, as defined in Sec. 404, Federal Water Pollution Control Act Amendments of 1987.

SECTION 4 – APPLICABILITY

This ordinance shall be applicable to all subdivision or site plan applications, unless eligible for an exemption or granted a waiver by the Franklin County under the specifications of the Stormwater Procedures Manual. 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 as established in KPDES permit number KYG200000.

When a site development plan is submitted that qualifies as a redevelopment project as defined in the Stormwater Procedures Manual, decisions on permitting and on-site stormwater requirements shall be made after a review by the Franklin County.

SECTION 5 – UTILIZATION OF BMP RESOURCES.

Franklin County may furnish additional policy, criteria and information including specifications and standards, for the proper implementation of the requirements for this ordinance in the form of approved Best Management Practices (BMP), which will be located in the Franklin County's Stormwater Procedures Manual. The Stormwater Procedures Manual will include specific design criteria and operation and maintenance requirements for stormwater BMPs. Stormwater treatment practices that are designed and constructed in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards. Until the development of this resource, information on stormwater BMPs is available at EPA's National Menu of Stormwater Best Management Practices (<http://cfpub.epa.gov/npdes/stormwater/menuofbmps/>).

SECTION 6 – REQUIREMENTS FOR STORMWATER MANAGEMENT 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 Procedures Manual outlines accepted design criteria and the information required for submittal in the Stormwater Management Plan.

For development or redevelopment occurring on a previously developed site, an applicant shall be required to include within the stormwater plan, measures for controlling existing stormwater runoff discharges from the site in accordance with the Stormwater Procedures Manual.

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 submittal requirements outlined in the Stormwater Procedures Manual or EPA's National Menu of Stormwater Best Management Practices, as applicable. By approving a plan under this chapter, Franklin County does not accept responsibility for the design, installation, and operation and maintenance of stormwater BMPs.

SECTION 7 – MAINTENANCE AGREEMENTS

All nonresidential developments and multifamily 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 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.

SECTION 8 – ENFORCEMENT

Franklin County Planning and Zoning Department or their duly authorized designees shall be responsible for the enforcement of this Ordinance and have the authority to issue notices of violation (NOVs), citations, and levy fines as described below.

1. Enforcement procedures may be utilized if any of the following conditions exist:
 - (a) Structural and/or non-structural BMPs are not being installed or maintained per manufacturer's specifications and/or Franklin County
 - (b) Construction is not in compliance with the approved Stormwater Management Plan;
 - (c) Maintenance of permanent stormwater BMPs is not sufficient after construction; or
 - (d) Any of the conditions of this Ordinance are not being met.
2. Enforcement Procedures
 - (a) For the purposes of this Ordinance, 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.
 - (b) 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.
 - (c) For violations where no Operation and Maintenance Agreement has been recorded, Franklin County 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 Franklin County may request the County Attorney to seek to obtain injunctive relief.

- (d) Ten (10) calendar days after issuing the citation, Franklin County may issue a Notice of Intent to the Responsible Party, landowner, or land user stating the Franklin County's intent to perform work necessary to comply with this Ordinance. The Franklin County may go on the land and commence work after fourteen (14) days from issuing the notice of intent. The costs incurred by the Franklin County to perform this work shall be paid by the property owner or Responsible Party. The cost, plus interest at the rate authorized by the Franklin County, plus a reasonable administrative and attorneys fee shall be billed to the property owner. Failure to reimburse the County within thirty (30) days of billing will result in a lien being placed on the property.
- (e) Compliance with the provisions of this Ordinance may also be enforced by injunction.
- (f) Franklin County 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, Franklin County 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 Franklin County shall be fully reimbursed by the property owner and/or responsible party. The cost, plus interest at the rate authorized by Franklin County plus a reasonable administrative and attorneys fee shall be billed to the property owner. Failure to reimburse the County within thirty (30) days of billing will result in a lien being placed on the property. For the purpose of this ordinance, the ultimate party responsible for assuring compliance with the conditions set forth is the property owner.

SECTION 9 – PENALTY

1. 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.
2. Should the issuing authority or County take legal action to enforce the provisions of this chapter, the issuing authority or County shall be entitled to collect any and all costs in instituting and taking such legal action, including but not limited to its court costs and attorney's fees.

SECTION 10 – COMPATABILITY WITH OTHER PERMITS AND ORDINANCE REQUIREMENT

The requirements of this chapter should be considered minimum requirements, and where any provisions of this chapter impose 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.

SECTION 11 – 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 chapter.

