

ORDINANCE NO. 1992

**AN ORDINANCE CREATING A NEW ARTICLE VII IN THE CITY OF DANVILLE, KENTUCKY'S CODE OF ORDINANCES CHAPTER 6.5 (FLOOD DAMAGE PREVENTION AND STORMWATER MANAGEMENT) AN ORDINANCE PERTAINING TO THE CONTROL OF POST-DEVELOPMENT STORMWATER RUNOFF.**

WHEREAS, the City of Danville is the owner and operator of a small municipal separate storm sewer system; and

WHEREAS, this Ordinance is being enacted pursuant to mandates imposed by the Federal Clean Water Act (33 U.S.C. §1251 et seq. as may be amended) ("CWA"), the National Pollution Discharge Elimination System (33 U.S.C. §1342 as may be amended) ("NPDES"), and the Kentucky Pollutant Discharge Elimination System (401 KAR 5:050 to 401 KAR 5:080 as may be amended) in particular those parts that require local governments to comply with water pollution control requirements.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the City of Danville, Kentucky, that a new Article VII be created in Chapter 6.5 of the City of Danville Code of Ordinances, and shall read as follows:

**SECTION ONE: Intent**

Proper stormwater management and good water quality are vital in promoting the health, safety and general welfare of the public. It is the intent of this article, in an effort to minimize the dangers of flooding to life and property and to protect local water quality and maintain the integrity of stream channels, that certain runoff controls be provided as land areas are developed or redeveloped. The design criteria for stormwater conveyance and water quality control facilities are outlined in this article.

**SECTION TWO: Definitions**

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**Best Management Practices (BMPs)** – Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the Commonwealth. BMPs also include treatment requirements, operating procedures, and practices to control stormwater runoff.

**City Engineer**: The City Engineer of Danville, Kentucky, and the employees and/or the designees of the City Engineer.

**Detention or retention** – Restraining the rate of stormwater runoff with some natural or manmade devices.

Developed – Conditions after construction or other manmade change to improved or unimproved land, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.

Green Infrastructure – An adaptable term used to describe an array of products, technologies, and practices that use natural systems – or engineered systems that mimic natural processes – to enhance overall environmental quality and provide utility services. As a general principal, Green Infrastructure techniques use soils and vegetation to infiltrate, evapotranspire, and/or recycle stormwater runoff. When used as components of a stormwater management system, Green Infrastructure practices such as green roofs, porous pavement, rain gardens, and vegetated swales can produce a variety of environmental benefits.

Impervious surface – Surfaces that prevent or significantly impede the natural infiltration of stormwater into the soil, including but not limited to roofs, sidewalks, walkways, patios, private driveways, parking lots, access extensions, alleys and other paved, engineered, compacted or gravel.

Kentucky Pollutant Discharge Elimination System or KPDES – The Kentucky program for issuing, modifying, revoking and reissuing, revoking, monitoring and enforcing permits to discharge, and imposing and enforcing pretreatment requirements.

KPDES sMS4 Permit – The general permit issued by the Kentucky Division of Water (KDOW) that authorizes small Municipal Separate Storm Sewer Systems (sMS4) to discharge stormwater runoff from a small Municipal Separate Storm Sewer System (MS4) to the receiving waters of the Commonwealth in accordance with effluent limitations, monitoring requirements, and other conditions set forth in the permit authorizing the MS4 to discharge under the Kentucky Pollutant Discharge Elimination System.

Land disturbance activity or Land disturbing activity – Clearing, grubbing, grading, excavating, filling, or other alteration of the earth's surface where natural or manmade ground cover is destroyed. Land disturbance activity does not include the following:

1. Minor land disturbance activities including, but not limited to, activities specific to underground utility repairs, replacement of existing utilities, home gardens, minor repairs, and maintenance work.
2. Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.
3. Emergency work to protect life, limb, or property and emergency repairs.

Larger common plan of development or sale – A contiguous area where multiple separate and distinct construction activities are planned to occur at different times on different schedules under one plan, e.g., a housing development of 5 1/4-acre lots.

Municipal Separate Storm Sewer System – A conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, and storm drains) owned or operated by a state, city,

town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial water, stormwater, or other wastes, that discharges to waters of the United States:

1. designed or used for collecting or conveying stormwater;
2. which is not a combined sewer; and
3. which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

sMS4 – small Municipal Separate Storm Sewer System (sMS4).

National Pollutant Discharge Elimination System (NPDES) – The effluent permitting program for point source discharges that is administered by the United States Environmental Protection Agency (USEPA).

Runoff – Rainfall excess after natural losses from infiltration, evaporation, transportation, or incidental poundage.

Stormwater – Stormwater runoff, snowmelt runoff, surface runoff and drainage.

Swale – Surface-type conveyance for stormwater, usually designated to carry incidental, localized runoff.

Total Maximum Daily Load (TMDL) – A federally mandated program for impaired waters of the Commonwealth to determine the maximum assimilative capacity of a water for a specified pollutant and to allocate allowable pollutant loads to sources in the watershed.

Waters of the Commonwealth – Means and includes any and all rivers, streams, creeks, lakes, ponds, impounding reservoirs, springs, wells, marshes, and all other bodies of surface or underground water, natural or artificial, situated wholly or partly within or bordering upon the Commonwealth or within its jurisdiction.

Waters of the United States – As defined by the Clean Water Act, applies only to surface waters, rivers, lakes, estuaries, coastal waters and wetlands. Not all surface waters are legally “Waters of the United States”. Generally, those waters include the following:

1. All interstate waters
2. Intrastate waters used in interstate and/or foreign commerce
3. Tributaries of the above
4. Territorial seas at the cyclical high tide mark, and
5. Wetlands adjacent to all of the above.

Water Quality Control Facilities – The facilities (e.g. vegetated swales, filter strips, infiltration basins, detention ponds, stormwater wetlands, natural filtration areas, sand filters, and rain gardens, etc.), used to slow runoff, promote infiltration, and reduce sediments and other pollutants in stormwater runoff.

Water Quality Runoff Volume (WQv) – The stormwater volume to be treated

through a water quality control facility based on the surface runoff produced by an 80<sup>th</sup> percentile rainfall event.

**SECTION THREE: Scope of coverage.**

- A. The requirements in this article shall apply to:
1. All land-disturbing activities and all development or redevelopment activities that disturb an area greater than or equal to one acre.
  2. Sites that are smaller than one acre may also be covered by these regulations if they are a part of a larger common plan of development or sale.
- B. These regulations shall apply to land-disturbing activities within the jurisdictional boundaries of the City of Danville designated by the Kentucky Division of Water for coverage under the KPDES SMS4 permit.
- C. Unless included in exemptions listed in sections 1.5.2 and 1.6.2 of the Stormwater Manual or a waiver granted, all development occurring within the City and subject to this article shall provide for properly sized stormwater conveyance facilities capable of controlling peak discharge rates for selected design storms and provide water quality control facilities that shall treat the Water Quality Runoff Volume. Documentation of compliance with the requirements of this article shall be a Stormwater Management Plan submitted to the City Engineer in accordance with the requirements of the Stormwater Manual.

**SECTION FOUR: Review of stormwater management plan.**

The City Engineer shall review each Stormwater Management Plan and determine its conformance with the provisions of this article and the Stormwater Manual. Based on this review, the City will either approve the plan, approve with revisions following a resubmittal, or reject the plan indicating the reason and procedure for resubmitting a revised Plan for approval. The City's review of the Stormwater Management Plan is for general compliance with this article. Acceptance indicates that minimum requirements or intent are met and does not imply a guarantee of performance. The design engineer is ultimately responsible for the details of design, and the developer, property owner, or his assignees is responsible for implementation.

**SECTION FIVE: General requirements for post-construction stormwater control.**

The regulations set forth in the City of Danville's Stormwater BMP Manual shall be the standard for post construction stormwater management compliance for the City of Danville. The City of Danville Stormwater Manual is hereby adopted and incorporated by reference as if fully set forth herein. The City of Danville Stormwater Manual may be found and accessed at the City of Danville, Kentucky website, [danvilleky.org](http://danvilleky.org).

The City of Danville has furnished policy, criteria, and information including specifications and standards, for the proper implementation of the requirements for this article in the form of approved Best Management Practices (BMP), which are located in the City of Danville's Stormwater Manual. The Stormwater Manual includes a list of acceptable stormwater management and water quality control practices, including the specific design criteria for each stormwater practice. Stormwater management and water quality control practices that are designed and constructed in accordance with these design and sizing criteria will be presumed to meet the minimum stormwater management and water quality performance standards.

**SECTION SIX: Ownership and maintenance responsibilities of stormwater facilities.**

**A. Long Term Maintenance Agreement Required.**

All stormwater management facilities shall be covered by an enforceable Long Term Maintenance Agreement to ensure the management facilities function as designed. This agreement will include any and all easements required to access and inspect the stormwater treatment practices, and to perform 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. This agreement shall be binding on all subsequent owners of land served by the stormwater facilities.

**B. Ownership, Operation, and Maintenance of Stormwater Facilities**

For all developments requiring stormwater water quality control facilities, ownership and maintenance responsibilities remain with the property owner/developer. The owner shall perform or cause to be performed preventative maintenance of all stormwater management facilities during and after construction to ensure proper functioning. Additional details about maintenance and repair responsibilities are outlined in the Stormwater Manual.

**SECTION SEVEN: Issuance of certificate of occupancy.**

No certificate of occupancy shall be issued for any development which is subject to the regulations of this article unless and until all requirements and criteria of this article are fully complied with.

**SECTION EIGHT: Right of entry.**

The City of Danville and its agents shall have right of entry to inspect, observe, test, or perform any related activity to the operation, maintenance, and function of the stormwater infrastructure.

**SECTION NINE: Enforcement.**

The City of Danville shall be responsible for the enforcement of this Article. The City

Engineer, or their authorized representatives have the authority to issue verbal notices, written notices of violation (NOVs), citations and levy fines as described below.

A. Written Notice of Violation.

Whenever the City Engineer finds that a person has violated a prohibition or has failed to meet a requirement of this Article or the maintenance agreement, the City Engineer may order compliance by sending a written NOV to the property owner. All violations shall be corrected within the time period specified in the notice, but in no case shall such time period be less than twenty-four (24) hours. The NOV shall be mailed to the property owner at the last known address listed on the current tax assessment roll, or by personally serving, or by causing to be personally served, the property owner with a written NOV. A NOV's is 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.

B. Citation.

The City of Danville may commence appropriate legal action and/or seek equitable relief, including injunctive relief, against any person who fails to abate a violation and/or to restore an affected property prior to the deadline established in the notice of violation. Any person who violates, neglects, omits, or refuses to comply with any provision of this Article or the maintenance agreement shall, upon conviction, be fined not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1000) for each offense. The time of violation shall be measured from the time written notice to correct is given to the owner. Each day a violation is maintained shall constitute a separate offense. Any recoverable cost of corrective action shall be in addition to fines imposed as a penalty. The imposition of any penalty shall not exempt the violator from compliance with the provisions of this Article.

**SECTION TEN: Compatibility with other permits and ordinance requirements.**

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 ELEVEN: Severability.**

If any Section, sentence, clause or part of this Article is for any reason declared illegal, unconstitutional or otherwise invalid, such declaration shall not affect the remaining portions thereof.

**SECTION TWELVE: Effective Date.**

This ordinance is effective upon two successful readings and publication.

GIVEN FIRST READING AND PASSED ON 04.11.2022.

GIVEN SECOND READING AND PASSED ON 04.26.2022.

APPROVED:



G. MICHAEL PERROS,  
MAYOR

ATTEST:



ASHLEY RAIDER, CITY CLERK

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