



**North Central Texas
Council of Governments**

MODEL ORDINANCE FOR POST-CONSTRUCTION STORMWATER MANAGEMENT

Purpose: The North Central Texas Council of Government’s Regional Stormwater Management Coordinating Council has prepared and adopted the Model Ordinance for Post-Construction Stormwater Management on XXXX. The model ordinance is to be used as a template for adopting new or revised provisions of local law to implement and enforce a post-construction stormwater program, as well as assisting in the fulfillment of the requirements set forth in the Texas Commission on Environmental Quality (TCEQ) Phase II MS4 General Permit (TXR040000) Minimum Control Measure (MCM) 4: *Post-construction Stormwater Management in New Development and Redevelopment*.

Disclaimer: This ordinance was developed by cross-referencing and assembling existing language found consistently throughout local and state ordinances and treated as best practices for and the foundation of an ordinance such as this. Many cities in the North Central Texas and beyond use similar language to address post-construction stormwater management, but they vary greatly in organization, structure, and placement within the overall Code of Ordinances or Stormwater Design Manuals. All attributions here are made according to where the writers have encountered the phrasing or ideas conveyed, but this is not an exhaustive list of where such language may be found.

Note to users: Language in **green** is provided for optional use. Similar language was found in some ordinances but was not universal in post-construction ordinances and/or it goes beyond the basic TCEQ requirements. Instructions directly to the users of this ordinance, including spaces where the city is responsible for filling in the blanks, is in **blue**.

Additional resources:

- Operations and Maintenance Plan Guidance, found at: XXXX
- Inspection Forms: XXXX
- Referenced ordinances have been compiled and can be found here: XXXX
- TCEQ Minimum Control Measure (MCM) 4: Post-construction Stormwater Management in New Development and Redevelopment XXXXX

POST-CONSTRUCTION STORM WATER MANAGEMENT ORDINANCE

ORDINANCE NO. [XXX]

WHEREAS, the Texas Commission on Environmental Quality (TCEQ) required small Municipal Separate Storm Sewer Systems (MS4) to execute a Notice of Intent (NOI) for storm water discharges under the Texas Pollutant Discharge Elimination System (TPDES) Phase II MS4 General Permit (TXR040000); and

WHEREAS, a Storm Water Management Program (SWMP) for the City of XXX was developed as required to accompany the NOI; and **WHEREAS**, the SWMP requires the preparation and adoption of a Post Construction Storm Water Management ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF XXX, TEXAS;

Section 1. Background

1-1. Findings of Fact

The City finds that construction activities and land development alter the hydrologic characteristics of the land by increasing impervious surface area and in some cases, changing the terrain. These alterations increase stormwater runoff volume and accelerate the rate of flow, which may lead to erosion. In addition, impervious surfaces harbor water pollutants, which are carried to local water bodies via runoff.

1-2. Purpose

The City finds that proper management of post-construction stormwater runoff will minimize damage to public and private property and infrastructure, safeguard the public health, safety, environment, and general welfare, and protect water resources¹. This purpose is accomplished via the following actions:

- (1) Establishing minimum post-construction stormwater management standards to minimize stormwater runoff volumes and regulate subsequent quality; and,
- (2) Identifying the long-term responsibility for maintenance of permanent stormwater control measures and setting forth plans to ensure continued functionality.

Section 2. Definitions

Best Management Practice (BMP) *or Stormwater Control Measure (or insert City's preferred terminology)*: all generally accepted methods of reducing stormwater quantity and pollutants²; can be found at *[refer to location of City's stormwater BMPs]*

¹ City of Irving, Texas Land Development Code Division 5, Section 35-26

² City of Temple, Texas Code of Ordinances Chapter 27-13

Operations and Maintenance Plan: a legally recorded document that acts as a property deed restriction, and which provides for the long-term maintenance of stormwater management practices²

Owner: the deed holder of the land upon which the stormwater facility resides, to be determined by the most recently approved city tax roll³

Permanent BMP or **Permanent Stormwater Control Measure**: all practices and facilities employed to meet and maintain stormwater runoff quantity and quality requirements after site development has been completed

Post-construction or **Post-Development**: activities and operations performed after the Notice of Termination for a development or redevelopment project has been filed and approved

Stormwater Facility: any physical facility built to control stormwater runoff in compliance with [\[refer to City's erosion and runoff quality control requirements\]](#)

Section 3. Minimum Stormwater Control Standards

All permanent stormwater control measures must be designed to meet the criteria and specifications of the [\[refer to City's Drainage Manual/iSWM/relevant ordinance\]](#). Stormwater runoff quantity and quality after development or redevelopment of the property should not exceed pre-development conditions, to the greatest extent practicable⁴. **If site conditions warrant greater than the minimum required control, the City may impose additional requirements to ensure acceptable runoff volumes, rates, and quality.**⁵

Section 4. Operations and Maintenance Plan

4-1. Operations and Maintenance Plan Requirements

The Operations and Maintenance Plan must clearly identify the person(s) responsible for operation and maintenance of temporary and permanent stormwater control measures to ensure proper and continuous function. The Operations and Maintenance Plan shall include, but is not limited to:

- (1) Identification of person(s) or position title responsible for all tasks in the plan;
 - a. Adherence to the Operations and Maintenance plan is the responsibility of the individual property owner or of the Homeowner's Association (HOA) if the facility is part of a subdivision.

³ **City of Denton** – Derica to put example here

⁴ City of Kennedale, Texas Code of Ordinances Article 9, Section 17-615

⁵ City of Kennedale, Texas Code of Ordinances Article 9, Section 17-620

- b. The City may, at its sole discretion, choose to accept responsibility for the Operations and Maintenance of a stormwater facility on private land if the City determines it to be a public improvement⁶.
- (2) Inspection requirements; *(Choose one or both)*
- a. Self-inspection: The maintenance plan shall require self-inspection of the stormwater management facilities, according to the inspection form located in *[City may wish to attach its forms in an appendix]*. Self-inspection forms must be completed and submitted to *[designated entity at the City]* on an annual basis⁷.
 - b. City inspection: The City reserves the right to inspect all stormwater facilities for compliance with maintenance guidelines on an as-needed basis⁸.
- (3) Maintenance requirements;
- a. Description of maintenance tasks and anticipated frequency, including both routine and non-routine maintenance. *(Tasks listed are non-exhaustive; specific maintenance requirements may depend on the specific control measure and the city's design criteria.)*
 - i. Routine maintenance:
 - 1. Vegetation Management
 - 2. Debris Removal
 - 3. Mechanical Equipment Check
 - ii. Non-routine maintenance:
 - 1. Bank Stabilization
 - 2. Sediment Removal
 - 3. Structural Repair and Replacement⁹
 - b. Testing and disposal of sediments¹⁰;
- (4) Identification of funding source for maintenance and repairs^{9,10};
- (5) Execution of maintenance easements dedicated to the City¹¹ to allow for safe access for inspections and maintenance¹²; and
- (6) Estimated lifespan of stormwater control measures and appropriate replacement schedule¹⁰.

⁶ City of Temple, Texas Code of Ordinances Chapter 27-15(b)7

⁷ Sample documents from City of Grand Prairie, Texas, including inspection request and inspection form

⁸ City of Denton, Texas Development Code Chapter 35, Section 18.5.A.8

⁹ City of Grand Prairie, Texas Detention and Retention Maintenance Guidelines, page 3

¹⁰ City of Irving, Texas Land Development Code Division 5, Section 35-36

¹¹ City of Princeton, Texas Drainage Manual Section 3, Item E

¹² City of Denton, Texas Design Criteria manual Section 3.7

Activities outlined in the Operations and Maintenance plan shall adhere to all Design Criteria and other policies regarding the operation and maintenance of stormwater facilities for the City. *(City may wish to reference these or include as attachments.)* Inspection and Maintenance requirements may be altered or increased if the City deems it necessary to the proper function of the stormwater facility¹³.

4-2. Filing of Operations and Maintenance Plan

All permanent stormwater control measures, including the Operations and Maintenance Plan and the locations of any required Maintenance Easements are to be submitted with the site plan for approval by *[insert municipal body that will carry out these approvals; may be plan review, engineering, stormwater division, etc.]*. The Operations and Maintenance Plan and execution of Maintenance Easements must be completed and approved prior to the final acceptance of the project.¹⁴

Once approved, the Operations and Maintenance Plan, along with any maintenance easements, must be filed with the County Deed Office of the county in which the property is located. The Operations and Maintenance Plan is to be permanently tied to the deed of the land, regardless of changes in ownership.

The owner of the property holds the ultimate responsibility for ensuring that this plan is properly filed and followed throughout the lifespan of the stormwater control measures.

4-3. Transfer of Ownership

Cleaning and repair of stormwater control measures should be completed before transfer of ownership.

Section 5. Recourse for Noncompliance

5-1. Inspection Violations *(if self-inspection option)*

If the owner fails to submit completed inspection forms to *[managing entity within the City]* within the time frame specified for the property, the City will issue a letter requesting that the inspections be completed within *[specified grace period; recommended thirty (30) or sixty (60) days]* from the postmarked date¹⁵.

If the inspection has not been completed at this time, the city may levy a fine not to exceed *[\$XXX per incident/per day]*, according to *[reference to location of civil penalties]*.

¹³ City of Temple, Texas Code of Ordinances Chapter 27-31

¹⁴ City of Temple, Texas Code of Ordinances Chapter 27-30

¹⁵ Sample Document from City of Grand Prairie, Texas

5-2. Maintenance Violations

If City inspection personnel discover malfunctioning or improperly maintained stormwater control measures, the owner of the property will receive a notice detailing the violation. The notice of violation shall contain¹⁶:

- (1) The name and address of the owner;
- (2) The address (when available) or description of the structure or land upon which the violation is occurring;
- (3) A statement specifying the nature of the violation;
- (4) A description of the remedial measures necessary to bring the facility into compliance with the City's stormwater facility BMPs;
- (5) A statement of the penalties that may be assessed according to this ordinance; and
- (6) A statement that the violation may be appealed via *[City's notice of appeal process]* within *[standard appeal time frame; recommended fifteen (15) days]* of service of the Notice of Violation.

If the issue has not been resolved within *[specified grace period; recommended thirty (30) or sixty (60) days]* of the postmarked date, the City may issue a citation and levy a fine not to exceed *[\$XXX per incident/per day]*, according to *[reference to location of civil penalties]*. If the owner is nonresponsive or lacks means to perform the necessary repairs or maintenance, the City may conduct the work and assess the cost of the work to the owner; this cost will become a lien on the property until paid.¹⁷

Section 4. – Effective Date.

This ordinance shall be in full force and effective immediately following its passage, approval, and publication, as provided by law.

¹⁶ City of Temple, Texas Code of Ordinances Chapter 27-37

¹⁷ City of Temple, Texas Code of Ordinances Chapter 27-35