

**Ordinance No. 3411  
Entitled an Ordinance to amend the Municipal Code of the City  
of Morristown by deleting Ordinance No. 3148 in its entirety  
from Title 14, Chapter 5 and adding the following Land  
Disturbance Ordinance as Title 18, Chapter 6.**

SECTION I.

Sec. 18-601 LAND DISTURBING ACTIVITY, EROSION AND SEDIMENTATION  
CONTROL

All land disturbing activities shall be in compliance with and permitted under this division of this article. If one acre or more are disturbed, an application shall be applied for under the "State of Tennessee's General NPDES permit for Storm Water Discharges Associated with Construction Activity." If a Tennessee General NPDES Permit is applied for, a copy of the Notice of Intent (NOI) as well as a copy of the Notice of Coverage (NOC) issued by the state shall be sent to the City Engineer. To seek coverage under the Tennessee Department of Environment and Conservation General Permit the NOI shall be submitted to the address specified in the Construction General Permit NOI.

Sec. 18-602 LAND DISTURBING ACTIVITY REGULATED

- a) It shall be unlawful for any person or entity to conduct or permit to be conducted any land disturbing activity upon land owned, leased or controlled by them, or the person or entity conducting any land disturbing activity, including but not by way of limitation, any contractor, all such persons or entities hereafter being jointly and severally referred to as the "controlling party," without a permit issued under this article and, if one acre or more are disturbed, a General Permit for Storm Water Discharges associated with construction activity from the Tennessee Department of Environment and Conservation with a copy provided to the City Engineer. The controlling party is subject to the regulations and penalties as described herein. For purposes of this article the phrase land disturbing activity is defined as follows:

Land disturbing activity. Any land change which may result in soil erosion from water and wind and the movement of sediments into community waters or onto lands and roadways within the community, including, but not limited to, clearing, grading, excavating, transporting and filling of land, except that the term shall not include the following:

- 1) "Surface mining" as the same is defined in Tennessee Code Annotated Section 59-8-202;
- 2) Such minor land disturbing activities as home gardens and individual home landscaping, home repairs, home maintenance work; and other related activities which result in minor soil erosion;
- 3) The construction of single-family residences when built separately on lots within subdivisions which have been approved and recorded in the office of the Hamblen County Register; provided that excavation is limited to trenches for the foundation, basements, service and sewer connections, and minor grading for driveways, yard areas and sidewalks;
- 4) Individual service and sewer connections for single-or two family residences;

- 5) Agricultural practices involving the establishments, cultivation or harvesting of products of the field or orchard, preparing and planting of pasture land, forestry land management practices including harvesting, farm ponds, dairy operations, and livestock and poultry management practices, and the construction of farm buildings;
- 6) Any project carried out under the technical supervision of the Soil Conservation Service of the United States Department of Agriculture;
- 7) Construction, installation or maintenance of electrical, telephone and cable television lines and poles;
- 8) Installation, maintenance and repair of any underground public utility lines when such activity occurs on an existing hard surface road, street or sidewalk, provided the activity is confined to the area of the road, street or sidewalk which is hard-surface and a street, curb, gutter or sidewalk permit has been obtained; (Note: Work outside of hard surface requires a permit under this article.)
- 9) Construction, repair or rebuilding of tracks or other related facilities of a railroad company;

These activities may be undertaken without a permit; however, the persons conducting these excluded activities shall remain responsible for otherwise conducting those activities in accordance with the provisions of this article and other applicable law including responsibility for controlling sedimentation and runoff.

#### Sec. 18-603 LAND DISTURBING PERMIT REQUIRED

No land disturbing activity, whether temporary or permanent, shall be conducted within the City of Morristown until a land disturbing permit shall have been issued by the City Engineer allowing such activity pursuant to the provisions of this article, and if required, until issuance of a General NPDES Permit for Storm Water Discharges Associated with Construction Activity issued by the Department of Environment and Conservation. Such permit(s) shall be available for inspection by the City Engineer or City Engineer's representative on the job site at all times during which land disturbing activities are in progress. Such permit(s) shall be required in addition to any building permit or other permit required upon the site. If there is a conflict between the requirements of this ordinance and the General NPDES Permit issued by the state, the more stringent requirements shall apply. Issuance of a General NPDES Permit by the state shall not relieve the controlling party from compliance with the requirements of this ordinance.

A permit application fee of \$50.00 for 0-2 disturbed acres plus \$25.00 per acre or portion thereof above 2 acres with a maximum fee of \$125.00 shall be charged the applicant for review of the application. Failure to obtain any permit required hereunder prior to commencing land disturbing activity, in addition to all other fines and civil penalties provided hereunder, shall increase the permit application fee by one hundred percent.

#### Sec. 18-604 DATA REQUIRED IN LAND DISTURBING PERMIT APPLICATION

- a) Any application for the issuance of a land disturbing permit under this article shall include the following:

Name of applicant;

Business or residence address of applicant;

Name and address of owner of subject property;

Address and legal description of subject property;

Name and address of the contractor and any subcontractor(s) who shall perform the land disturbing activity and who shall implement the erosion and sediment control plan;

A statement setting forth the nature, extent and purpose of the land disturbing activity including the size of the area for which the permit shall be applicable and a schedule for the starting and completion dates of the land disturbing activity.

- b) Each application for a land disturbing permit shall be accompanied by a map or plat of the premises showing the present contour lines and the proposed contour lines resulting from the land disturbing activity in relation to all parts of the premises and the properties immediately adjacent thereto and in relation to all abutting street grades and elevations; such map or plat shall show all existing drainage facilities and the proposed permanent disposition of surface waters upon completion of the land disturbing activity.
- c) Each application for a land disturbing permit shall be accompanied by an erosion and sediment control plan which shall accurately describe the potential for soil erosion and sedimentation problems resulting from the land disturbing activity and shall explain and illustrate the measures which are to be taken to control these problems. The length and complexity of the plan is to be commensurate with the size of the project, severity of the site condition, and potential for off-site damage; the plan shall contain a description of the existing site conditions, a description of adjacent topographical features, a description of soil types and characteristics in the area, potential problems of soil erosion and sedimentation, stabilization specifications, storm water management considerations, a time schedule for completion of the land disturbing activity and for maintenance after completion of the project, clearing and grading limits, and all other information needed to accurately depict solutions to potential soil erosion and sedimentation problems. The erosion and sediment control plan shall also include a description of how construction site operators will control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site. Any erosion and sediment control plan shall be approved by the City Engineer prior to the issuance of the land disturbing permit. The land disturbing permit shall be issued in accordance with current policy on issuance of land disturbance permit.
- d) At any time the City Engineer determines that an erosion and sediment control plan does not comply with the provisions of this article, he shall notify the applicant in writing of all deficiencies within said plan.

#### Sec. 18-605 GENERAL REQUIREMENTS

No land disturbing activity shall be conducted within the city except in such manner that:

- a) All design, erosion and sediment control plan preparation, and construction activity is conducted in accordance with all provisions of the General NPDES Permit for Discharges of Storm Water Associated with Construction Activities, also called the Construction General Permit (CGP). If applicable, this permit shall be obtained by the owner as required by Section 18-601.

- b) All Best Management Practices (BMPs) shall be designed, constructed, inspected, and maintained in accordance with the latest edition of the Tennessee Erosion and Sediment Control Handbook. The City Engineer may approve additional BMPs which provide equivalent performance upon request. Erosion and sediment control BMPs that are designed, constructed, and maintained in accordance with the BMP criteria presented in the manual and/or approved by the City Engineer shall be presumed to meet the minimum water quality performance standards required by the city.
- c) The controlling party shall be responsible upon completion of land disturbing activities to leave slopes so that they will not erode. Such methods may include revegetation, mulching, rip-rapping, or gunniting. If the slopes are to be revegetated, then suitable erosion control matting, sod, or other approved erosion control method shall be used on all slopes steeper than 3:1. Slopes shall not be steeper than 2:1 unless approved by City Engineer. Regardless of the method used, the objective will be to leave the site as erosion-free and maintenance-free as practicable. Slopes which are found to be eroding excessively within one (1) year of project completion must have additional slope stabilizing measures installed until the problem is corrected.
- d) Construction site operators shall control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the site as outlined in the erosion and sediment control plan.
- e) Priority construction activity is defined as those activities discharging directly into, or immediately upstream of, waters the state recognizes as impaired (for siltation) or high quality. Pre-construction meetings with construction-site operators will be required at these sites. The City of Morristown will inspect all priority sites at least once per month. The City Engineer has the discretion to require BMPs that conform to a higher than minimum standard for priority construction activities or elsewhere if deemed necessary.
- f) A specific individual shall be designated to be responsible for erosion and sediment controls on each site. This person shall have completed all required training and/or certifications as required by the Construction General Permit.
- g) If the erosion and sediment control plan must be resubmitted to TDEC as required by the Construction General Permit, it shall also be resubmitted to the City Engineer.
- h) Neighboring persons and property shall be protected from damage or loss resulting from excessive storm water runoff, soil erosion or deposition upon private property or public streets of water transported silt and debris. Adjacent property owners shall be protected from land devaluation due to exposed bare banks.
- i) When the land disturbing activity is finished and stable perennial vegetation has been established on all remaining exposed soil, the controlling party shall notify the City Engineer of these facts and request termination of the permit issued under this section. The City Engineer shall then inspect the site within twenty (20) days after receipt of such notice, and when advisable may require additional measures to stabilize the soil and prevent erosion. If such requirements are given by letter, the controlling party shall continue to be covered by the provisions of this section, until a request for termination of the permit has been accepted by the City Engineer.

- j) Any land disturbing activity performed prior to enactment of this ordinance which is causing erosion and which is not covered by a valid permit shall be required to be permitted under the provisions of this ordinance within ninety (90) days of effective date of this ordinance.

Sec. 18-606 PERFORMANCE BOND

- a) A performance bond in an amount equal to one hundred fifty percent of the City's estimated cost of completion of the work identified in the permit(s), in form satisfactory to the City shall be required as a condition precedent to the City's issuance of the land disturbing permit.
- b) Upon completion of the land disturbing activity and approval of the request for termination, the performance bond will be released subject to any amounts required to be withheld until permanent vegetation is established.

Sec. 18-607 NOTICE OF VIOLATION

Whenever the City Engineer or his representative determines that a violation of any provision of this chapter has occurred, or that work does not have a required plan or permit, or that work does not comply with an approved plan or permit, the City Engineer or his representative may issue a Notice of Violation to the property owner, utility, facility operator, lessee, contractor, permittee and/or the equipment operator doing work on the site. The Notice of Violation shall:

- a) Be in writing;
- b) Include a description of the property sufficient for identification of where violation has occurred;
- c) List the violation;
- d) State the action required;
- e) Provide a deadline for compliance or to stop work.

Sec. 18-608 MISDEMEANOR AND CIVIL PENALTIES

- a) Misdemeanor-Unlawful Acts  
It shall be unlawful for any person to violate any provision of this ordinance. Any person found to be in violation of the provisions of this ordinance shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00) for each offense. Each day of failure or refusal to comply with any lawful notice to abate violation of this ordinance shall be deemed a separate offense and punishable accordingly.
- b) Civil Penalty  
Any controlling party violating the provisions of this ordinance may be assessed a civil penalty by the City of not less than fifty dollars (\$50.00) or more than five thousand dollars (\$5,000.00) per day for each day of violation. Each day of violation shall constitute a separate violation. The City may also recover all damages proximately caused to the municipality by such violations.
- c) In assessing a civil penalty, the municipality may consider:
  - 1) The harm done to the public health or the environment;
  - 2) Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity;
  - 3) The economic benefit gained by the violator;
  - 4) The amount of effort put forth by the violator to remedy this violation;
  - 5) Any unusual or extraordinary enforcement costs incurred by the municipality;

- 6) The amount of penalty established by ordinance or resolution for specific categories of violations; and
  - 7) Any equities of the situation that outweigh the benefit of imposing any penalty of damage assessment.
- d) In addition to the civil penalty in subsection (b) above, the city may recover all damages proximately caused by the violator to the municipality, which may include any reasonable expenses incurred in investigating and enforcing violations of this chapter.
  - e) The city may bring legal action to enjoin the continuing violation of this chapter, and the existence of any other remedy, at law or in equity, shall be no defense to any such actions.
  - f) The remedies set forth in this section shall be cumulative, not exclusive, and it shall not be a defense to any action, civil or criminal, that one (1) or more of the remedies set forth herein has been sought or granted.

Sec. 18-609 APPEALS

Pursuant to Tennessee Code Annotated §68-221-1106(d), any person aggrieved by the imposition of a civil penalty or damage assessment as provided by this ordinance may appeal said penalty or damage assessment to the municipality's governing body.

- a) Appeals to be in writing. The appeal shall be in writing and filed with the municipal recorder or clerk within fifteen (15) days after the civil penalty and/or damage assessment is served in any manner authorized by law.
- b) Public hearing. Upon receipt of an appeal, the municipality's governing body shall hold a public hearing within thirty (30) days. Ten (10) days prior notice of the time, date and location of said hearing shall be published in a daily newspaper of general circulation. Ten (10) days notice by registered mail shall also be provided to the aggrieved party at the time of appeal. The decision of the governing body of the municipality shall be final
- c) Appealing decisions of the municipality's governing body. Any alleged violator may appeal a decision of the municipality's governing body pursuant to the provisions of Tennessee Code Annotated, title 27, chapter 8.

Adopted on first reading the 15<sup>th</sup> day of March, 2011.

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Mayor

ATTEST:

\_\_\_\_\_  
City Administrator

Adopted on second and final reading the 5<sup>th</sup> day of April 211.

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Mayor

ATTEST:

\_\_\_\_\_  
City Administrator