

**Ordinance No. 3413  
Entitled an Ordinance to amend the Municipal Code of the City  
of Morristown by adding the following sections relating to Post  
Construction Water Quality Management as Title 18, Chapter 9.**

CHAPTER 9

POST-CONSTRUCTION WATER QUALITY MANAGEMENT

SECTIONS

- 18-901. General Provisions
- 18-902. Definitions
- 18-903. Requirements for Existing Facilities
- 18-904. Requirements for New Development and Redevelopment
- 18-905. Design Criteria
- 18-906. Exemptions
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- 18-908. Inspections and Maintenance
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18-901. General Provisions

(1) Purpose

It is the purpose of this ordinance to:

- (a) Apply to all areas located within the jurisdiction of the City of Morristown, Tennessee.
- (b) Protect, maintain, and enhance the environment of the City of Morristown, and the public health, safety, and the general welfare of the citizens of the City, by controlling discharges of pollutants to the public stormwater system, with the intent of maintaining and improving the quality of the receiving waters into which the stormwater outfalls flow, including, without limitation, lakes, rivers, streams, ponds, wetlands, and groundwater of the City.
- (c) Enable the City of Morristown to comply with the National Pollutant Discharge Elimination System permit (NPDES) and applicable regulations, 40 CFR 122.26, for stormwater discharges.
- (d) Allow the City of Morristown to exercise the powers granted in Tennessee Code Annotated 68-221-1105 which provides that, among other powers municipalities have with respect to water quality management facilities, is the power by ordinance or resolution to:
  - (i) Exercise general regulation over the planning, location, construction, and operation and maintenance of water quality management facilities in the municipality, whether or not owned and operated by the municipality;
  - (ii) Adopt any rules and regulations deemed necessary to accomplish the purposes of this statute;

- (iii) Establish standards to regulate stormwater contaminants as may be necessary to protect water quality;
- (iv) Review and approve plans and plats for water quality management in proposed subdivisions or commercial developments;
- (v) Issue permits for stormwater discharges or for the construction, alteration, extension, or repair of water quality management facilities;
- (vi) Suspend or revoke permits when it is determined that the permittee has violated any applicable ordinance, resolution, or condition of the permit;
- (vii) Expend funds to remediate or mitigate the detrimental effects of contaminated land or other sources of stormwater contamination, whether public or private.

(2) Administration

- (a) The City Administrator and the staff under his or her supervision shall administer the provisions of this ordinance.
- (b) The City Engineer has the authority to adopt and revise additional policies, criteria, manuals, specifications, standards, rules, regulations, and guidance for the proper implementation of the requirements of this article. These adopted items may be developed by the City or another source and shall be enforceable, consistent with other provisions of this ordinance.
- (c) The City Engineer shall have the authority to prepare, or have prepared, master plans for drainage basins and to establish regulations or direct capital improvements to carry out said master plans.
- (d) In the event that the City Engineer determines that a violation of any provision of this article has occurred, or that work does not have a required plan approval, or that work does not comply with an approved plan, the City Engineer may issue enforcement responses to the property owner and/or any other person or entity having responsibility for activities performed at a development.

(3) Conflict and Responsibility

- (a) This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, deed restrictions, or existing ordinances and regulations.
- (b) If any provisions of this ordinance and any other provisions of law, regulations, or policy impose overlapping or contradictory regulations, or contain any restrictions covering any of the same subject matter, that provision which is more restrictive or imposes higher standards or requirements shall govern. It is required that the City Engineer be advised of any such regulatory conflicts by the applicant.

- (c) Conformance with this ordinance is a minimum requirement and does not relieve the property owner, utility, facility operator, lessee, tenant, contractor, the equipment operator and/or any other person or entity doing work from applying sound judgment and taking measures which go beyond the scope of the requirements of this ordinance where necessary.
- (d) This ordinance does not imply a warranty or the assumption of responsibility on the part of the City for the suitability, fitness, or safety of any structure with respect to flooding, water quality, or structural integrity. This ordinance is a regulatory instrument only, and is not to be interpreted as an undertaking by the City to design any structure or facility.
- (e) Neither the approval of a discharge under this article, nor compliance with the conditions of such approval, shall relieve any person of responsibility for damage to other persons or property or impose any liability upon the City for damage to other persons or property.

(4) Severability

Each separate provision of this ordinance is deemed independent of all other provisions herein so that if any provision or provisions of this ordinance shall be declared invalid, all other provisions thereof shall remain enforceable.

(5) Rules Applying to Ordinance

For the purpose of this chapter, certain rules of construction shall apply as follows:

- (a) Words used in the singular shall include the plural, and the plural shall include the singular
  - (b) Words used in the present tense shall include the future tense
  - (c) The word "shall" is mandatory and not discretionary. The word "may" is permissive.
  - (d) Words not defined in this ordinance shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary.
  - (e) The masculine form shall include the feminine.
- (6) Persons or entities who have been issued NPDES general, individual and/or multi-sector permits shall provide a copy of such permit and the associated Storm Water Pollution Prevention Plan (SWPPP) and/or Spill Prevention Control and Countermeasures (SPCC) Plan no later than sixty (60) calendar days after issuance of the permit.
- (7) Any alteration, improvement, or disturbance to existing drainage channels, pipes, or other stormwater systems that convey public water shall be prohibited without authorization from the City Engineer. This does not include alterations that must be made in order to maintain the intended performance of the drainage system.

## 18-902. Definitions

- (1) "As-Built Certification" As-built, field-verified plans signed and sealed by a registered professional engineer and/or a registered land surveyor, both licensed to practice in the state of Tennessee, which shows contours, easements, elevations, grades, location of drainage and hydraulic structures, and permanent best management practices; calculations demonstrating proper operation of the facilities; and other items as may be required.
- (2) "Aquatic Resource Alteration Permit (ARAP)" A permit issued by the Tennessee Department of Environment and Conservation for physically altering Waters (streams and wetlands) of the State.
- (3) "Applicant" Person who has submitted an application for approval of land disturbing activity, including required stormwater management plan, if applicable.
- (4) "Best Management Practices (BMP or BMPs)" Schedules of activities, prohibitions of practices, maintenance procedures, Water Quality Management Facilities, structural controls and other management practices that are designed to prevent or reduce the pollution of waters of the State, approved by the City of Morristown, Water quality BMPs may include structural devices, such as Water Quality Management Facilities, or non-structural practices such as buffers or natural open spaces.
- (5) "BMP Manual" Water Quality BMP Manual
- (6) "CFR" Code of Federal Regulations.
- (7) "Channel" A natural or manmade watercourse of perceptible extent, with definite bed and banks to confine and conduct continuously or periodically flowing water.
- (8) "City" The City of Morristown, Tennessee.
- (9) "City Administrator" The City Administrator of the City or his designee.
- (10) "Clearing" Clearing typically refers to removal of vegetation and/or disturbance of soil prior to grading or excavation in anticipation of construction activities. Clearing may also refer to wide area land disturbance in anticipation of non-construction activities; for instance, cleared forested land in order to convert forest land to pasture for wildlife management purposes. In the definition of discharges associated with construction activity, clearing does not refer to clearing of vegetation along roadways, highways or power lines for sight distance or other maintenance and/or safety concerns, or cold planing, milling, and/or removal of concrete and/or bituminous asphalt roadway pavement surfaces.
- (11) "Construction" Any installation, building, placement or assembly of facilities or equipment, including contractual obligations to purchase such facilities or equipment, at the premises where such equipment will be used, including preparation work at such premises.
- (12) "Contaminant" Any physical, chemical, biological, or radiological substance or matter in water.
- (13) "Dedication" The deliberate appropriation of property by its owner for general public use.

- (14) "Design Professional" An engineer, landscape architect, or architect competent in civil and/or site design and licensed to practice in the State of Tennessee.
- (15) "Developer" The person, firm or corporation, either public and private, engaged in the development of land.
- (16) "Development" or "Site Development" Any land change that alters the hydrologic or hydraulic conditions of any property. Development includes, but is not limited to, providing access to a site; clearing of vegetation; grading; earth moving; providing utilities, roads and other services such as parking facilities, Water Quality Management Facilities and erosion control systems, potable water and wastewater systems; altering land forms, or construction or demolition of a structure on the land.
- (17) "Development Plan" Detailed engineered/architectural drawing(s) of a commercial, industrial, institutional or residential development project, showing existing site conditions and proposed improvements with sufficient detail (e.g. technical reports, specifications, survey) for City review, approval, and then subsequent construction. The contents of a development plan are further defined by the City Zoning Ordinance, Subdivision Regulations, Building Code and other City departmental standards for constructing developments and public works projects.
- (18) "Discharge" Dispose, deposit, spill, pour, inject, seep, dump, leak or place by any means, or that which is disposed, deposited, spilled, poured, injected, seeped, dumped, leaked, or placed by any means, including any direct or indirect entry of any solid or liquid matter into the municipal separate storm sewer system, by any means intentional or otherwise.
- (19) "Disturbed Area" A portion of any site that has been altered from existing conditions, including but not limited to the following: providing access to a site; clearing of vegetation; grading; earth moving; providing utilities, roads and other services such as parking facilities, Water Quality Management Facilities and erosion control systems, potable water and wastewater systems; altering land forms, or construction or demolition of a structure on the land.
- (20) "Drainage System" A system of pipes, channels, culverts and ditches that conveys stormwater from and through public and private land in the City of Morristown.
- (21) "Easement" An acquired privilege or right of use or enjoyment that a person, party, firm, corporation, municipality or other legal entity has in the land of another.
- (22) "Erosion" The removal of soil particles by the action of water, wind, ice, or other geological agents, whether naturally occurring or acting in conjunction with or promoted by man-made activities or effects.
- (23) "Existing Stormwater Facility" Any existing structural feature that slows, filters, or infiltrates runoff after a rainfall event.
- (24) "FEMA" The Federal Emergency Management Agency, which administers the National Flood Insurance Program (NFIP).
- (25) "Grading" Any clearing, excavating, filling or other disturbance of terrain.

- (26) "High Quality Waters" Surface waters of the State of Tennessee that are identified by TDEC as "high quality waters." Characteristics of high quality waters are listed at Rule 1200-4-3-.06 of the official compilation of rules and regulations of the State of Tennessee. Characteristics include waters designated by the Water Quality Control Board as Outstanding National Resources Waters (ONRW); waters that provide habitat for ecologically significant populations of certain aquatic or semiaquatic plants or animals; waters that provide specialized recreational opportunities; waters that possess outstanding scenic or geologic values; or waters where existing conditions are better than water quality standards. High quality waters are sometimes referred to as Tier II or Tier III (ONRW) waters.
- (27) "Hot Spot" An area where the land use or activities cause highly contaminated water runoff with concentrations of pollutants in excess of those typically found in stormwater.
- (28) "Impaired Waters" Waters of the State not meeting their prescribed uses.
- (29) "Impervious Area" Impermeable surfaces which prevent the percolation of water into the soil including, but not limited to, pavement, parking areas and driveways, packed gravel or soil, or rooftops.
- (30) "Land Disturbing Activity" Any activity on a property that results in a change in the existing soil (both vegetative and non-vegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, development, re-development, demolition, construction, reconstruction, clearing, grading, filling, logging and/or tree chipping operations (excluding silviculture operations), haul roads associated with the development, and excavation.
- (31) "Land Disturbance Permit" A building, demolition, or grading permit approved and issued by the City Engineer, authorizing commencement of land disturbing activities.
- (32) "Maintenance" Any activity that is necessary to keep a stormwater facility in good working order so as to function as designed. Maintenance shall include complete reconstruction of a stormwater facility if reconstruction is needed in order to restore the facility to its original operational design parameters. Maintenance shall also include the correction of any problem on the site property that may directly impair the functions of the stormwater facility.
- (33) "Maintenance Agreement" Stormwater Management / BMP Facilities Maintenance Agreement
- (34) "Municipal separate storm sewer system (MS4)" The conveyances owned or operated by the municipality for the collection and transportation of stormwater, including the roads and streets and their drainage systems, catch basins, curbs, gutters, ditches, man-made channels, and storm drains.
- (35) "NPDES" National Pollutant Discharge Elimination System. NPDES is the program administered by the United States Environmental Protection Agency to eliminate or reduce pollutant discharges to the waters of the United States.

- (36) "Off-site facility" A structural BMP located outside the subject property boundary described in the application for land development activity.
- (37) "On-site facility" A structural BMP located within the subject property boundary described in the application for land development activity.
- (38) "Owner" The legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.
- (39) "Peak flow" The maximum instantaneous rate of flow of water at a particular point resulting from a storm event. Also, the maximum discharge computed for a given design flood event.
- (40) "Person" Any and all persons, natural or artificial, including any individual, firm, or association and any municipal or private corporation organized or existing under the laws of this or any other state or country.
- (41) "Pollutant" Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste or any other substance that is detrimental to the quality of the waters of the State.
- (42) "Priority Construction Activity" Land disturbing activities that are located in a watershed that discharges directly into waters recognized by the State of Tennessee as impaired for siltation or as high quality waters.
- (43) "Project" The entire proposed development regardless of the size of the area of land to be disturbed.
- (44) "Recorded" Recorded or registered in the official land records of the county where the land is located.
- (45) "Redevelopment" The improvement of land that has been previously developed.
- (46) "Sediment" Solid material, either mineral or organic, that is in suspension, is being transported, or has been moved from its site of origin by erosion.
- (47) "Sinkhole" A depression characterized by closed contours on a topographic map. A sinkhole throat, or opening to the subsurface, may or may not be visible. Field verification may be required in areas where the depth of the depression is below the tolerance of currently available topographic mapping.
- (48) "Stop Work Order" An order issued which requires that all construction activity on a site be stopped except that required to conduct corrective action as defined in the stop work order.
- (49) "Stormwater," "Stormwater Runoff," or "Runoff" Surface water resulting from rain, snow or other form of precipitation, which is not absorbed into the soil and results in surface water flow and drainage.

- (50) “Stormwater Management / BMP Facilities Maintenance Agreement” A legal document executed by the property owner, or a homeowners’ association as owner of record, and recorded with the Register of Deeds in Hamblen County, Tennessee, which guarantees perpetual and proper maintenance of Water Quality Management Facilities and Best Management Practices.
- (51) “Stormwater Utility” The stormwater utility created by ordinance of the City to administer the stormwater program and stormwater rules and regulations adopted by the municipality.
- (52) “Stream” A linear surface water conveyance with either perennial or ephemeral base flow and regulated by the City as a Special Flood Hazard Area (SFHA), or that has been identified as a stream by the City, the United States Army Corps of Engineers or the Tennessee Department of Environment and Conservation.
- (53) “Subdivision” The division, subdivision, or resubdivision of any lot or parcel of land as defined in the “Subdivision Regulations for Development Within the Morristown, Tennessee Planning Region”
- (54) “Surface water” Waters upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other water courses, lakes and reservoirs.
- (55) “TMDL (Total Maximum Daily Load)” A calculation, performed by TDEC, of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the source(s) of the pollutant.
- (56) “TDEC” The Tennessee Department of Environment and Conservation.
- (57) “Transporting” Any moving of earth materials from one place to another, other than such movement incidental to grading, as authorized on an approved plan.
- (58) “Vegetated Buffer” A use-restricted vegetated area that is located along the perimeter of streams, ponds, lakes or wetlands, containing natural vegetation and grasses, or enhanced or restored vegetation.
- (59) “Vegetation” Collection of plant life, including trees, shrubs, bushes, and grass.
- (60) “Utility, public or private” Any agency which under public franchise or ownership, or under certification of convenience and necessity provides the public with electricity, natural gas, steam, communication, rail transportation, water, sewage collection, or other similar service.
- (61) “Water Quality BMP Manual (BMP Manual)” A manual adopted by the City which contains policies, design standards and criteria, technical specifications and guidelines, maintenance guidelines, and other documentation to be used for implementation of this article.

- (62) “Water Quality Management” The use of structural or non-structural practices that are designed to reduce storm water runoff pollutant loads, discharge volumes, peak flow discharge rates and detrimental changes in stream temperature that affect water quality and habitat.
- (63) “Water Quality Management Facilities” The drainage structures, conduits, ditches, combined sewers, sewers, and all devices and appurtenances by means of which stormwater is collected, transported, pumped, treated, or disposed of. Water Quality Management Facilities include structural or nonstructural measures, or both, to control the increased volume, rate and quality of stormwater runoff caused by manmade changes to the land.
- (64) “Water Quality Management Plan (WQMP)” An engineering plan for the design of Water Quality Management Facilities and BMPs within a proposed development or redevelopment. The WQMP includes a map showing the extent of the land development activity and location of Water Quality Management Facilities and BMPs, design calculations for Water Quality Management Facilities and BMPs, record drawings/certifications and Stormwater Management / BMP Facilities Maintenance Agreement, and any other items required by the City Engineer and/or the Water Quality BMP Manual.
- (65) “Water Quality Volume Reduction” A decrease in the water quality volume for one or more areas of a proposed development which is obtained only for specific site development features or approaches that can reduce or eliminate the discharge of pollutants in stormwater runoff. Water quality volume reductions can only be obtained when technical criteria defined by the City are met.
- (66) “Water Quality Volume Reduction Areas” Areas within the proposed development or redevelopment for which a water quality volume reduction can be obtained.
- (67) “Watercourse” A channel, natural depression, gully, stream, creek, pond, reservoir or lake in which stormwater runoff and floodwater flows either regularly or infrequently. This includes major drainageways for carrying urban stormwater runoff.
- (68) “Waters” or “Waters of the State” Any and all waters , public or private, on or beneath the surface of the ground, which are contained within, flow through or border upon Tennessee or any portion thereof except those bodies of water confined to and retained within the limits of private property in single ownership which do not combine or effect a junction with natural surface or underground waters.
- (69) “Watershed” All the land area that contributes runoff to a particular point along a waterway.
- (70) “Wetland” An area that has been designated as such by the United States Army Corps of Engineers, the Tennessee Department of Environment and Conservation, or the Natural Resources Conservation Service.

### 18-903. Requirements for Existing Facilities

- (1) The following requirements shall apply to all locations and developments at which land disturbing activities have occurred previous to the enactment of this ordinance:
  - (a) Denuded areas must be vegetated or covered under the standards and guidelines specified in the BMP Manual and on a schedule acceptable to the City Engineer.
  - (b) Cuts and slopes must be properly covered with appropriate vegetation and/or retaining walls constructed.
  - (c) Drainage ways shall be properly covered in vegetation or secured with rip-rap, channel lining, etc., to prevent erosion.
  - (d) Trash, junk, rubbish, etc. shall be cleared from drainage ways.
  - (e) Stormwater runoff shall be controlled to the extent reasonable to prevent pollution of local waters. Such control measures may include, but are not limited to, the following:
    - (i) Ponds, including detention ponds, extended detention ponds, wet pond, alternative storage measures
    - (ii) Constructed wetlands
    - (iii) Infiltration systems, including infiltration/percolation trenches, infiltration basins, drainage (recharge) wells, and porous pavement
    - (iv) Filtering systems, including catch basin inserts/media filters, sand filters, filter/absorption beds, filter and buffer strips
    - (v) Open channel, such as swales
- (2) The City Engineer shall in writing notify the owners of existing locations and developments of specific drainage, erosion or sediment problems affecting such locations and developments, and the specific actions required to correct those problems. The notice shall also specify a reasonable time for compliance.
- (3) The owner(s) of Existing Stormwater Facilities, Water Quality Management Facilities, BMPs, Vegetated Buffers and Water Quality Volume Reduction Areas shall at all times inspect and properly operate and maintain all facilities in such a manner as to maintain the full function of the facilities or Best Management Practices which are installed or used by the property owner(s) to achieve compliance with this ordinance.

### 18-904. Requirements for New Development and Redevelopment

- (1) Owners of land development activities not exempted under Section 18-906 must submit a Water Quality Management Plan (WQMP).
  - (a) The WQMP shall be submitted as part of the Development Plan, as required by the City Zoning Ordinance, Subdivision Regulations, Building codes and other standards for development plans.

- (b) The WQMP shall include the specific required elements that are listed and/or described in the Water Quality BMP Manual.
    - (i) The City Engineer may require submittal of additional information in the WQMP as necessary to allow an adequate review of the existing or proposed site conditions.
    - (ii) The City Engineer may also require the WQMP to address the maximum development potential of a site under existing zoning, regardless of whether the applicant presently intends to develop the site to its maximum potential.
  - (c) The WQMP shall be subject to any additional requirements set forth in the Subdivision Regulations, Zoning Ordinance, or other City ordinances and regulations. In addition, the City Engineer may impose additional requirements he feels necessary, based on engineering judgment and scientific research, to meet the requirements of this ordinance.
  - (d) WQMPs shall be prepared and stamped by an engineer, landscape architect, or architect competent in civil and site design and licensed to practice in the State of Tennessee. Portions of the WQMP that require hydraulic or hydrologic calculations and design shall be prepared and stamped by a design professional competent in civil and site design and licensed to practice in the State of Tennessee.
  - (e) No land disturbance or building permit shall be issued until a WQMP has been approved by the City Engineer.
  - (f) The approved WQMP shall be adhered to during grading and construction activities. Under no circumstance is the owner or operator of land development activities, or any person(s) acting on the owner's behalf, allowed to deviate from the approved WQMP without prior approval of a plan amendment by the City Engineer.
  - (g) The approved WQMP shall be amended if the proposed site conditions change after plan approval is obtained, or if it is determined by the City Engineer during the course of grading or construction that the approved plan is inadequate.
  - (h) The WQMP shall include a listing of any legally protected state or federally listed threatened or endangered species and/or critical habitat (if applicable) located in the area of land disturbing activities, and a description of the measures that will be used to protect them during and after grading and construction. United States Fish and Wildlife approval is required for all protection measures.
- (2) Water Quality Management Facilities, BMPs, Vegetated Buffers and Water Quality Volume Reduction Areas shown in WQMPs shall be maintained through the declaration of a protective covenant, entitled Stormwater Management / BMP Facilities Maintenance Agreement. The Maintenance Agreement must be approved and shall be enforceable by the City. The Maintenance Agreement shall be recorded with the deed and shall run with the land and continue in perpetuity.

- (3) Water Quality Management Facilities, BMPs, Vegetated Buffers, and Water Quality Volume Reduction Areas shall be placed into a permanent water quality easement that is recorded with the deed to the parcel and held by the City.
- (4) A maintenance right-of-way or easement, having a minimum width of twenty (20) feet shall be provided to all Water Quality Management Facilities, BMPs, Vegetated Buffers and Water Quality Volume Reduction Areas from a driveway, public road, or private road.
- (5) Owners of land development activities not exempted from submitting a WQMP may be subject to additional watershed or site-specific requirements than those stated in this ordinance in order to satisfy local or State NPDES, TMDL or other regulatory water quality requirements. Areas subject to additional requirements may also include developments, redevelopments, or land uses that are considered pollutant Hot Spots, discharges to critical areas with sensitive resources, or areas where the City Engineer has determined that additional restrictions are needed to limit adverse impacts of the proposed development on water quality or channel protection.
- (6) The City Engineer will make a final inspection of the structural BMPs after construction to ensure that they are in compliance with the approved plan and the provisions of this ordinance. Any corrections must be made before a Certificate of Occupancy will be issued.
- (7) A performance guarantee in the form of a corporate surety bond, irrevocable letter of credit, or other surety satisfactory to the City Engineer must be posted to insure completion of all requirements of the Water Quality Management Plan before approval will be granted. The amount of this performance guarantee shall be one and one-half (1.5) times the estimated costs of the Water Quality Management Facilities, channel protection, Vegetated Buffers, and any other BMP's required by the WQMP.
  - (a) The project engineer shall submit an itemized list of the estimated costs for infrastructure improvements. The City Engineer shall approve or adjust the proposed cost estimate.
  - (b) All performance guarantees shall include the following:
    - (i) Principal's name and address
    - (ii) Surety's name and address
    - (iii) Notation: "Shall be held bound unto the City of Morristown"
    - (iv) A sum determined by the City Engineer
    - (v) Subdivision name and phase (if applicable)
    - (vi) Work to be performed
  - (c) Prior to granting WQMP approval, the owner and the City Engineer shall agree upon a deadline of the completion of all required improvements. Such a deadline shall not exceed two (2) years from the date of WQMP approval. The City Engineer shall have the authority to recommend the extension of such deadline for one (1) additional year where

the owner has presented substantial reasons and/or hardships.

- (d) The performance guarantee shall be released in full only upon completion of the following items:
    - (i) submittal of acceptable as-built drawings, prepared by a licensed professional engineer showing the required facilities and certifying they were constructed in accordance with the approved WQMP together with such other information as may be required by the City Engineer;
    - (ii) submittal of a copy of the recorded Maintenance Agreement; and
    - (iii) submittal of a copy of a recorded plat showing the location of all required facilities and associated easements; and
    - (iv) inspection and written acceptance of the site by the City Engineer.
  - (e) After all required items have been completed, a portion of the bond may be held for a minimum of one year following final plat approval or until the site is permanently stabilized, whichever is longer, to insure that maintenance and repairs are performed.
  - (f) In cases where partial improvements have been made, the amount of the guarantee may be reduced upon compliance with the inspections and certifications by the City Engineer as appropriate. The amount of the reduction shall not exceed the percentage of the improvements already completed.
  - (g) The City Engineer shall be empowered to demand forfeiture of any performance bond or the payment of any irrevocable letter of credit deemed necessary in order to complete the needed improvements and/or maintenance in the approved Water Quality Management Plan.
- (8) An As-Built Certification shall be provided to the City Engineer, certifying that all drainage and treatment structures or facilities, BMPs, volumes, sizes, slopes, locations, elevations, and hydraulic structures have been field verified, represent the as-built field conditions, and comply with the approved stormwater management plan(s).
- (a) As-Built Certifications shall include sufficient design information to show that Water Quality Management Facilities will operate as approved. This shall include the pre-construction peak flow discharges, the post-construction peak flow discharges, and/or volumes of stormwater runoff based on the proposed site development, as well as all necessary computations used to determine the reduced peak flow rates for the design storms. Calculations which demonstrate that the facilities will function properly must also be provided if the as-built conditions differ from those proposed in the approved WQMP.

- (b) The As-Built Certification shall be sealed by an appropriate design professional and/or a registered land surveyor licensed to practice in the State of Tennessee.

18-905. Design Criteria

- (1) All owners of developments or redevelopments who must submit a WQMP shall provide treatment of stormwater runoff in accordance with the following requirements.
  - (a) The stormwater runoff at the site must be treated for water quality prior to discharge from the development or redevelopment site in accordance with the stormwater treatment standards and criteria provided in the Water Quality BMP Manual.
  - (b) The treatment of stormwater runoff shall be achieved through the use of one or more Water Quality Management Facilities and/or BMPs that are designed and constructed in accordance with the design criteria, guidance, and specifications provided in the BMP Manual.
  - (c) Methods, designs, or technologies for Water Quality Management Facilities or BMPs that are not provided in the BMP Manual may be submitted for approval by the City Engineer if it is proven that such methods, designs, or technologies will meet or exceed the stormwater treatment standards set forth in the BMP Manual and this ordinance. Proof of such methods, designs, or technologies must meet the minimum testing criteria set forth in the BMP Manual.
  - (d) BMPs shall not be installed within public rights-of way or on public property without prior approval of the City Engineer.
  - (e) Prior to or during the site design process, Applicants shall consult with the City Engineer to determine if they are subject to additional stormwater design requirements.
- (2) All owners of developments or redevelopments who are required to submit a WQMP shall provide downstream channel erosion protection in accordance with design criteria stated in the BMP Manual. Downstream channel erosion protection can be provided by an alternative approach in lieu of controlling the channel protection volume subject to prior approval by the City Engineer. Sufficient hydrologic and hydraulic analysis that shows that the alternative approach will offer adequate channel protection from erosion must be presented in the WQMP.
  - (a) Downstream flood protection can be provided by downstream conveyance improvements and/or purchase of flow easements in lieu of peak discharge controls subject to prior approval by the City Engineer and satisfaction of the following requirements:
    - (i) Sufficient hydrologic and hydraulic analysis must be presented that shows that the alternative approach will offer adequate protection from downstream flooding for all potentially affected downstream property owners.

- (ii) The applicant is responsible for submittal and approval of any necessary Conditional Letter of Map Revision prior to construction, and a Letter of Map Revision upon completion of construction.
  - (iii) The applicant is responsible for all State and Federal permits that may be applicable to the site including TDEC NPDES and ARAP permits, US Army Corps of Engineers Section 404 permits, and TVA Section 26a permits.
- (b) Developments and redevelopments that do not cause an increase in peak discharges are not exempt from conformance with water quality treatment and downstream channel protection requirements.
- (3) All developments and redevelopments that must submit a WQMP shall provide a downstream impact analysis addressing overbank flood control in accordance with the BMP Manual.
- (4) All owners of developments or redevelopments who must submit a WQMP shall establish, protect, and maintain a Vegetated Buffer in accordance with the policies, criteria, and guidance set forth in the Water Quality Buffer Zone Ordinance along all streams, ponds, lakes and wetlands. Exemptions from this requirement are as follows:
  - (a) Vegetated Buffers are not required around the perimeter of ponds that have no known connection to streams, other ponds, lakes or wetlands.
  - (b) Vegetated Buffers are not required around Water Quality Management Facilities or BMPs that are designed, constructed, and maintained for the purposes of water quality and/or quantity control, unless expressly required by the design standards and criteria for the facility that are provided in the BMP Manual.
- (5) The applicant must present a detailed plan for management of vegetation at the site after construction is finished, including who will be responsible for the maintenance of vegetation at the site and what practices will be employed to ensure that adequate vegetative cover is preserved. Where it is required by the BMP, this plan must be prepared by a registered landscape architect licensed in Tennessee.
- (6) The applicant must submit a Maintenance Plan for all water quality management facilities to ensure their continued performance. These plans will identify the parts or components of a Water Quality Management Facility that need to be maintained and the equipment and skills or training necessary. Provisions for the periodic review and evaluation of the effectiveness of the maintenance program and the need for revisions or additional maintenance procedures shall be included in the plan. A permanent elevation benchmark shall be identified in the plans to assist in the periodic inspection of the facility.
- (7) The applicant must submit a Special Pollution Abatement Plan (SPAP) as described below, if applicable.

- (a) A Special Pollution Abatement Plan (SPAP) shall be required for the land uses identified as pollutant Hot Spots, as defined below:
    - (i) Any property containing more than four hundred (400) parking spaces, or one hundred twenty thousand (120,000) square feet of impervious parking area;
    - (ii) vehicle, truck or equipment maintenance, fueling, washing or storage areas including but not limited to: gas stations, automotive dealerships, automotive repair shops, and car wash facilities
    - (iii) recycling and/or salvage yard facilities;
    - (iv) restaurants, grocery stores, and other food service facilities;
    - (v) commercial facilities with outside animal housing areas including animal shelters, fish hatcheries, kennels, livestock stables, veterinary clinics, or zoos
    - (vi) other producers of pollutants identified by the City Engineer as a pollutant Hot Spot using information provided to or collected by him/her or his/her representatives, or reasonably deduced or estimated by him/her or his/her representatives from engineering or scientific study.
  - (b) A Special Pollution Abatement Plan may be required for land uses or activities that are not identified by this ordinance as Hot Spots, but are deemed by the City Engineer to have the potential to generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in stormwater.
  - (c) For new development or redevelopments, the SPAP shall be submitted as part of the WQMP, and the BMPs submitted on the plan shall be subject to all other provisions of this ordinance. Technical requirements for the plan shall be based on the provisions and guidelines set forth in the BMP Manual.
    - (i) Best Management Practices specified in the SPAP must be appropriate for the pollutants targeted at the site and must be approved with the WQMP.
  - (d) A SPAP may also be required for an existing property if the City Engineer determines that discharges from the property are in violation of this ordinance or other ordinances of the City or are causing harm to waters of the State.
- (8) In addition to the above requirements, all developments or redevelopments that must submit a Water Quality Management Plan shall:
- (a) Provide erosion prevention and sediment control in accordance with the ordinances and regulations of the City;
  - (b) Account for both onsite and offsite stormwater;
  - (c) Maintain natural drainage divides and hydrologic characteristics;

- (d) Provide soils information;
  - (e) Control stormwater runoff, provide peak discharge/volume control, and address sinkholes in accordance with the “Subdivision Regulations for Development Within the Morristown, Tennessee Planning Region” or as required by the City Engineer;
  - (f) Adhere to all local floodplain development requirements in accordance with City regulations and design all structures or fill located in floodways designated by the Federal Flood Insurance Study to pass a 100-year frequency flood;
  - (g) Submit all supporting hydrologic and hydraulic assumptions, as well as all maps and references used in calculations.; and
  - (h) Not adversely affect adjacent or neighboring properties.
- (9) Attendance at a pre-construction meeting with the City Engineer prior to issuance of a land disturbance permit is required for owners and operators of developments or redevelopments that are:
- (a) new subdivisions or condominium developments; or
  - (b) non-residential land developments that require coverage under the State of Tennessee General NPDES Permit for Discharges of Stormwater Associated with Construction Activities; or
  - (c) a priority construction activity, as defined in this ordinance; or
  - (d) other cases when coordination with adjacent construction activities is needed or when conditions indicate a higher than normal risk for pollutant discharges.

18-906. Exemptions

- (1) The following developments and redevelopments are exempt from the requirements for a Water Quality Management Plan, unless the City Engineer has determined that treatment of Stormwater Runoff for water quality is needed to order to satisfy local or State NPDES, TMDL, or other regulatory water quality requirements, or the proposed development will be a pollutant Hot Spot, or to limit adverse water quality or channel protection impacts of the proposed development.
- (a) developments or redevelopments that disturb less than one (1) acre of land. No exemption is granted if the development or redevelopment is part of a larger common plan of development or sale that would disturb one (1) acre or more and the stormwater runoff from the development or redevelopment is not treated for water quality via a downstream or regional Water Quality Management Facility or BMP that meets the requirements of this ordinance
  - (b) minor land disturbing activities such as residential gardens and residential or non-residential repairs, landscaping, or maintenance work

- (c) individual utility service connections, unless such activity is carried out in conjunction with the clearing, grading, excavating, transporting, or filling of a lot or lots for which a WQMP would otherwise be required
  - (d) installation, maintenance or repair of individual septic tank lines or drainage fields, unless such activity is carried out in conjunction with the clearing, grading, excavating, transporting, or filling of a lot or lots for which a WQMP would otherwise be required
  - (e) installation of posts or poles
  - (f) farming activities, existing nursery and agricultural operations, but not including construction conducted as a permitted principal or accessory use by zoning ordinances
  - (g) additions or modifications to existing, individual, single family structures
  - (h) any logging and agricultural activity which is consistent with an approved soil conservation plan or a timber management plan prepared or approved by the other state or federal agency regulating such activity, as applicable.
  - (i) emergency work to protect life, limb or property, and emergency repairs
  - (j) repairs to any stormwater treatment practice deemed necessary by the City Engineer
  - (k) developments or redevelopments of any size that received approval of detail plans prior to the effective date of this chapter or developments or redevelopments for which a WQMP was not required prior to the effective date of this chapter
- (2) The exemptions listed above shall not be construed as exempting these owners of developments and redevelopments from compliance with stormwater requirements stated in the minimum subdivision regulations, zoning ordinance, or other City ordinances and regulations.

#### 18-907. Modifications

- (1) The minimum requirements for stormwater management may be modified upon written request of the landowner, provided that at least one of the following conditions applies:
- (a) It can be demonstrated that the proposed development is not likely to impair attainment of the objectives of this ordinance.
  - (b) Alternative minimum requirements for on-site management of stormwater discharges have been established in a Water Quality Management Plan that has been approved by the City Engineer.
  - (c) Provisions are made to manage stormwater by an off-site facility. The off-site facility must be in place and designed to provide the level of stormwater control that is equal to or greater than that which would be afforded by on-site

practices. Further, the facility must be operated and maintained by an entity that is legally obligated to continue the operation and maintenance of the facility.

- (d) Engineering studies determine that installing the required Water Quality Management Facilities or BMPs would actually cause adverse impact to water quality or cause increased channel erosion or downstream flooding.
  - (e) Non-structural BMPs will be used on the site that will reduce the generation of stormwater from the site, the size and cost of stormwater storage, and/or the pollutants generated at the site. The City Engineer must approve any such plan and will determine the amount of credit granted for the non-structural BMPs.
    - (i) Additional structural BMPs will still be required unless credit for the full stormwater generation is provided.
    - (ii) If non-structural BMPs are approved, the Applicant shall ensure that these practices are documented and remain unaltered by subsequent property owners.
- (2) Requests to modify the WQMP requirements shall be submitted to the City Engineer in writing, along with all necessary plans, specifications, calculations, and other documentation required to demonstrate that one or more of the conditions listed above is met and that the modification will not result in a reduction of water quality.
- (a) The City Engineer shall not approve modifications that cause any of the following:
    - (i) the City to be in violation of any state or Federal NPDES permit, TMDL, or other applicable water quality regulation
    - (ii) degradation of biological functions or habitat
    - (iii) accelerated stream bank or streambed erosion or siltation
    - (iv) deterioration of existing culverts, bridges, dams, or other structures
    - (v) increased threat of flood damage to public health, life or property
  - (b) Any modification of the requirements of this ordinance requires written approval by the City Engineer.
  - (c) If a modification requested at the time of plan submission is approved, the modifications must be documented as part of the approved WQMP.
  - (d) During construction, an owner may request modifications to the approved WQMP. Until such time as the amended plan is approved by the City Engineer in writing, the land-disturbing activity and associated construction shall not proceed, except in accordance with the WQMP as originally approved.

- (3) Where compliance with minimum requirements for stormwater management is modified in accordance with this section, the applicant may satisfy the minimum requirements by meeting one or a combination of the mitigation measures below:
  - (a) Purchase and donation of privately owned lands, or the grant of an easement to be dedicated for preservation and/or reforestation. These lands should be located adjacent to the stream corridor in order to provide permanent buffer areas to protect water quality and aquatic habitat
  - (b) The creation of a Water Quality Management Facility or other drainage improvements on previously developed properties, public or private, that currently lack Water Quality Management Facilities designed and constructed in accordance with the purposes and standards of this resolution
  - (c) Other alternatives accepted by the City Engineer in an approved Water Quality Management Plan.

#### 18-908. Inspections and Maintenance

- (1) The owner(s) of Water Quality Management Facilities and/or Best Management Practices shall at all times inspect and properly operate and maintain all facilities and systems of stormwater treatment and control, related appurtenances, and BMPs in such a manner as to maintain the full function of the facilities or BMPs which are installed or used by the property owner(s) to achieve compliance with this ordinance in accordance with the "Stormwater Management / BMP Facilities Maintenance Agreement."
- (2) The City Engineer may, to the extent authorized by state and federal law, establish inspection programs to verify that all Water Quality Management Facilities, including those built before as well as after the adoption of this ordinance, are functioning within design limits.
  - (a) These inspection programs may be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of the municipality's NPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws.
  - (b) Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in stormwater management facilities; and evaluating the condition of drainage control facilities and other BMPs.
  - (c) During and after construction, the City Engineer may enter upon any property which has a Water Quality Management Facility; BMP; Vegetated Buffer; water quality volume credit area; discharges or contributes, or is believed to discharge

or contribute, to stormwater runoff or the stormwater system, stream(s), natural drainageway(s) or via any other private or public stormwater management system during all reasonable hours to inspect for compliance with the provisions of this article, monitor, or to request or perform corrective actions.

- (i) Failure of a property owner, person(s) working on behalf of the property owner, or other legal occupant of the property, such as a lessee, to allow such entry by the City Engineer onto a property for the purposes set forth in this section shall be cause for the issuance of a stop work order, withholding of a certificate of occupancy, and/or civil penalties and/or damage assessments in accordance with this ordinance.
- (3) The City Engineer has the authority to impose more stringent inspection and maintenance requirements as necessary for purposes of water quality protection and public safety.
- (4) Inspection and maintenance activities shall be documented by the property owner or his/her designee, maintained by the property owner for a minimum of three (3) years, and made available for review by the City Engineer upon request.
- (5) Inspection and maintenance of privately-owned Water Quality Management Facilities shall be performed at the sole cost and expense of the owner(s) of such facilities.
- (6) The removal of sediment and/or other debris from Existing Water Quality Management Facilities and BMPs shall be performed in accordance with all City, state, and federal laws. Guidelines for sediment removal and disposal are referenced in the BMP Manual. The City Engineer may stipulate additional guidelines if deemed necessary for public safety.
- (7) This ordinance does not authorize access to adjoining private property by the property owner or site operator. Arrangements concerning removal of sediment or pollutants on adjoining property must be settled by the owner or operator with the adjoining landowner. In addition, approval from TDEC must be granted before any work may be done in a stream, wetland, or other waters of the State.
- (8) The City Engineer may order corrective actions to BMPs, Water Quality Management Facilities, Vegetated Buffers and/or Water Quality Volume Reduction Areas as are necessary to properly maintain the facilities/areas within the City for the purposes of water quality treatment, channel erosion protection, adherence to local performance standards, and/or public safety.
  - (a) If the property owner(s) fails to perform corrective action(s), the City Engineer shall have the authority to order the corrective action(s) to be performed by the City or others.
  - (b) In such cases where a performance bond exists, the City shall utilize the bond to perform the corrective actions. In such cases where a performance bond does not exist, the property owner shall reimburse the City for double its direct and related expenses.

- (c) If the property owner fails to reimburse the City, the City is authorized to file a lien for said costs against the property and to enforce the lien by judicial foreclosure proceedings.
  - (d) Corrective measures imposed by the City Engineer under this section are subject to appeal under Section 18-912 of this ordinance.
- (9) Any alteration, improvement, or disturbance to Water Quality Management Facilities, Vegetated Buffers, BMPs, or Water Quality Volume Reduction Areas shown in certified record drawings shall be prohibited without authorization from the City Engineer. This does not include alterations that must be made in order to maintain the intended performance of the Water Quality Management Facilities or BMPs.
- (10) The municipality shall have the discretion to accept the dedication of any existing or future Water Quality Management Facility, provided such facility meets the requirements of this ordinance and includes adequate and perpetual access and sufficient areas, by easement or otherwise, for inspection and regular maintenance.
- (a) Any Water Quality Management Facility accepted by the municipality must also meet the municipality's construction standards and any other standards and specifications that apply to the particular facility in question.
  - (b) The applicant must make a written request for dedication of the facility to the City Engineer, after which the City Engineer will render a written decision. The property owner is responsible for proper construction, operation, inspection, and maintenance of the BMP until such time as the City Engineer accepts the dedication.

#### 18-909. Emergency Suspensions

- (1) Under this article, if the City Engineer finds that an emergency exists imperatively requiring immediate action to protect the public health, safety or welfare; the health of animals, fish or aquatic life; or a public water supply, the City Engineer may, without prior notice, issue an order reciting the existence of such an emergency and requiring that such action be taken as the City Engineer deems necessary to meet the emergency.
- (2) Any owner or tenant notified of a suspension shall immediately eliminate the violation. If an owner or tenant fails to immediately comply voluntarily with the suspension order, the City Engineer may take such steps as deemed necessary to remedy the endangerment. The City Engineer may allow the owner or tenant to recommence when the owner or tenant has demonstrated to the satisfaction of the City Engineer that the period of endangerment has passed.
- (3) A owner or tenant that is responsible, in whole or in part, for any discharge or connection presenting imminent danger to the public health, safety or welfare; the health of animals, fish or aquatic life; or a public water supply, shall submit a detailed written statement describing the causes of the harmful discharge or connection and the measures taken to prevent any future occurrence, to the City Engineer within seven (7) calendar days of receiving notice of the suspension.

- (4) Nothing in this article shall be interpreted as requiring a hearing prior to any emergency suspension under this section.
- (5) Any owner or tenant whose operation is suspended pursuant to this section, on petition to the City Council, shall be afforded a hearing as soon as possible, but in no case shall such hearing be held later than thirty (30) calendar days from the receipt of such a petition by the City Engineer.

18-910. Enforcement

- (1) Any person who performs any of the following acts shall be in violation of this article:
  - (a) fails to comply with the ordinance
  - (b) performs work that does not have a required plan approved by the City Engineer
  - (c) performs work that does not comply with an approved plan
  - (d) violates the provisions of any plan approval issued pursuant to this ordinance,
  - (e) fails or refuses to comply with any lawful communication or notice to stop work, abate, or take corrective action by the City Engineer

Each day such violation continues shall constitute a separate violation.

- (2) Violations of this ordinance shall be cause for the requirement for corrective action(s), the issuance of a stop work order, withholding of plan approval, withholding of plan inspections, withholding of a certificate of occupancy, and/or civil penalties and/or damage assessments as set forth below.
- (3) Upon the request of the City Engineer, the City attorney shall initiate appropriate legal action to enforce the provisions of this article. The City may bring legal action to enjoin the continuing violation of this chapter and the existence of any other remedy in law or equity shall be no defense to any such action.
- (4) Any person who violates any provision of this ordinance may also be liable to the City in a civil action for damages.
- (5) Any violator may be required to restore land to its undisturbed condition.
  - (a) In the event that restoration is not undertaken within a reasonable time after notice, the City Engineer may take necessary corrective action.
  - (b) The cost of such action shall be covered by the posted performance bond, when available. Should the amount of the performance bond being held by the City be insufficient or not available, the cost shall become a lien upon the property until paid.
- (6) The City Engineer may notify other departments or the City to deny services to the property until the site has been brought into compliance.

- (7) The City Engineer shall have the authority to issue notices of violation and citations and to impose the civil penalties provided in this section.
- (8) The City Engineer may decline to approve a plan for any owner who has failed to comply with any section of this article or an order issued under this article unless such owner first files a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the City Engineer to be necessary to achieve consistent compliance.
- (9) Enforcement Actions
  - (a) Notice of Violation. Whenever the City Engineer finds that any person discharging stormwater has violated or is violating this ordinance or an order issued hereunder, the City Engineer may serve upon the property owner, utility, facility, operator, lessee, contractor, or equipment operator of the site of the discharge a Notice of Violation.
    - (i) The notice of violation shall: (1) be in writing, (2) include a description of the property sufficient for identification of where the violation occurred, (3) list the violation, (4) state the action required, and (5) provide a deadline for compliance or to stop work.
    - (ii) Within fourteen (14) days of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted to the City Engineer. Submission of this plan in no way relieves the discharger of liability for any violations occurring before or after receipt of the notice of violation.
  - (b) Consent Orders. The City Engineer is empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person responsible for the noncompliance. Such orders will include specific action to be taken by the person to correct the noncompliance within a time period specified by the order. Consent orders shall have the same force and effect as administrative orders issued pursuant to paragraphs (d) and (e) below.
  - (c) Show Cause Hearing. The City Engineer may order any person who violates this ordinance or an order issued hereunder, to show cause why a proposed enforcement action should not be taken. The hearing shall be before the City Administrator. Notice shall be served on the person specifying the time and place for the meeting, the proposed enforcement action and the reasons for such action, and a request that the violator show cause why this proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing.
  - (d) Compliance Order. When the City Engineer finds that any person has violated or continues to violate this ordinance or an order issued hereunder, he may issue an order to the violator directing that, following a specific time period,

adequate structures, devices, or other BMPs be installed or procedures implemented and properly operated. Orders may also contain such other requirements as might be reasonably necessary and appropriate to address the noncompliance, including the construction of appropriate structures, installation of devices, self-monitoring, and management practices.

- (e) Cease and Desist Orders. When the City Engineer finds that any person has violated or continues to violate this ordinance or any order issued hereunder, the City Engineer may issue an order to cease and desist all such violations and direct those persons in noncompliance to: (1) comply forthwith; or (2) take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and terminating the discharge.
- (10) An Enforcement Response Plan or similar policy document, including a schedule of civil penalties which may be assessed for certain specific violations or categories of violations, may be established by the City Engineer and approved by the City Council.

#### 18-911. Civil Penalties

- (1) Any person who violates any provision of this article may be assessed an administrative civil penalty by the City Engineer of not less than \$50.00 and not more than \$5,000.00 for each day of violations in accordance with T.C.A. § 68-221-1106. Each day of violation shall constitute a separate violation. In assessing a civil penalty, the City Engineer may consider:
  - (a) The harm done to the public health or the environment;
  - (b) Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity;
  - (c) The economic benefit gained by the violator;
  - (d) The amount of effort put forth by the violator to remedy the violation;
  - (e) Any unusual or extraordinary enforcement costs incurred by the City;
  - (f) Any amount of penalty established by ordinance or resolution for specific categories of violations; and
  - (g) Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.
- (2) In addition to the civil penalty, the City Engineer may assess:
  - (a) All damages proximately caused by the violator to the City, which may include any reasonable expenses incurred in investigating violations of, and enforcing compliance with, this article, or any other actual damages caused by the violation; and
  - (b) The costs of the City's maintenance of Water Quality Management Facilities when the user of such facilities fails to maintain them as required by this section.

- (3) The municipality may bring legal action to enjoin the continuing violation of this ordinance, and the existence of any other remedy, at law or equity, shall be no defense to any such actions.
- (4) The remedies provided for in this ordinance are not exclusive and the City Engineer may take any, all, or any combination of enforcement actions against any noncompliant owner that is in violation.
  - (a) Any remedies taken shall be in addition to any other remedies provided by law.
  - (b) The remedies set forth in this ordinance 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.
- (5) Any civil penalty assessed to a violator pursuant to this section may be in addition to any other penalty assessed by a State or Federal authority.
- (6) All damages and civil penalties collected under this ordinance, following adjustment for the expenses incurred in making such collections, shall be allocated and appropriated for the administration of the City's stormwater program.

#### 18-912. Appeals

Pursuant to Tennessee Code Annotated section 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 City Council.

- (1) Any person against whom an assessment has been issued may secure a review of said assessment by filing with the City Engineer a written petition setting forth the grounds and reasons for their objections and asking for a hearing on the matter before the City Council. The appeal shall be in writing and filed with the City Engineer within fifteen (15) days after the civil penalty and/or damage assessment is served in any manner authorized by law.
- (2) Upon receipt of an appeal, the City Council 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, such notice to be sent to the address provided by the aggrieved party at the time of appeal.
- (3) If a petition for review of such damage assessment or civil penalty is not filed within thirty (30) days after the damage assessment or civil penalty is served in any manner authorized by law, the violator shall be deemed to have consented to the damage assessment or civil penalty, and it shall become final.
- (4) If any assessment becomes final because of a person's failure to appeal the municipality's assessment, the City Engineer may apply to the appropriate court for a judgment and seek execution of said judgment. Upon final order, if payment is not made, the City Engineer may issue a cease and desist order.

- (5) Any alleged violator may appeal a decision of the City Council 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.

\_\_\_\_\_  
Mayor

ATTEST:

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

Adopted on second and final reading the 5<sup>th</sup> day of April 2011.

\_\_\_\_\_  
Mayor

ATTEST:

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