

TITLE 14: ZONING AND LAND USE CONTROL

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CHAPTER 1: ZONING ORDINANCE

Section

14-101 Land use to be governed by zoning ordinance

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§ 14-101 LAND USE TO BE GOVERNED BY ZONING ORDINANCE.

Land use within the town shall be governed by the ordinance titled “Zoning Ordinance, Smyrna, Tennessee”, and any amendments thereto.
(2007 Code, § 14-101)

§ 14-102 VIOLATION AND PENALTY.

Violations of the zoning ordinance shall subject the offender to a penalty under the general penalty provision of this code. Each day a violation is allowed to continue shall constitute a separate offense.
(2007 Code, § 14-102)

CHAPTER 2: PLANNING DEPARTMENT

Section

- 14-201 Department established; functions
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§ 14-201 DEPARTMENT ESTABLISHED; FUNCTIONS.

There is hereby created and established a Planning Department, which Department shall provide planning services; administer the town's zoning, sign, and subdivision ordinances and/or regulations; direct long-range planning activities; provide mapping functions; administer codes enforcement and inspection division; and provide such other services as may be directed by the Town Manager.
(2007 Code, § 14-201) (Ord. 02-26, passed 8- -2002)

§ 14-202 TOWN PLANNER; APPOINTMENT; RESPONSIBILITIES.

The Town Manager shall appoint the planning manager, who shall serve as the head of the Planning Department and who shall report directly to the Town Manager. The planning manager shall direct the operations of the Planning Department and Codes Enforcement and Inspection Division and shall perform such other duties as may be assigned by the Town Manager, or as may be requested by the Town Council, Planning Commission, and/or Board of Zoning Appeals.
(2007 Code, § 14-202) (Ord. 02-26, passed 8- -2002)

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Cross-reference:

Planning Department, see Title 14, Chapter 2

§ 14-301 CREATION AND MEMBERSHIP.

(1) Pursuant to the provisions of T.C.A. § 13-4-101, there is hereby created a town Planning Commission, hereinafter referred to as the Planning Commission. The Planning Commission shall consist of seven members. One of the members shall be the Mayor or his or her designee and one of the members shall be a member of the Town Council selected by the Town Council. The other five members of the Planning Commission shall be appointed by the Mayor.

(2) In making such appointments, the Mayor shall strive to ensure that the racial composition of the Planning Commission is at least proportionately reflective of the town's racial minority population. The terms of the five members appointed by the Mayor shall be for two years each and shall be so arranged such that the term of at least one member will expire each year. The terms of the Mayor or his or her designee and the member selected by the Town Council shall run concurrently with their respective terms of office.

(3) Any vacancy in an appointed membership shall be filled for the unexpired term by the Mayor, who shall also have the authority to remove any appointed member at his or her pleasure. The Planning Commission shall serve without compensation.

(2007 Code, § 14-301) (Ord. 02-28, passed 8- -2002)

§ 14-302 ORGANIZATION, POWERS, FUNCTIONS, AND DUTIES.

The Planning Commission shall be organized and shall carry out its powers, functions, and duties in accordance with all applicable provisions of T.C.A. Title 13. The Planning Commission is designated as the Design Review Commission in accordance with T.C.A. § 6-54-132; written appeals requested

within ten days to the Town Clerk by property owners affected by the Planning Commission's decision as to design review guidelines shall be to the Town Council.

(2007 Code, § 14-302) (Ord. 02-28, passed 8- -2002)

Editor's note:

This section was modified in the 2017 update

§ 14-303 CONTINUED EXISTENCE.

Notwithstanding anything herein to the contrary, the members of the Planning Commission, as such Planning Commission exists on the effective date of this chapter, shall continue to serve for the remainder of their respective terms or until their earlier resignation or removal.

(2007 Code, § 14-303) (Ord. 02-28, passed 8- -2002)

§ 14-304 TIME AND PLACE OF MEETINGS.

The Commission shall meet on the first Thursday of each month at the Town Hall and at other such times and locations as approved and designated by the Planning Commission.

(2007 Code, § 14-304)

§ 14-305 TRAINING AND CONTINUING EDUCATION.

Each Planning Commissioner shall attend training and continuing education as provided in T.C.A. § 13-4-101(c).

(2007 Code, § 14-305)

CHAPTER 4: SIGN ORDINANCE

Section

14-401 Signage to be governed by sign ordinance

14-402 Violation and penalty

§ 14-401 SIGNAGE TO BE GOVERNED BY SIGN ORDINANCE.

Signage within the town shall be governed by the “Town of Smyrna Sign Ordinance” and any amendments thereto, as adopted and approved by ordinance of the Town Council.
(2007 Code, § 14-401)

§ 14-402 VIOLATION AND PENALTY.

Violations of the sign ordinance shall subject the offender to a penalty under the general penalty provision of this code. Each day a violation is allowed to continue shall constitute a separate offense.
(2007 Code, § 14-402)

CHAPTER 5: STORM WATER ADVISORY COMMITTEE

Section

14-501 Creation and purpose

14-502 Membership

14-503 Powers and duties

Cross-reference:

Storm water management, see Title 14, Chapter 6

Storm water utility ordinance, see Title 14, Chapter 7

§ 14-501 CREATION AND PURPOSE.

There is hereby created a Storm Water Advisory Committee of the town. The purpose of the Storm Water Advisory Committee is to advise and assist the town in implementing a program for reducing pollutants discharged into creeks, ditches, streams, and rivers, and to advance specific elements of the program, including, but not limited to, the following: public education and outreach programs; identification of sources and causes of pollution from runoff and discharges; and development of appropriate ordinances and regulations for Town Council consideration to govern activities that contribute to stream pollution. The Storm Water Advisory Committee shall also hear and determine appeals related to the assessment of the storm water user fee. The Storm Water Advisory Committee shall also make determinations of credits, adjustments, and the loss of credits and/or adjustments related to the storm water user fee.

(2007 Code, § 14-501) (Ord. 03-29, passed 9- -2003)

§ 14-502 MEMBERSHIP.

(1) *Composition.* The Committee shall consist of seven members. Members of the Committee shall serve without pay and shall be appointed by a majority vote of the Town Council. The Public Works Director, the Town Engineer, the Town Planner, and the Storm Water Management Coordinator shall serve as the town representatives to the Committee. Town representatives to the Committee shall not sit on the Committee or vote on any matters before the Committee.

(2) *Terms.* The terms of the members shall be staggered to provide continuity and experience on the Committee. The terms of the members of the Committee shall be two years each, beginning on the first day of April of the year in which each such member was appointed.

(3) *Vacancies*. Vacancies created by causes other than the expiration of a member's term shall be filled for the remainder of such member's term in the same manner as otherwise provided for in this chapter.

(4) *Removal*. Members of the Committee may be removed by the Town Council for neglect of duty, conflict of interest, malfeasance in office, violation of the ethics ordinance, or other just cause, or for unexcused absence from more than three consecutive meetings or more than five non-consecutive meetings during the member's term of appointment. It is the duty of the town staff representative to advise the Town Manager when removal is recommended or necessary based on the provisions herein. The decision of the Town Council will be final with no appeal. Committee members who are unable to attend regular meetings are expected to tender their resignation.

(2007 Code, § 14-502) (Ord. 03-29, passed 9- -2003)

§ 14-503 POWERS AND DUTIES.

(1) *Bylaws and regulations*. The Committee shall have the power to adopt and revise bylaws, rules, and regulations for the purpose of conducting the business of the Committee. The Committee, when it deems prudent, may also make recommendations to the Town Council for amending this chapter.

(2) *Committee not empowered to obligate town or incur liability*. Notwithstanding anything that may be herein contained or implied to the contrary, the Committee shall not be empowered to obligate the town in any way or to expend or incur liability for any sum of money, it being the intent of the Town Council that the Committee shall act in an advisory capacity only and shall serve only to make recommendations to the town staff, Planning Commission, and Town Council, as appropriate.

(3) *Officers*. As soon as practical after their appointment, the members of the Committee shall meet and organize by electing a chairperson and a vice-chairperson. Thereafter, officers of the Committee shall be elected by the members of the Committee's first meeting in April of each year. Each officer shall serve until his or her successor has been elected and qualified. The chairperson will preside at all meetings, preserve order and decorum, enforce the rules and regulations of the Committee, sign all letters and documents as authorized by the Committee, and will otherwise perform the duties devolving upon a presiding officer. The chairperson may participate in all discussions and shall vote as a member of the Committee. The vice-chairperson shall perform the duties of the chairperson in his or her absence. Should the office of chairperson or vice-chairperson become vacant, the Committee shall, at its next meeting, elect a successor for the remainder of the unexpired term of such office from among its members. The Town Manager will provide a secretary from staff who will assume charge of all records of the Committee and who will keep accurate and complete minutes of all meetings thereof.

(4) *Meetings*. The Committee will determine a regular meeting schedule, provided that at least one meeting of the Committee be held in April of each year. The chairperson and/or Town Manager shall have the authority to call a special meeting of the Committee, provided that sufficient public notice is given. All meetings will be open to the public and will be conducted at Town Hall. Accurate minutes will be kept of all meetings and shall be made available to the public.

(5) *Public hearings.* The Committee is hereby authorized and empowered to schedule and conduct public hearings.

(6) *Appeals and credit determinations related to the storm water user fee.* Appeals and credit determinations related to the storm water user fee shall be decided based on substantiated evidence with a sound engineering and factual basis. All appeal and credit determinations shall be applied utilizing a strict interpretation of the storm water utility ordinance. At any hearing related to an appeal or credit determination, the town shall be allowed to present evidence, findings, and recommendations; appealing parties and applicants shall be given an opportunity to present evidence, findings, and recommendations. The Committee shall state as part of any approval or disapproval of an appeal or credit determination the basis for any such approval or disapproval.

(7) *Reports.* The Committee shall from time to time, and at least annually, submit written reports to the Town Council, furnishing information regarding the work and activities of the Committee.
(2007 Code, § 14-503) (Ord. 03-29, passed 9- -2003)

CHAPTER 6: STORM WATER MANAGEMENT ORDINANCE

Section

- 14-601 General provisions
- 14-602 Definitions
- 14-603 Grading permits
- 14-604 Storm water system design: construction and permanent storm water management
- 14-605 Permanent storm water management: operation, maintenance, and inspection
- 14-606 Illicit discharges
- 14-607 Enforcement
- 14-608 Penalties
- 14-609 Appeals
- 14-610 Amendments
- 14-611 Right of entry and inspection
- 14-612 Detention pond inspection procedures

Editor's note:

This chapter was modified in the 2017 update

§ 14-601 GENERAL PROVISIONS.

This chapter shall be known as the “Storm Water Management Ordinance” for the town.

(1) *Introduction.*

(a) This chapter is intended to manage storm water runoff from new development and redevelopment projects to help maintain or improve water quality, water quantity, and the effects of the quality of life and character for the town. This chapter is intended to help eliminate soil erosion and/or sediment in stream channels that alter the integrity and profile of the stream regime, pollutes water, overloads existing drainage facilities with storm water and sediment, undermines floodplain management in downstream communities, reduces groundwater recharge, harms or possibly eliminating natural fauna and flora, and threatens public health and safety. More specifically, surface water runoff can carry pollutants, including the leading pollutant, sediment, into receiving waters. The potential impacts of these pollutants and the accompanying higher velocities and greater volumes include:

(i) Changing natural ecosystems through sediment and pollutant deposits as well as erosion of stream banks that affect the quantity and quality of water flowing, the destruction of habitats, the burying of food sources, and the loss of plant and animal life;

- (ii) Posing significant health risks through increased bacteria;
- (iii) Accelerating algal growth to the extent of contamination of receiving waters by adding excessive nutrient loads;
- (iv) Increasing metal deposits and total suspended solids, thus creating adverse toxicity for aquatic life;
- (v) Reducing oxygen levels because of oil, grease, and organic matter; and
- (vi) Affecting animal and plant life adversely, due to changing temperatures, thus decreasing dissolved oxygen levels of receiving waters.

(b) Uncontrolled storm water can increase the incidence of flooding and the level of floods which occur, altering the integrity and profile of stream regime, endangering roads, public and private property, and human life. Altered land surfaces can change runoff rate and volume as seen in the following:

- (i) Erosion and slumping of stream banks, undercutting roots, blockage, and diversion of stream flow directions by fallen trees;
- (ii) Increased erosion rates; and
- (iii) Uniform and shallow streambeds, providing less varied aquatic habitats.

(c) The adverse water quality and quantity consequences described above may result in substantial economic and/or human losses. The potential losses include, but are not limited to, increased wastewater and drinking water treatment costs, diminished property values, loss of recreational canoeing and kayaking, increased flood damages and insurance rates, increased stream bank remediation as well as state and federal fines associated with water quality violations. Many future problems can be avoided through proper storm water management, whereby a comprehensive and reasonable program of regulations is fundamental to the public health, safety, and welfare and to the protection of the citizenry and environment.

(2) *Purpose.* It is the purpose of this chapter to:

(a) Protect, maintain, and enhance the environment of the town and the public health, safety, and the general welfare of the citizens of the town, by controlling discharges of pollutants to the town's storm water system and to maintain and improve the quality of the receiving waters into which the storm water outfalls flow, including, without limitation, lakes, rivers, streams, ponds, wetlands, and groundwater of the town;

(b) Enable the town to comply with the National Pollutant Discharge Elimination System permit (NPDES) and applicable regulations, 40 C.F.R. § 122.26 for storm water discharges; and

(c) Allow the town to exercise the powers granted in T.C.A. § 68-221-1105, which provides that, among other powers municipalities have with respect to storm water facilities, is the power by ordinance or resolution to:

(i) Exercise general regulation over the planning, location, construction, and operation and maintenance of storm water facilities in the town, whether or not owned and operated by the town;

(ii) Adopt any rules and regulations deemed necessary to accomplish the purposes of this statute, including the adoption of a system of fees for services and permits;

(iii) Establish standards to regulate the quantity of storm water discharged and to regulate storm water contaminants as may be necessary to protect water quality;

(iv) Review and approve plans and plats for storm water management in proposed subdivisions or commercial developments;

(v) Issue permits for storm water discharges, or for the construction, alteration, extension, or repair of storm water 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) Regulate and prohibit discharges into storm water facilities of sanitary, industrial, or commercial sewage or waters that have otherwise been contaminated; and

(viii) Expend funds to remediate or mitigate the detrimental effects of contaminated land or other sources of storm water contamination, whether public or private.

(3) *Administering entity.* The town's storm water management coordinator or designee shall administer the provisions of this chapter.

(4) *Fees.* In order to fund the costs of storm water management and of administering the provisions of this chapter, each applicant for land disturbance permit, at the time of submitting such application therefore, shall pay a fee in the amount established by a fee schedule adopted as a part of the budget ordinance. The Town Council specifically reserves the right to amend this chapter from time to time to change the amounts and/or calculation of such fees and/or to implement a different system of fees and charges to fund the costs of storm water management and of administering the provisions of this chapter. Notwithstanding anything herein to the contrary, the fees established by this division (4) shall not become effective until 60 days following the effective date of Ord. 05-07.

(5) *Jurisdiction.* The storm water management ordinance shall govern all properties within the corporate limits of the town. The intended purpose of this chapter is to safeguard property and public welfare by regulating storm water drainage and requiring temporary and permanent provisions for its control. It should be used as a planning and engineering implement to facilitate the necessary control of storm water.

(6) *Authority of departments.* The Town Manager may provide authority in part or whole to various departments for the implementation of activities pursuant to this title. This authority may include, but is not limited to, plan review, incentives negotiation, plan approval, and storm water facilities Maintenance. The Public Works Director or Town Engineer shall have the authority of administration and enforcement of the provisions established pursuant to this title, including, but not limited to, the issuance of civil penalties.

(7) *Right-of-entry.*

(a) Designated town staff shall have right of entry on or upon the property of any person subject to this title and any permit/document issued hereunder. The town staff shall be provided ready easy access to all parts of the premises for the purposes of inspection, monitoring, sampling, inventory, records examination and copying, and the performance of any duties necessary to determine/document compliance with this title.

(b) Where a property, site, or facility has security measures in force which require proper identification and clearance before entry into its premises, the person shall make necessary arrangements with its security personnel so that, upon presentation of suitable identification, the designated town staff will be permitted to enter without delay for the purposes of performing specific responsibilities.

(c) Designated town staff shall have the right to set up on the person's property such devices as are necessary to conduct sampling and/or monitoring of the person's storm water operations or discharges.

(d) Any temporary or permanent obstruction to safe and easy access to the areas to be inspected and/or monitored shall be removed promptly by the person at the written or verbal request of the town staff. The costs of clearing such access shall be borne by the person.

(e) The Public Works Director or Town Engineer or designee, may inspect the facilities of any user in order to ensure compliance with this title. Such inspection shall be made with the consent of the owner, manager, or signatory official. If such consent is refused, denied, or not promptly addressed, the designated town staff may seek issuance of an administrative search warrant.

(f) The town has the right to determine and impose inspection schedules necessary to enforce the provisions of this chapter. Inspections may include, but are not limited to, the following:

(i) An initial inspection prior to storm water management plan approval;

(ii) A bury inspection prior to burial of any underground drainage structure;

(iii) Erosion control inspections as necessary to ensure effective control of erosion and sedimentation;

(iv) A finish inspection when all work, including installation of storm management facilities, has been completed; and

(v) Regular or random follow-up inspections to ensure the storm management facilities remain in compliance.

(Ord. 04-48, passed 1- -2005; Ord 05-07, passed 3- -2005; Ord. 05-19, passed 5- -2005)

Editor's note:

This section was modified in the 2017 update

§ 14-602 DEFINITIONS.

For the purpose of this section, the following definitions shall apply: Words used in the singular shall include the plural, and the plural shall include the singular; words used in the present tense shall include the future tense. The word “shall” is mandatory and not discretionary. The word “may” is permissive. Words not defined in this section shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster’s Dictionary.

100-YEAR FLOOD EVENT. See ***BASE FLOOD.***

ACTIVE CHANNEL. The portion of the stream channel that is subject to frequent flows (approximately once every two years) and the portion of the channel below the floodway.

ACTIVE CONSTRUCTION SITE. Any site that has a permit for grading or other related activities (even if actual construction is not proceeding) and any site where construction is occurring regardless of permits acquired.

APPEAL. A request for a review of the Town Engineer’s interpretation of any provisions of these regulations.

AQUATIC RESOURCE ALTERATION PERMIT (ARAP).

(a) Examples of stream alterations that require a permit from the TDEC Division of Water Resources and/or U.S. Army Corp of Engineers include:

- (i) Dredging, excavation, channel widening, or straightening;
- (ii) Bank sloping; stabilization;
- (iii) Channel relocation;
- (iv) Use of any motorized equipment between the top of banks;
- (v) Water diversions or withdrawals;
- (vi) Construction/removal of dams, weirs, dikes, levees, and similar structures;
- (vii) Flooding, excavating, draining and/or filling a wetland;

(viii) Road and utility crossings; and

(ix) Structural fill.

(b) Note: No person or entity shall violate any provision of a general or specific ARAP permit.

ARCHITECT. An architect duly registered, licensed, or otherwise authorized by the State of Tennessee to practice in the field of building architecture.

AS-BUILT PLANS. Drawings depicting conditions as they were actually constructed. Their submittal and approval is a requirement for the issuance of a certificate of occupancy.

BASE FLOOD. A flood that has an average frequency of occurrence of once in 100 years, determined from an analysis of floods on a particular watercourse and other watercourses in the same general region. Statistically, it has a 1% chance of occurring in any given year, it may also be known as the **100-YEAR FLOOD EVENT**.

BEST MANAGEMENT PRACTICES (BMPs). Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the state. **BMPs** also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

BLUE LINE STREAMS. Streams that are represented on the United States Department of the Interior, Geological Survey (USGS) 1:24,000 topographic quadrangle maps.

BMP TREATMENT TRAIN. A technique for progressively selecting various storm water management practices to address water quality, by which groups of practices may be used to achieve a treatment goal while optimizing effectiveness, maintenance needs, and space.

BORROW PIT. An excavation from which erodible material (typically soil) is removed to be used as fill for another site. There is no processing or separation of erodible material conducted at the site. Given the nature of activity and pollutants present at such excavation, a **BORROW PIT** is considered a construction activity for the purpose of this permit.

BRIDGE. A human-made structure spanning and providing passage over a waterway to allow for the conveyance of storm water flows. Spans of 20 feet or more are considered a **BRIDGE**.

BUFFER ZONE. A setback from the top of water body's bank of undisturbed vegetation, including trees, shrubs, and herbaceous vegetation; enhanced or restored vegetation; or the re-establishment of native vegetation bordering streams, ponds, wetlands, springs, reservoirs, or lakes, which exists or is established to protect those water bodies. The goal of the water quality buffer is to preserve undisturbed vegetation that is native to the streamside habitat in the area of the project. Vegetated, preferably native, water quality buffers protect water bodies by providing structural integrity and canopy cover (maintain

cooler water temperatures) as well as storm water infiltration, filtration, and evapotranspiration. Specific channel protection criteria shall be provided as prescribed in the BMP manuals and the Water Quality Buffer Zone definition as adopted under § 14-604(1)(a).

BUFFER ZONE REQUIREMENTS.

(a) “Construction” applies to all streams adjacent to construction sites, with an exception for streams designated as impaired or exceptional state waters, as designated by the state’s Department of Environment and Conservation. A 30-foot natural riparian buffer zone adjacent to all streams at the construction site shall be preserved, to the maximum extent practicable, during construction activities at the site. The water quality buffer zone is required to protect waters of the state located within or immediately adjacent to the boundaries of the project, as identified using methodology from standard operating procedures for hydrologic determinations (see rules to implement a certification program for qualified hydrologic professionals, TN Rules Chapter 0400-40-17). Buffer zones are not primary sediment control measures and should not be relied on as such. Rehabilitation and enhancement of a natural buffer zone is allowed, if necessary, for improvement of its effectiveness of protection of the waters of the state. The ***BUFFER ZONE REQUIREMENT*** only applies to new construction sites. The riparian buffer zone should be preserved between the top of stream bank and the disturbed construction area.

(b) ***BUFFER ZONE REQUIREMENTS*** for discharges into either non-impaired or impaired or exceptional waters: A natural riparian buffer zone adjacent to the receiving stream designated as impaired or exceptional waters shall be preserved, to the maximum extent practicable, during construction activities at the site. The water quality buffer zone is required to protect waters of the state (e.g., perennial and intermittent streams, rivers, lakes, wetlands) located within or immediately adjacent to the boundaries of the project, as identified on a 7.5-minute USGS quadrangle map, or as determined by the Director. Buffer zones are not sediment control measures and should not be relied upon as primary sediment control measures. Rehabilitation and enhancement of a natural buffer zone is allowed, if necessary, for improvement of its effectiveness of protection of the waters of the state. The buffer zone requirement only applies to new construction sites. The riparian buffer zone should be established between the top of stream bank and the disturbed construction area.

(i) New development and significant redevelopment sites are required to preserve water quality buffers along impaired or exceptional waters within the MS4. Buffers shall be clearly marked on site development plans, grading permit applications, and/or concept plans. Buffer width depends on the size of a drainage area. Streams or other waters with drainage areas less than one square mile will require buffer widths of 30 feet minimum. Streams or other waters with drainage areas between one and up to two square miles will require buffer widths of 45 feet minimum. Streams or other waters with drainage areas greater than two square miles will require buffer widths of 60 feet minimum.

(ii) For non-impaired water bodies, a minimum of 30-foot buffer zone is required. Non-impaired water bodies do not have a drainage area criterion.

BUILDING. Any structure built for support, shelter, or enclosure for any occupancy or storage.

CHANNEL. A natural or artificial watercourse with a definite bed and banks that conducts flowing water continuously or periodically.

COMMON PLAN OF DEVELOPMENT OR SALE. Any announcement or documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, and the like) or physical demarcation (including boundary signs, lot stakes, surveyor markings, and the like) indicating construction activities may occur on a specific plot. A **COMMON PLAN OF DEVELOPMENT OR SALE** identifies a situation in which multiple areas of disturbance are occurring on contiguous areas. This applies because the activities may take place at different times, on different schedules, by different operators.

COMMUNITY WATER. Any rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wetlands, wells, and other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of the town.

CONTAMINANT. Any physical, chemical, biological, or radiological substance or matter in surface or groundwater that is not naturally found there.

CRITICAL DESIGN-STORM PERIOD. Refers to the time in which detention volume must be controlled with the pre-development flow volume as a maximum limit.

CROSS-DRAIN. A culvert used to convey flow under a road or other obstruction between channels or surface flow.

CULVERT. A human-made conveyance of storm water flows, including a pipe or other constructed conveyance .

CUT. Portion of land surface or area from which earth has been removed or will be removed by excavation; the depth below original ground surface to the excavated surface.

DESIGN STORM EVENT. A hypothetical storm event, of a given frequency interval and duration, used in the analysis and design of a storm water facility. The estimated design rainfall amounts, for any return period interval (2-year, 5-year, 10-year, 25-year, 50-year, 100-year, and the like) in terms of either 24-hour depths or intensities for any duration, can be found by accessing the following NOAA National Weather Service Atlas 14 data for Tennessee: http://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html?bkmrk=tn. Other data sources may be acceptable with prior written approval by TDEC Water Pollution Control.

DETENTION. The temporary delay of storm runoff prior to discharge into receiving waters.

DEVELOPER. Any individual, firm, corporation, association, partnership, trust, or authorized agents involved in commencing proceedings to effect development of land for him, her, or others.

DEVELOPMENT. Any human-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating,

drilling operations, or permanent storage of materials (as defined as materials of like nature stored in whole or in part for more than six months).

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, either accidental or intentional.

DRAINAGE BASIN. A part of the surface of the earth that is occupied by and provides surface water runoff into a storm water management system (MS4 or waters of the state), which consists of a surface stream or a body of impounded surface water together with all tributary surface streams and bodies of impounded surface water.

EASEMENT. An acquired privilege or right of use or enjoyment that a person, party, firm, corporation, town, or other legal entity has in the land of another. Maintenance of **EASEMENTS** is the sole responsibility of the property owner.

ENGINEER or PROFESSIONAL ENGINEER. An engineer duly registered, licensed, or otherwise authorized by the state to practice in the field of civil engineering.

EROSION. The removal of soil particles by the action of water, wind, ice, gravity, or other geological agents, whether naturally occurring or acting in conjunction with or promoted by human-made activities or effects.

EROSION AND SEDIMENT CONTROL PLAN. A written plan (including drawings or other graphic representations) that is designed to minimize the accelerated erosion and sediment runoff at a site during construction activities.

EROSION PREVENTION (EP). Practices implemented to prevent, through shielding, binding, or other mechanism(s), the suspension of soil particles, often associated with erosion prevention and sedimentation control.

EXCAVATION. See **CUT**.

EXISTING CONSTRUCTION. Any structure for which the “start of construction” commenced before the effective date of these regulations.

EXISTING GRADE. The slope or elevation of existing ground surface prior to cutting or filling.

FILL. Portion of land surface or area to which soil, rock, or other materials have been or will be added; height above original ground surface after the material has been or will be added.

FINISHED GRADE. The final slope or elevation of the ground surface, after cutting or filling.

FLOOD or **FLOODING**. Water from a river, stream, watercourse, lake, or other body of standing water that temporarily overflows and inundates adjacent lands and which may affect other lands and activities through increased surface water levels and/or increased groundwater level.

FLOODPLAIN. The relatively flat or lowland area adjoining a river, stream, watercourse, lake, or other body of standing water, which has been or may be covered temporarily by floodwater. For purposes of this chapter, the **FLOODPLAIN** is defined as the 100-year floodplain having a 1% chance of being equaled or exceeded in any given year.

FLOODWAY. The portion of the stream channel and adjacent floodplain required for the passage or conveyance of a 100-year flood discharge. The **FLOODWAY** boundaries are placed to limit encroachment in the floodplain so that a discharge can be conveyed through the floodplain without materially increasing (less than one foot) the water surface elevation at any point and without producing hazardous velocities or conditions. This is the area of significant depths and velocities and due consideration should be given to effects of fill, loss of cross sectional flow area, and resulting increased water surface elevations.

FLOOR. The top surface of an enclosed area in a building, including basement (i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction). The term does not include the floor of a garage used solely for parking vehicles.

GREEN INFRASTRUCTURE. The interconnected network of natural areas and other open spaces that conserves natural ecosystem values and functions, sustains clean air and water, and provides environmental and community benefits.

GREEN INFRASTRUCTURE PRACTICES. Management measures that are designed, built, and maintained to infiltrate, evapotranspire, harvest, and/or use rainwater through the use of natural hydrologic features.

GREENWAYS. Linear undeveloped areas linking various types of development by such facilities as bicycle paths, footpaths, and bridle paths. **GREENWAYS** are usually kept in their natural state except for the pathway and areas immediately adjacent to the pathway.

GROUNDWATER. All naturally occurring water beneath the surface of the ground. **GROUNDWATER** is in conveyance with the overlying surface water.

HIGHEST ADJACENT GRADE. The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

HOTSPOT (PRIORITY AREA). An area where land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in storm water.

ILLICIT CONNECTIONS. Illegal and/or unauthorized connections to the town's separate storm water system whether or not such connections result in discharges into that system.

ILLICIT DISCHARGE. Any discharge to the town's separate storm sewer system that is not composed entirely of storm water and not specifically exempted under § 4(3).

IMPAIRED WATERS. Any segment of surface waters that has been identified by the Tennessee Department of Environment and Conservation (TDEC) as failing to support classified uses. The TDEC periodically compiles a list of such waters known as the "303(d) List".

IMPERVIOUS SURFACE. A term applied to any ground or structural surface that water cannot penetrate or through which water penetrates with great difficulty.

IMPROVED SINKHOLE. A natural surface depression that has been altered in order to direct fluids into an opening to the subsurface (throat). An **IMPROVED SINKHOLE** is a type of injection well regulated under TDEC's underground injection control (UIC) program. Underground injection constitutes an intentional disposal of waste waters in natural depressions, open fractures, and crevices (such as those commonly associated with weathering of limestone/karst topography) and shall be adequately pre-treated prior to subsurface discharge.

INFILTRATION. The process of surface runoff seeping/soaking into the soils rather than flowing into a detention basin, sinkhole, open fracture, or stream. Only suitable soils, determined by a qualified soil engineer or soil scientist, can serve as media used for **INFILTRATION**. **INFILTRATION** areas shall be protected from any disturbance during construction by use of an orange, plastic barricade construction fence.

INSPECTOR. A person that has successfully completed (has a valid certification) the "Fundamentals of Erosion Prevention and Sediment Control, Level I" course or equivalent course. An **INSPECTOR** performs and documents the required inspections, paying particular attention to time-sensitive permit requirements, such as stabilization and maintenance activities. An **INSPECTOR** may also have the following responsibilities:

(a) Oversee the requirements of other construction-related permits, such as aquatic resources alteration permit (ARAP) or corps of engineers permit for construction activities in or around waters of the state;

(b) Update field SWPPPs;

(c) Conduct pre-construction inspection to verify that undisturbed areas have been properly marked and initial measures have been installed; and

(d) Inform the permit holder of activities that may be necessary to gain or remain in compliance with the construction general permit (CGP) and other environmental permits.

INVASIVE EXOTIC PLANTS. Plants that have been introduced from other regions and compete so successfully against natives plants that they can crowd out their competitors, thus providing a monoculture that discourages the growth of native plant species.

LAND DISTURBING ACTIVITY. Any activity on property that results in a change in the existing soil cover (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, grading, filling, and excavation. **LAND DISTURBING ACTIVITY** does not include clearing and grubbing, unless such clearing and grubbing is within 60 feet of a drainage way, wetland, stream bank, or body of water and in such instance prior to approval from the Department of Public Works is required.

LAND SURVEYOR. A land surveyor duly registered, licensed, or otherwise authorized by the State of Tennessee to practice in the field of land surveying.

LANDSCAPE ARCHITECT. A landscape architect duly registered, licensed, or otherwise authorized by the State of Tennessee to practice in the field of Landscape Architecture.

MAINTENANCE. Any activity that is necessary to keep a storm water facility in good working order so as to function as designed. **MAINTENANCE** shall include complete reconstruction of a storm water 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 storm water facility.

MAINTENANCE AGREEMENT. A document recorded in the property records that acts as a property deed restriction and provides for long-term maintenance of storm water management practices and facilities.

MASTER PLAN. Any study or plan prepared by or accepted by the town that identifies solutions to water quantity or quality problems. Also known as basin study or plan, flood management study or plan, or water quality management study or plan.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4). The conveyances owned or operated by the town for the collection and transportation of storm water, including the roads and streets and their drainage systems, catch basins, curbs, gutters, ditches, human-made and natural channels, and storm drains, and where the context indicates, it means the town that owns the separate storm sewer system.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT or **NPDES PERMIT.** A permit issued pursuant to 33 U.S.C. § 1342.

NATIVE VEGETATION. The normal vegetation that grows or would reestablish normally after a disturbance. This does not include invasive exotic plants.

NATURAL GROUND SURFACE. The ground surface in its original state before any grading, excavating, or filling.

NEW CONSTRUCTION. Structures for which the “start of construction” commenced on or after the effective date of these regulations. The term also includes any subsequent improvements to such structures.

NRCS. Natural Resources Conservation Service.

OFF-SITE FACILITY. A structural BMP located outside the subject property boundary described in the permit application for land development activity.

ON-SITE FACILITY. A structural BMP located within the subject property boundary described in the permit application for land development activity.

PEAK FLOW. The maximum instantaneous rate of flow of water at a particular point resulting from a storm event.

PERMITTEE. Any person, firm, or any other legal entity to which a site disturbance, grading, storm water, building, or other related permit is issued in accordance with town regulations.

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.

POLLUTANT. Anything which causes or contributes to pollution. **POLLUTANTS** may include, but are not limited to, paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded and abandoned objects, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform, and pathogens; dissolved and particulate metals; animal wastes, wastes and residues that result from constructing a building or structure; sediment; and noxious or offensive matter of any kind.

PRIORITY AREA. See **HOT SPOT**.

REDEVELOPMENT. The alteration of developed land that adds 5,000 square feet of impervious surface area or more, or offers a new opportunity for storm water controls. Demolition and reconstruction is considered development and not redevelopment. **REDEVELOPMENT** is not intended to include such activities as exterior remodeling, which would not be expected to cause adverse storm water quality impacts.

RETENTION. The prevention of storm runoff from direct discharge into receiving waters. Examples include systems which discharge through percolation, exfiltration, filtered bleed-down, and evaporation processes.

RIPARIAN BUFFER ZONE. See **BUFFER ZONE**.

RIPARIAN ZONE. Areas adjacent to water resources with a differing density, diversity, and productivity of plant and animal species relative to nearby uplands. This area provides a transition from an aquatic ecosystem to a terrestrial ecosystem.

RUNOFF. That portion of the precipitation which lands on a watershed area that is discharged from the area into the town's separate storm water system.

SCS. Soil conservation service, now known as NRCS.

SEDIMENT. Solid material, both mineral and organic, that is in suspension, or in bed load, is being transported, or has been moved from its site of origin by water, wind, ice, or gravity and has come to rest on the earth's surface either above or below sea level.

SEDIMENTATION. The action of soil particles suspended in storm water that settle in streambeds and can disrupt the natural flow of the stream and suffocate biota.

SENSITIVE AREAS. Areas that supply critical habitat in supporting aquatic or semi-aquatic life such as streams, sinkholes, springs, wetlands, ponds, and the like.

SLOPE. Degree of deviation of a surface from the horizontal, usually expressed in percent or ratio.

SOIL. All unconsolidated mineral and organic material of any origin that overlies bedrock and that can be readily excavated.

SOIL ENGINEER. A professional engineer who is qualified, licensed, and/or registered in the State of Tennessee to practice applied soil mechanics and foundation engineering.

SOILS REPORT. A study of soils on a subject property with the primary purpose of characterizing and describing the soils. The **SOILS REPORT** shall be prepared by a qualified soils engineer or Tennessee certified soil scientist, who shall be directly involved in the soil characterization either by performing the investigation or by directly supervising employees conducting the investigation.

STABILIZATION. Providing adequate measures, vegetative and/or structural, that will prevent or minimize erosion from occurring.

STEEP SLOPE. A natural or created slope of 35% grade or greater. Designers of sites with **STEEP SLOPES** must pay attention to storm water management in the SWPPP to engineer runoff nonerosively around or over a steep slope. In addition, site managers should focus on erosion prevention on the slope(s) and stabilize the slope(s) as soon as practicable to prevent slope failure and/or sediment discharges from the project.

STOP WORK ORDER. An order directing the developer and/or permittee responsible for the development to cease and desist all or any portion of the work which violates the provisions of this title.

STORM WATER. Storm water runoff, snow melt runoff, surface runoff, street cleaning or maintenance, infiltration, and drainage.

STORM WATER ENTITY. The entity designated by the town to administer the storm water management ordinance, and other storm water rules and regulations adopted by the town. More

specifically, *STORM WATER ENTITY* refers to the storm water management program coordinator or other storm water management program designee in their absence.

STORM WATER MANAGEMENT. The programs assigned to maintain quality and quantity of storm water runoff to pre-development levels.

STORM WATER MANAGEMENT FACILITIES. The drainage structures, conduits, ponds, ditches, combined sewers, sewers, and all device appurtenances by means of which storm water is collected, transported, pumped, treated, or disposed of either human-made or natural.

STORM WATER MANAGEMENT PLAN. The set of drawings and other documents that comprise all the information and specifications for the programs, drainage systems, structures, BMPs, concepts, and techniques intended to maintain or restore quality and quantity of storm water runoff to pre-development levels.

STORM WATER POLLUTION PREVENTION PLAN (SWPPP). A written plan that includes site map(s), an identification of construction/contractor activities that could cause pollutants in the storm water, and a description of measures or practices to control these pollutants. It must be prepared and approved before construction begins. In order to effectively reduce erosion and sedimentation impacts, Best Management Practices (BMPs) must be designed, installed, and maintained during land disturbing activities. The *SWPPP* should be prepared in accordance with the current Tennessee Erosion and Sediment Control Handbook. The handbook is intended for use during the design and construction of projects that require erosion and sediment controls to protect waters of the state. It also aids in the development of *SWPPPs* and other reports, plans, or specifications required when participating in state water quality regulations. All *SWPPPs* shall be prepared and updated in accordance with § 3 of the general NPDES permit for discharges of storm water associated with construction activities and submitted with the notice of intent (NOI) to TDEC.

STORM WATER RUNOFF. Water flow on the surface of the ground, resulting from precipitation.

STORM WATER UTILITY. The storm water utility created by ordinance of the town or other entity designated by the town to administer the storm water management ordinance, and other storm water rules and regulations adopted by the town.

STRIPPING. Any activity that removes or significantly disturbs the vegetative surface cover, including clearing and grubbing operations.

STRUCTURAL BMPs. Facilities that are constructed to provide control of storm water runoff in accordance with current approved BMP manuals.

STRUCTURE. Anything constructed or erected, the use of which requires a permanent location on or in the ground. Such construction includes, but is not limited to, objects such as buildings, towers, smokestacks, carports, and walls.

SURFACE WATER. Waters upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other watercourses, lakes, wetlands, marshes, reservoirs, and plugged sinkholes.

TDEC. The Tennessee Department of Environment and Conservation .

TOP OF BANK. The ordinary high water level and break in slope for a water resource.

TOWN. The Town of Smyrna, Tennessee.

TOWN ENGINEER. Refers to the Town of Smyrna, Town Engineer or Public Works Director who has the authority to delegate to designated staff.

WASTE SITE. An area where waste material from a construction site is deposited. When the material is erodible, such as soil or spoils, the site must be treated as a construction site.

WATERCOURSE or ***WATERWAY.*** A permanent or intermittent stream or other body of water, either natural or human-made, which gathers or carries surface water.

WATER QUALITY BUFFER. See ***BUFFER ZONE.***

WATER RESOURCES. Streams, seeps, springs, wetlands, sinkholes, or lakes as determined by the Public Works Director or Town Engineer.

WATERSHED. All land area that contributes runoff to a particular point along a waterway as well as the entire waterway.

WATERS or ***WATERS OF THE STATE.*** Any and all water, public or private, on or beneath the surface of the ground, which are contained within, flow through, or border upon the state, 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.

WETLAND(S). Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted to life in saturated, hydric soil conditions. ***WETLANDS*** include, but are not limited to, swamps, marshes, bogs, and similar areas.

WET-WEATHER CONVEYANCES. Human-made or natural watercourses, including natural watercourses that have been modified by channelization, that flow only in direct response to precipitation runoff in their immediate locality and whose channels are above the groundwater table and are not suitable for drinking water supplies; and in which hydrological and biological analyses indicate that, under normal weather conditions, due to naturally occurring ephemeral or low flow, there is not sufficient water to support fish or multiple populations of obligate lotic aquatic organisms whose life cycle includes an aquatic phase of at least two months. (Rules and regulations of the State of Tennessee, Chapter 1200-4-3-.04(3)).

(Ord. 04-48, passed 1- -2005)

§ 14-603 GRADING PERMITS.

(1) *Requirements.* No grading or building permit shall be issued until the applicant has submitted all required state and/or federal permits which include, but are not limited to, a notice of coverage (NOC), wetland permit, aquatic resource alteration permit (ARAP), injection well permit, and/or TDOT permit(s).

(2) *Grading permit.* Every person shall be required to obtain a grading permit which will be utilized as the permit required by the town's Public Works Department in the following cases:

(a) Land disturbing activity disturbs one or more acres of land, unless exempted under § 4(3);

(b) Land disturbing activity of less than one acre of land if such activity is part of a larger common plan of development that affects one or more acre of land;

(c) Land disturbing activity of less than one acre of land, if, at the discretion of the town's Public Works Department, such activity poses a unique threat to water, public health, or safety; and

(d) The creation and use of borrow pits.

(3) *Exemptions.* The following activities are exempt from the permit requirement:

(a) Any emergency activity that is immediately necessary for the protection of life, property, or natural resources;

(b) Existing nursery and agricultural operations conducted as a permitted main or accessory use;

(c) Any logging or farming activity that complies with conservation practices or timber management practices prepared or approved by the Rutherford County Soil Conservation District or University of Tennessee Agricultural Extension Service; and

(d) Additions or modifications to existing single-family structures.

(4) *Application for grading permit.*

(a) Each application shall include the following:

(i) Name of applicant;

(ii) Business or residence address of applicant;

(iii) Name, physical address, email address, and telephone number of the owner of the property of record in the office of the assessor of property;

(iv) Address and legal description of subject property including the tax map reference number and parcel number of the subject property;

(v) Name, physical address, email address, and telephone number of the contractor and any subcontractor(s) who will perform the land disturbing activity and who shall implement the erosion and sediment control plan;

(vi) A statement indicating 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;

(vii) Where the property includes a sinkhole, the applicant shall obtain the appropriate permits from TDEC, Division of Water Supply;

(viii) The applicant shall obtain from all other state or federal agencies any other appropriate environmental permits that pertain to the property. However, the inclusion of those permits in the application shall not foreclose the town's Public Works Department from imposing additional development requirements and conditions, commensurate with this chapter, on the development of property covered by those permits;

(ix) A pre-construction meeting with the Public Works Director, Town Engineer, or designee shall be held after all erosion protection sediment control (EPSC) measures have been installed, inspected, and approved by the town prior to the issuance of a grading permit; and

(x) Site owner or developer and/or contractor that wish to transfer grading permit coverage to a new owner or developer and/or contractor shall do so by applying for a notice of transfer request in the town's Public Works Department. The site owner or developer shall also be required to transfer performance sureties to the new site owner or developer prior to the town approving the notice of transfer.

(b) Each application shall be accompanied by:

(i) An erosion and sediment control plan as described in § 14-604(5); and

(ii) A storm water management plan as described in § 14-604(4), providing for storm water management during the land disturbing activity and after the activity has been completed.

(c) The permittee(s) shall be responsible for all EPSC measures and maintenance located within the sites or sections defined in the permit regardless of individual lot ownership until a notice of transfer is issued by the town's Public Works Department.

(5) *Review and approval of application.*

(a) The town's Public Works Department will review each application for a grading permit to determine its conformance with the provisions of this chapter. Within 15 working days after receiving an application, the Public Works Department shall provide one of the following responses in writing:

(i) Approval of the permit application;

(ii) Approval of the permit application, subject to such reasonable conditions as may be necessary to substantially secure the objectives of this chapter, and issue the permit subject to these conditions; or

(iii) Denial of the permit application, indicating the reason(s).

(b) If the Public Works Department has granted conditional approval of the permit, the applicant shall submit a revised plan that conforms to the conditions established by the Department. However, the applicant shall be allowed to proceed with their grading activity, so long as it conforms to conditions established by the Department. The revised plan shall be submitted to the Public Works Department within ten working days from the date of conditional approval.

(c) No construction plans will be released until the grading permit has been approved.

(6) *Permit duration.* Every grading permit shall expire and become null and void if substantial work authorized by such permit has not commenced within 180 calendar days of issuance, or is not complete within 18 months from the date of the commencement of construction.

(7) *Inspections.* Once a grading permit is issued, the Department shall conduct regular inspections of the storm water management system construction. All inspections shall be documented and written reports prepared that contain the following information:

(a) The date and location of the inspection;

(b) Whether construction is in compliance with the approved storm water management plan;

(c) Variations from the approved construction specifications; and

(d) Any violations that may exist.

(8) *Performance agreement/letter of credit.*

(a) The town's Public Works Department may, at its discretion, require the submittal of a performance agreement/letter of credit prior to issuance of a permit in order to ensure that the storm water practices are installed by the permit holder as required by the approved storm water management plan. The amount of the installation performance agreement/letter of credit shall be the total estimated construction cost of the structural BMPs approved under the permit plus any reasonably foreseeable

additional related costs (e.g., for damages or enforcement). The performance agreement/letter of credit shall contain forfeiture provisions for failure to complete work specified in the storm water management plan. The applicant shall provide an itemized construction cost estimate complete with unit prices, which shall be subject to acceptance, amendment, or rejection by the Public Works Department. Alternatively, the Public Works Department shall have the right to calculate the construction cost estimates.

(b) The performance agreement/letter of credit shall be released in full only upon submission of as-built plans and written certification by a registered professional engineer licensed to practice in the State of Tennessee that the structural BMP has been installed in accordance with the approved plan and other applicable provisions of this chapter. The town's Public Works Department will make a final inspection of the structural BMP to ensure that it is in compliance with the approved plan and the provisions of this chapter. Provisions for a partial pro-rata reduction of the performance agreement/letter of credit based on the completion of various development stages can be made at the discretion of the Public Works Department.

(9) *Waivers.*

(a) *General.* No waivers will be granted to any construction or site work project. All construction and site work shall provide for storm water management as required by this chapter. However, alternatives to the 2010 NPDES General Permit for Discharges from Small Municipal Separate Storm Sewer Systems primary requirement for on-site permanent storm water management may be considered, if:

(i) Management measures cannot be designed, built, and maintained to infiltrate, evapotranspire, harvest, and/or use, at a minimum, the first inch of every rainfall event preceded by 72 hours of no measurable precipitation. This remainder of the first inch of rainfall must be 100% managed with no discharge to surface waters as per § 14-604(6); and

(ii) It can be demonstrated that the proposed development is not likely to impair attainment of the objectives of this chapter. Alternative minimum requirements for on-site management of storm water discharges have been established in a storm water management plan that has been approved by the town.

(b) *Downstream damage and the like prohibited.* In order to receive consideration, the applicant must demonstrate, to the satisfaction of the Public Works Department, the proposed alternative will not lead to any of the following conditions downstream:

- (i) Deterioration of existing culverts, bridges, dams, and other structures;
- (ii) Degradation of biological functions or habitat;
- (iii) Accelerated stream bank or streambed erosion or siltation; or
- (iv) Increased threat of flood damage to public health, life, or property.

(c) *Grading permit not issued where waiver requested.* No grading permit shall be issued where an alternative has been requested until the alternative is approved. If no alternative is approved, the plans must be resubmitted with a storm water management plan that meets the primary requirement for on-site storm water management § 14-604(6).
(Ord. 04-48, passed 1- -2005)

§ 14-604 STORM WATER SYSTEM DESIGN: CONSTRUCTION AND PERMANENT STORM WATER MANAGEMENT.

(1) *MS4 storm water design, BMP manuals, and illicit discharge detection and elimination.*

(a) The town adopts as its MS4 storm water design and BMP manuals for storm water management, construction and permanent, the following publications (as such publications may hereafter be amended and/or restated from time to time), which are incorporated by reference in this chapter as if fully set out herein:

(i) Town subdivision regulations (as adopted and/or amended from time to time by the town's Municipal Planning Commission), and including specifically, but not limited to, the town's dry detention basin policy;

(ii) *TDEC Erosion Prevention and Sediment Control Handbook*; most current edition;

(iii) *Guide to the Selection and Design of Storm Water Best Management Practices: A Guide for Phase II MS4 Communities for Protecting Post-Construction Storm Water Quality and Managing Storm Water Flow*, with the exception that Appendices A, B, C, and D are expressly excluded from adoption and reference herein;

(iv) *TDEC Tennessee Permanent Storm Water Management and Design Manual*;

(v) *Nashville-Davidson County Metro Storm Water Management Manual* (Best Management Practices (BMP) Manual - Volume 4); most current edition;

(vi) *Nashville-Davidson County Low Impact Development Storm Water Management Manual*, Volume 5;

(vii) Collection of MS4 approved BMPs developed or collected by the MS4 that comply with the goals of the MS4 permit and/or the CGP; and

(viii) *EPA Illicit Discharge Detection and Elimination Manual*; most current addition.

(b) The town's BMP manual(s) include a list of acceptable BMPs, including the specific design performance criteria and operation and maintenance requirements for each storm water practice. These include town approved BMPs for permanent storm water management, including green infrastructure BMPs.

(c) The town's manual(s) may be updated and expanded from time to time, at the discretion of the Town Council, upon the recommendation of the town's Public Works Department, based on improvements in engineering, science, monitoring, and local maintenance experience, or changes in federal or state law or regulation. Storm water facilities that are designed, constructed, and maintained in accordance with these BMP criteria will be presumed to meet the minimum water quality performance standards.

(2) *Land development.* This section shall be applicable to all land development, including, but not limited to, site plan applications, subdivision applications, and grading permit applications. These standards apply to any new development or redevelopment site that meets one or more of the following criteria:

(a) One acre or more:

- (i) New development that involves land development activities of one acre or more; and
- (ii) Redevelopment that involves other land development activity of one acre or more.

(b) Projects or developments of less than one acre of total land disturbance may also be required to obtain authorization under this chapter if:

(i) The storm water entity has determined that the storm water discharge from a site is causing, contributing to, or is likely to contribute to a violation of a state water quality standard;

(ii) The storm water entity has determined that the storm water discharge is, or is likely to be, a significant contributor of pollutants to waters of the state;

(iii) Changes in state or federal rules require sites of less than one acre that are not part of a larger common plan of development or sale to obtain a storm water permit;

(iv) Any new development or redevelopment, regardless of size, that is defined by the storm water entity to be a hotspot land use; or

(v) Minimum applicability criteria set forth in division (2)(a) above if such activities are part of a larger common plan of development even multiple that is part of a separate and distinct land development activity that may take place at different times on different schedules. Note: Any discharge of storm water or other fluid to an existing sinkhole or other injection well, as defined, must be authorized by permit or be ruled as a Class V Underground Injection well under the provisions of Tennessee Department of Environment and Conservation (TDEC) Rules, Chapter 1200-4-6.

(3) *Submittal of a copy of the NOC, SWPPP, and NOT to the local MS4.* Permittees who discharge storm water through an NPDES-permitted municipal separate storm sewer system (MS4), who are not exempted in § 1.4.5 (permit coverage through qualifying local program) of the construction general permit (CGP) must provide proof of coverage under the construction general permit (CGP); submit a copy of the storm water pollution prevention plan (SWPPP); and at project completion, a copy of the

signed notice of termination (NOT) to the storm water entity. Permitting status of all permittees covered (or previously covered) under this general permit as well as the most current list of all MS4 permits is available at the TDEC's DataViewer website. Copies of additional applicable local, state, or federal permits (i.e., ARAP and the like) must also be provided upon request. If requested, these permits must be provided before the issuance of any grading permit or the equivalent.

(4) *Storm water pollution prevention plan (SWPPP) for construction storm water management.* The applicant must prepare a storm water pollution prevention plan for all construction activities that complies with division (5) below. The purpose of this plan is to identify construction/contractor activities that could cause pollutants in the storm water, and to describe measures or practices to control these pollutants during project construction.

(5) *Storm water pollution prevention plan requirements.* The erosion prevention and sediment control plan component of the SWPPP shall accurately describe the potential for soil erosion and sedimentation problems resulting from grading activity and shall explain and illustrate the measures that 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. If necessary, the plan shall be phased so that changes to the site during construction, which alter drainage patterns or characteristics, will be addressed by an appropriate phase of the plan. The plan shall be sealed by a registered professional engineer or landscape architect licensed in the State of Tennessee. The plan shall conform to the requirements found in the *TDEC General NPDES Permit for Construction Activities, MS4 BMP manuals*, and shall include at least the following:

(a) Project description, briefly describe the intended project and proposed land disturbing activity including number of units and structures to be constructed and infrastructure required;

(b) A topographic map with contour intervals of five feet or less showing present conditions and proposed contours resulting from land disturbing activity;

(c) All existing drainage ways, including intermittent and wet-weather. Include any designated floodways or floodplains. Include any designated floodways or floodplains whether published by the Federal Emergency Management Agency (FEMA) or as designated by sound engineering practices and hydraulic calculations;

(d) A general description of existing land cover. Individual trees and shrubs do not need to be identified;

(e) Stands of existing trees as they are to be preserved upon project completion, specifying their general location on the property. Differentiation shall be made between existing trees to be preserved, trees to be removed, and proposed planted trees. Tree protection measures must be identified, and the diameter of the area involved must also be identified on the plan and shown to scale. Information shall be supplied concerning the proposed destruction of exceptional and historic trees in setbacks and buffer strips, where they exist. Complete landscape plans may be submitted separately. The plan must include the sequence of implementation for tree protection measures;

- (f) Approximate limits of proposed clearing, grading, and filling;
- (g) Approximate flows of existing storm water leaving any portion of the site;
- (h) A general description of existing soil types and characteristics and any anticipated soil erosion and sedimentation problems resulting from existing characteristics;
- (i) Location, size, and layout of proposed storm water and sedimentation control improvements;
- (j) Existing and proposed drainage network;
- (k) Proposed drain tile or waterway sizes;
- (l) Approximate flows leaving site after construction and incorporating water run-off mitigation measures. The evaluation must include projected effects on property adjoining the site and on existing drainage facilities and systems. The plan must address the adequacy of outfalls from the development: when water is concentrated, what is the capacity of waterways, if any, accepting storm water off-site; and what measures, including infiltration, sheeting into buffers, and the like, are going to be used to prevent the scouring of waterways and drainage areas off-site, and the like;
- (m) The projected sequence of work represented by the grading, drainage, and sedimentation and erosion control plans as related to other major items of construction, beginning with the initiation of excavation and including the construction of any sediment basins or retention/detention facilities or any other structural BMPs;
- (n) Specific remediation measures to prevent erosion and sedimentation run-off. Plans shall include detailed drawings of all control measures used; stabilization measures including vegetation and non-vegetation measures, both temporary and permanent, will be detailed. Detailed construction notes and a maintenance schedule shall be included for all control measures in the plan;
- (o) Specific details for: the construction of stabilized construction entrance/exits, silt fence or approved alternate, concrete washouts, check dams, rock rings, storm drain protection, and sediment traps/basins; road access points; eliminating or keeping soil, sediment, and debris on streets and public ways at a level acceptable to the town. Soil, sediment, and debris brought onto streets and public ways must be removed by the end of the work day to the satisfaction of the town. Failure to remove the sediment, soil, or debris/litter shall be deemed a violation of this chapter;
- (p) Proposed structures: location and identification of any proposed additional buildings, structures, or development on the site;
- (q) A description of on-site measures to be taken to recharge surface water into the groundwater system through runoff reduction practices; and

(r) Specific details for construction waste management. Construction site operators shall control waste, such as discarded building materials, concrete truck washout, petroleum products, and petroleum related products, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality. When the material is erodible, such as soil or spoils, the site must be treated as a construction site. Containment pits for fuel and other fluids kept on site shall have 110% containment.

(6) *General design performance criteria for permanent storm water management.* The following performance criteria shall be addressed for permanent storm water management at all development sites.

(a) (i) Applicable to all sites approved prior to January 1, 2017. All sites shall control the first flush storm event (0.5-inch) as specified in this chapter or in the approved BMP manuals and water quality buffer zone definition. These practices shall seek to utilize impervious areas for storm water treatment and to infiltrate storm water runoff from driveways, sidewalks, rooftops, parking lots, and landscaped areas to the maximum extent practical to provide treatment for both water quality and quantity.

(ii) Applicable to all sites approved after January 1, 2017. Site design standards for all new and redevelopment require, in combination or alone, management measures that are designed, built, and maintained to infiltrate, evapotranspire, harvest, and/or use, at a minimum, the first inch of every rainfall event preceded by 72 hours of no measurable precipitation. This first inch of rainfall must be 100% managed with no discharge to surface waters.

(b) Limitations to the application of runoff reduction requirements include, but are not limited to:

(i) Where a potential for introducing pollutants into the groundwater exists, unless pretreatment is provided;

(ii) Where pre-existing soil contamination is present in areas subject to contact with infiltrated runoff;

(iii) Presence of sinkholes or other karst features.

(c) Pre-development infiltrative capacity of soils at the site may be taken into account in selection of runoff reduction management measures.

(d) For projects that cannot meet 100% of the runoff reduction requirement, the remainder of the stipulated amount of rainfall must be treated prior to discharge with a technology documented to remove 80% total suspended solids (TSS) unless an alternative provided under this chapter is approved. The treatment technology must be designed, installed, and maintained by the property owner or property owner's association to continue to meet this performance standard.

(e) To protect stream channels from degradation, specific channel protection criteria shall be provided as prescribed in the MS4 BMP manuals and the water quality buffer zone definition.

(f) Storm water discharges to critical areas with sensitive resources (i.e., sinkholes, wetlands, cold water fisheries, shellfish beds, swimming beaches, recharge areas, water supply reservoirs) may be subject to additional performance criteria, or may need to utilize or restrict certain storm water management practices.

(g) Storm water discharges from hot spots may require the application of specific structural BMPs and pollution prevention practices. In addition, storm water from a hot spot land use may not be infiltrated.

(h) Prior to or during the site design process, applicants for grading permits shall consult with the storm water entity to determine if they are subject to additional storm water design requirements.

(i) The calculations for determining peak flows as found in the subdivision regulations shall be used for sizing all storm water facilities.

(7) *Minimum volume control requirements.* The following performance criteria shall be addressed for permanent storm water management at all development sites.

(a) Storm water designs shall meet the multi-stage storm frequency storage requirements as identified in the subdivision regulations. All sites shall control peak flow rates of storm water discharge associated with the design storms specified in the subdivision regulations and reduce the generation of post-construction storm water runoff to a minimum of pre-construction levels.

(b) If hydrologic or topographic conditions warrant greater control than that provided by the minimum control requirements, the storm water entity may impose any and all additional requirements deemed necessary to control the volume, timing, release velocities, and rate of runoff.

(8) *Permanent storm water management plan requirements.* The storm water management plan shall include sufficient information to allow the storm water entity to evaluate the environmental characteristics of the project site, the potential impacts of all proposed development of the site, both present and future, on the water resources, and the effectiveness and acceptability of the measures proposed for managing storm water generated at the project site. To accomplish this goal, the storm water management plan shall include the following.

(a) *Topographic base map.* Topographic base map of the site which extends a minimum of 100 feet beyond the limits of the proposed development and indicates:

(i) Existing surface water drainage, including streams, ponds, culverts, ditches, sinkholes, wetlands; and the type, size, elevation, and the like of nearest upstream and downstream drainage structures;

(ii) Topographic contours at a reasonable interval to infer surface water flow patterns;

(iii) Current land use, including all existing structures, locations of utilities, roads, and easements;

(iv) All other existing significant natural and artificial features; and

(v) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses; drainage patterns; locations of utilities, roads, and easements; the limits of clearing and grading.

(b) *BMP*. Proposed structural and non-structural BMPs.

(c) *Description*. A written description of the site plan and justification of proposed changes in natural conditions may also be required.

(d) *Calculations*. Hydrologic and hydraulic design calculations for the pre-development and post-development conditions for the design storms specified in the subdivision regulations. These calculations must show that the proposed storm water management measures are capable of controlling runoff from the site in compliance with this chapter and the guidelines of the subdivision regulations. Such calculations shall include:

(i) A description of the design storm frequency, duration, and intensity where applicable;

(ii) Time of concentration;

(iii) Soil curve numbers or runoff coefficients, including assumed soil moisture conditions;

(iv) Peak runoff rates and total runoff volumes for each watershed area;

(v) Infiltration rates, where applicable;

(vi) Culvert, storm water sewer, ditch, and/or other storm water conveyance capacities;

(vii) Flow velocities;

(viii) Data on the increase in rate and volume of runoff for the design storms referenced in the subdivision regulations; and

(ix) Documentation of sources for all computation methods and field test results.

(e) *Soils information*. If a storm water management control measure depends on the hydrologic properties of soils (e.g., detention/infiltration basins) then a soils report, investigated and reported by a state certified soil scientist or soils engineer, shall be submitted. The soils report shall be based on on-site boring logs or soil pit profiles and soil survey reports to include at a minimum depth to seasonal high groundwater table elevation (if encountered), groundwater table elevation (if encountered), depth to bedrock, and hydraulic soil group. If infiltration is used during storm water design in-situ infiltration rates must be provided. The number and location of required soil borings or soil pits shall be determined based on what is needed to determine the suitability and distribution of soil types present at the location

of the control measure. At least one soil boring or soil pit will be installed within the vicinity of the proposed storm water management facility.

(f) *Gutter spread requirements.* Gutter spread within new, widened, and extended roadways is limited to one-half the travel lane as specified in the subdivision regulations.

(9) *Maintenance and repair plan.* The design and planning of all permanent storm water management facilities including detention basins shall include detailed maintenance and repair procedures to ensure their continued performance. These plans will identify the parts or components of a storm water 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 inspection of the facility. All common space containing components such as detention basin or other permanent BMPs must be managed by a homeowner's association (HOA), condominium association, or other property management company. The applicant shall 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.

(10) *Maintenance easements.* The applicant shall ensure access to the site for the purpose of inspection and repair by securing all the maintenance easements needed. These easements shall be binding on the current property owner and all subsequent owners of the property and shall be properly recorded with the Rutherford County Register of Deeds in perpetuity.

§ 14-605 PERMANENT STORM WATER MANAGEMENT: OPERATION, MAINTENANCE, AND INSPECTION.

(1) *As-built plans.* All applicants are required to submit actual as-built plans for any structures located on-site after final construction is completed. The plan must show the final design specifications for all storm water management facilities and must be sealed by a registered professional engineer licensed to practice in the State of Tennessee. A final inspection by the Public Works Department is required before any performance agreement/letter of credit will be released. The Public Works Department shall have the discretion to adopt provisions for a partial pro-rata reduction of the performance agreement/letter of credit on the completion of various stages of development. In addition, occupation permits, certificate of occupation permits, or signing of the final plat may not be granted until corrections to all BMPs have been made and accepted by the Public Works Department.

(2) *Landscaping and stabilization requirements.*

(a) Any area of land from which the natural vegetative cover has been either partially or entirely cleared by development activities shall be revegetated according to a schedule approved by the town's Public Works Department. Stabilization measures shall be initiated as soon as possible in portions of the site where construction activities have temporarily or permanently ceased. Temporary or permanent soil stabilization at the construction site (or a phase of the project) must be completed no later

than 15 days after the construction activity in that portion if the site has temporarily or permanently ceased. In the following situations, temporary stabilization measures are not required:

(i) Where the initiation of stabilization measures is precluded by snow cover or frozen ground conditions or adverse soggy ground conditions, stabilization measures shall be initiated as soon as practicable;

(ii) Where construction activity on a portion of the site is temporarily ceased, and grading will be resumed within 15 days; or

(iii) Areas of steep slope that have not been worked in seven days must be stabilized.

(b) Permanent stabilization with perennial vegetation (using native herbaceous and woody plants where practicable) or other permanently stable, non-eroding surface shall replace any temporary measures as soon as practicable. Unpacked gravel containing fines (silt and clay sized particles) or crusher runs will be considered an eroding surface.

(c) The following criteria shall apply to revegetation efforts.

(i) Reseeding must be done with an annual or perennial cover crop accompanied by placement of straw mulch or its equivalent of sufficient coverage to control erosion until such time as the cover crop is established over 90% of the seeded area.

(ii) Placement of straw mulch or its equivalent of sufficient coverage to control erosion until the plantings are established and are capable of controlling erosion shall accompany replanting with native woody and herbaceous vegetation;

(iii) Any area of re-vegetation must exhibit survival of a minimum of 75% of the cover crop throughout the year immediately following re-vegetation or exhibit no erosion based on Public Works Department field review. Re-vegetation shall be repeated in successive years until the aforementioned criteria are achieved. If erosion should occur anywhere on-site it should be repaired to the satisfaction of the Public Works Department.

(d) In accordance with the TDEC's construction general permit, an erosion prevention and sediment control (EPSC) plan must be submitted with the final design describing the vegetative stabilization and management techniques to be used at a site after construction is completed. This plan will explain not only how the site will be stabilized after construction, but who will be responsible for the maintenance of vegetation at the site and what practices will be employed to ensure that adequate vegetative cover, general landscaping, and landscaping located around the perimeter of the detention and retention ponds are preserved.

(3) *Inspection of storm water management facilities.* Inspections of facilities are performed by the Public Works Department, while detailed procedures, entitled detention pond inspection procedures, may be found as a separate document on the storm water management program's website. Periodic inspections of facilities shall be documented and reported in accordance with this chapter.

(4) *Storm water management on new build lots.* Drainage on new construction build lots shall be managed complementary to the plan engineered for the larger or neighboring development. Storm gutters and down spouts, sump pumps, and other outlets draining storm water or other authorized runoff shall be piped or otherwise channeled into a conveyance that will adequately drain runoff from the property. At no time shall runoff be directed onto a neighboring lot so that it flows outside of the drainage easement. Storm water and other drainage shall be managed on each lot, property, or site, so it will not cause damage or become a nuisance to a neighboring property. Storm drainage shall be properly routed to the nearest main drainage swale, street curb, or other appropriate storm water conveyance structure to ensure proper drainage from the site.

(5) *Owner responsibilities.*

(a) The owner shall be responsible for the maintenance and repair of the storm water facility of the property upon which the facility is located and be recorded as such on the plat for the property by appropriate notation.

(b) The owner shall provide that the minimum maintenance and repair needs include, but are not limited to: the removal of silt, litter, and other debris; the cutting of grass; cutting and vegetation removal; and the replacement of landscape vegetation in detention and retention basins, inlets and drainage pipes, and any other storm water facilities. The property owner shall also be responsible for additional maintenance and repair needs consistent with the needs and standards outlined in the MS4 BMP manuals.

(c) The owner shall provide that maintenance needs must be addressed in a timely manner, on a schedule to be approved by the storm water management program.

(d) For underground storm water management systems, the owner or their assigned is required to conduct a storm water inspection based on manufacturer's recommendations for inspections. This inspection must be conducted by an engineer licensed in the State of Tennessee or someone under their responsible charge. A copy of the inspection report must be submitted to the town

(6) *Requirements for existing problem locations.*

(a) Upon approval by the Town Manager, the Public Works Department shall, in writing, notify the owners of existing locations and developments of specific drainage, erosion, or sediment problems affecting or caused by such locations and developments, and the specific actions required to correct those problems. The notice shall also specify a reasonable time for compliance. Discharges from existing BMPs that have not been maintained and/or inspected in accordance with this chapter shall be regarded as illicit.

(b) The Public Works Department may, to the extent authorized by state and federal law, enter and inspect private property for the purpose of determining if there are illicit non-storm water discharges and/or establish inspection programs to verify that all storm water management facilities, including those built before as well as after the adoption of this chapter, are functioning within design limits. 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 town's NPDES storm water permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to:

- (i) Reviewing maintenance and repair records;
- (ii) Sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and
- (iii) Evaluating the condition of drainage control facilities and other BMPs.

(7) *Requirements for all existing locations and ongoing developments.* The following requirements shall apply to all locations and development at which land disturbing activities have occurred previous to the enactment of this chapter.

- (a) Denuded areas must be vegetated or covered under the standards and guidelines specified in § 14-605 and on a schedule acceptable to the storm water entity.
- (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, or other appropriate BMPs to prevent erosion.
- (d) Trash, junk, litter, and the like shall be cleared from drainage ways.
- (e) Storm water runoff shall, at the discretion of the storm water entity, be controlled to the maximum extent practicable to prevent its pollution. Such control measures may include, but are not limited to, the following:

- (i) Ponds:
 - (A) Detention pond;
 - (B) Extended detention pond;
 - (C) Wet pond; and
 - (D) Alternative storage measures.
- (ii) Constructed wetlands.

(iii) Infiltration systems:

- (A) Infiltration/percolation trench;
- (B) Infiltration basin;
- (C) Drainage (recharge) well; and
- (D) Porous pavement.

(iv) Filtering systems:

- (A) Catch basin inserts/media filter;
- (B) Sand filter;
- (C) Filter/absorption bed; and
- (D) Filter and buffer strips.

(v) Open channel:

- (A) Swale; and
- (B) Natural conveyance.

(8) *Corrections of problems subject to appeal.* Corrective measures imposed by the town's Public Works Department under this section are subject to appeal under § 14-610.

(9) *Failure to meet or maintain design or maintenance standards.*

(a) If a responsible party fails or refuses to meet the design or maintenance standards required for storm water facilities under this chapter, the Public Works Department, after reasonable notice, may correct a violation of the design standards or maintenance needs by performing all necessary work to place the facility in proper working condition.

(b) In the event that the storm water management facility becomes a danger to public safety or public health, the Public Works Department shall notify, in writing, the party responsible for maintenance of the storm water management facility. Upon receipt of that notice the responsible party shall have 30 calendar days to effect maintenance and repair of the facility in an approved manner. In the event that corrective action is not undertaken within that time, the Public Works Department may take necessary corrective action. The cost of any action by the Public Works Department under this section shall be charged to the responsible party.

(Ord. 04-48, passed 1- -2005)

§ 14-606 ILLICIT DISCHARGES.

(1) *Scope.* This section shall apply to all water generated on developed or undeveloped land entering the town's separate storm sewer system.

(2) *Prohibition of illicit discharges.* No person shall introduce or cause to be introduced into the town separate storm sewer system or state water any discharge that is not composed entirely of storm water or any discharge that flows from storm water facility that is not inspected in accordance with this section shall be an illicit discharge. Non-storm water discharges shall include, but shall not be limited to, sanitary wastewater, car wash wastewater, radiator flushing disposal, spills from roadway accidents, carpet cleaning wastewater, spillage/overflow of free standing grease receptacles, compactor/dumpster leakage, effluent from septic tanks, improper oil disposal, laundry wastewater/gray water, improper disposal of auto and household toxics. The commencement, conduct, or continuance of any non-storm water discharge to the municipal separate storm sewer system is prohibited except as described as follows.

(a) Uncontaminated discharges from the following sources:

- (i) Water line flushing or other potable water sources;
- (ii) Landscape irrigation or lawn watering with potable water;
- (iii) Diverted stream flows;
- (iv) Rising groundwater (i.e., storm drain infiltration);
- (v) Pumped groundwater;
- (vi) Foundation or footing drains;
- (vii) Crawl space pumps;
- (viii) Air conditioning condensation;
- (ix) Springs;
- (x) Non-commercial washing of vehicles;
- (xi) Natural riparian habitat or wetland flows;
- (xii) Swimming pools (if dechlorinated - typically less than one part per million (ppm) chlorine);
- (xiii) Firefighting activities; and

(xiv) Any other uncontaminated water source.

(b) Discharges specified in writing by the Public Works Department as being necessary to protect public health and safety.

(c) Dye testing is an allowable discharge if the Public Works Department has so specified in writing.

(d) Discharges authorized by the construction general permit (CGP), which comply with § 3.5.9 of the same:

(i) Dewatering of work areas of collected storm water and ground water (filtering or chemical treatment may be necessary prior to discharge);

(ii) Waters used to wash vehicles (of dust and soil, not process materials such as oils, asphalt, or concrete) where detergents are not used and detention and/or filtering is provided before the water leaves site;

(iii) Water used to control dust in accordance with CGP § 3.5.5;

(iv) Potable water sources, including waterline flushings from which chlorine has been removed to the maximum extent practicable;

(v) Routine external building wash-down that does not use detergents or other chemicals;

(vi) Uncontaminated groundwater or spring water; and

(vii) Foundation or footing drains where flows are not contaminated with pollutants, such as process materials such as solvents, heavy metals, and the like.

(3) *Prohibition of illicit connections.*

(a) The construction, use, maintenance, or continued existence of illicit connections to the town separate storm sewer system is prohibited.

(b) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(4) *Reduction of storm water pollutants by use of BMPs.* Any person responsible for a property or premises, which is, or may be, the source of an illicit discharge, may be required to implement, at the person's expense, the BMPs necessary to prevent the further discharge of pollutants to the town separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the

discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed in compliance with the provisions of this section. Discharges from existing BMPs that have not been maintained and/or inspected in accordance with this chapter shall be regarded as illicit.

(5) *Notification of spills.* Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of materials which are resulting in, or may result in, illicit discharges or pollutants discharging into storm water, the town separate storm sewer system, the person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials, the person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, the person shall notify the Public Works Department in person or by telephone, email, or facsimile no later than the next business day. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the Public Works Department within three business days of the telephone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and actions taken to prevent recurrences. Records shall be retained for at least three years.

(6) *No illegal dumping allowed.* No person shall dump or otherwise deposit outside an authorized landfill, convenience center, or other authorized garbage or trash collection point, any trash or garbage of any kind or description on any private or public property, occupied or unoccupied, inside the town. (Ord. 04-48, passed 1- -2005)

§ 14-607 ENFORCEMENT.

(1) *Enforcement authority.* The Town Manager or his or her designee, hereinafter called the “Director”, shall have the authority to issue notices of violation (NOV) and citations, and to impose the civil penalties provided in this section. Measures authorized include:

(a) *Verbal warnings.* At a minimum, verbal warnings must specify the nature of the violation and required corrective action;

(b) *Written notices.* Written notices must stipulate the nature of the violation and the required corrective action, with deadlines for taking such action;

(c) *Stop work orders.* Stop work orders that require construction activities to be halted, except for those activities directed at cleaning up, abating discharge, and installing appropriate control measures;

(d) *Consent orders with administrative penalties.* The MS4 has the authority to assess monetary penalties, which may include civil and administrative penalties;

(e) *Withholding of plan approvals, permits, or other authorizations.* Where a facility is in noncompliance, the MS4's own approval process affecting the facility's ability to discharge to the MS4 can be used to abate the violation; and

(f) *Additional measures.* The MS4 may also use other escalated measures provided under local legal authorities. The MS4 may perform work necessary to improve erosion control measures and collect the funds from the responsible party in an appropriate manner, such as collecting against the project's bond or directly billing the responsible party to pay for work and materials.

(2) *Notification of violation.*

(a) *Verbal warning.* Verbal warning may be given at the discretion of the inspector when it appears the condition can be corrected by the violator within a reasonable time, which time shall be approved by the inspector.

(b) *Written notice.* Whenever the Director finds that any permittee or any other person discharging storm water has violated or is violating this chapter or a permit or order issued hereunder, the Director may serve upon such person a written NOV. Within ten working 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 Director. Submission of this plan in no way relieves the discharger of liability for any violations occurring before or after receipt of the NOV.

(c) *Consent orders.* The Director 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 also specified by the order. Consent orders shall have the same force and effect as administrative orders issued pursuant to divisions (2)(d) and (2)(e) below.

(d) *Show cause hearing.* The Director may order any person who violates this chapter or permit or order issued hereunder, to show cause why a proposed enforcement action should not be taken. 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 required) at least ten working days prior to the hearing.

(e) *Compliance order.* When the Director finds that any person has violated or continues to violate this chapter or a permit or order issued there under, he or she may issue an order to the violator directing that, following a specific time period, adequate structures and/or devices 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 BMPs.

(f) *Cease and desist orders.* When the Director finds that any person has violated or continues to violate this chapter or any permit or order issued hereunder, the Director may issue an order to cease and desist all such violations and direct those persons in noncompliance to:

(i) Comply forthwith; or

(ii) 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.

(g) *Suspension, revocation, or modification of permit.* The storm water entity may suspend, revoke, or modify the permit authorizing the land development project or any other project of the applicant or other responsible person within the town. A suspended, revoked, or modified permit may be reinstated after the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein, provided such permit may be reinstated upon such conditions as the storm water entity may deem necessary to enable the applicant or other responsible person to take the necessary remedial measures to cure such violations.

(3) *Conflicting standards.* Whenever there is a conflict between any standard contained in this chapter and in the BMP manual adopted by the town under this chapter, the strictest standard shall prevail.

(Ord. 04-48, passed 1- -2005)

§ 14-608 PENALTIES.

(1) *Violations.* Any person who shall commit any act declared unlawful under this chapter, who violates any provision of this chapter, who violates the provisions of any permit issued pursuant to this chapter, or who fails or refuses to comply with any lawful communication, order, or notice to abate or take corrective action issued by either the town's Public Works Department or the Director, shall be guilty of a civil offense.

(2) *Penalties.* Under the authority provided in T.C.A. § 68-221-1106, penalties may include:

(a) The town declares that any person violating the provisions of this chapter may be assessed a civil penalty by the Director of not less than \$50 or not more than \$10,000 per day for each day of violation. Each day of violation shall constitute a separate violation. The town shall give the violator reasonable notice of the assessment of any penalty;

(b) Any person unlawfully polluting the waters of the state or not complying with TDA 69-3-101 will be committing a Class C felony; and

(c) Any person knowingly and willfully falsifying records, information, plans, data required by the board or commissioner will be committing a Class E felony and pay a \$25,000 fine and may be incarcerated.

(3) *Measuring civil penalties.* In assessing a civil penalty, the Director may consider:

(a) The harm done to the public health and/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 this violation;

(e) Any unusual or extraordinary enforcement costs incurred by the town;

(f) The 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.

(4) *Recovery of damages and costs.* In addition to the civil penalty in the division (2) above, the town may recover, but is not limited to recover, the following:

(a) All damages proximately caused by the violator to the town, which may include any reasonable expenses incurred in investigating violations of, and enforcing compliance with, this chapter, or any other actual damages caused by the violation; and

(b) The costs of the town's maintenance of storm water facilities when the user of such facilities fails to maintain them as required by this chapter.

(5) *Referral to TDEC.*

(a) If the MS4 becomes aware that a construction activity, or an industrial storm water discharge, exists and that the discharge must be permitted under an NPDES permit but is not so permitted, the MS4 must notify TDEC of this situation by supplying the following information to the local environmental field office (EFO):

(i) Construction project or industrial facility location;

(ii) Name of owner or operator;

(iii) Estimated construction project size or type of industrial activity (including SIC code if known); and

(iv) Records of communication with the owner or operator regarding filing requirements.

(b) Where the town has used progressive enforcement to achieve compliance with this chapter, and in the judgment of the town has not been successful, the town may refer the violation to TDEC. For the purposes of this provision, "progressive enforcement" shall mean two follow-up inspections and two

warning letters. In addition, enforcement referrals to TDEC must include, at a minimum, the following information:

- (i) Construction project or industrial facility location;
- (ii) Name of owner or operator;
- (iii) Estimated construction project or size or type of industrial activity (including SIC code, if known); and
- (iv) Records of communications with the owner or operator regarding the violation, including at least two follow-up inspections, two warning letters or notices of violation, and any response from the owner or operator.

(6) *Other remedies.* The town may bring legal action to enjoin the continuing violation of this chapter, and the existence of any other remedy, at law or equity, shall be no defense to any such actions.

(7) *Remedies cumulative.* 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 or more of the remedies set forth herein has been sought or granted.

(Ord. 04-48, passed 1- -2005)

§ 14-609 APPEALS.

Pursuant to T.C.A. § 68-221-1106(d), any person aggrieved by the imposition of a civil penalty or damage assessment as provided by this chapter may appeal said penalty or damage assessment to the Town Council.

(1) *Written appeals.* The appeal shall be in writing and filed with the Town Clerk within 30 days after the civil penalty and/or damage assessment is served in any manner authorized by law. If a petition for review is not filed within such time, the violator shall be deemed to have consented to the damage assessment and/or civil penalty and it shall become final.

(2) *Public hearing.* The Town Council shall hold a public hearing not less than 30, and not more than 60, days after receipt of a petition for review. At least ten days' advance written notice, by registered mail, shall 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) *Appealing decisions.* Any alleged violator may appeal a decision of the Town Council pursuant to the provisions of T.C.A. Title 27, Chapter 8.

(Ord. 04-48, passed 1- -2005)

§ 14-610 AMENDMENTS.

The Town Council shall have the authority to enact amendments to this chapter from time to time. (Ord. 04-48, passed 1- -2005)

§ 14-611 RIGHT OF ENTRY AND INSPECTION.

The Public Works Director, Storm Water Coordinator, inspector, or other duly authorized employee of the town, upon reasonable notice to any person who is owner, tenant, or occupant of any real estate, is empowered to enter, upon presentation of proper credentials, upon or through any premises for the purposes of carrying out the objectives of this chapter. This right of entry shall include, but not be limited to, any equipment necessary to conduct such inspections. It shall be the duty of the person to provide all necessary clearance before entry and not to unnecessarily delay or hinder the inspector in carrying out the inspection. The right of entry shall exist at any time.

§ 14-612 DETENTION POND INSPECTION PROCEDURES.*(1) Inspection frequency.*

(a) Annually; or

(b) If violation(s) are found, then frequency lessens to six months until violation(s) are corrected.

(2) Inspection procedures.

(a) Latitudes and longitudes of pond corners and outlet structure have already been determined and recorded, while new ponds are added to a computerized inventory soon after construction;

(b) Entire pond perimeter is inspected for erosion into the pond;

(c) All inlets and outlets are inspected for structural competency, plus erosion and illicit discharge(s) immediately down stream of structure(s);

(d) Interior pond slopes are inspected for erosion and vegetative cover;

(e) Pond floor is inspected for erosion and deposition as well as illicit discharges, including excessive litter and vegetative cover; and

(f) Overall pond holding capacity is assessed to determine if pond still meets original design approved by the town's Planning Commission and staff.

(3) *Enforcement procedures.*

(a) Descriptions of pond violation(s) are written onto the standard inspection form on-site during and before leaving the site inspection;

(b) Depending on severity of the pond violation(s), either a letter of warning/advisement or a notice of violation is crafted then sent, via certified mail, to the pond owner;

(c) Depending on the severity of the pond violation(s), a follow-up inspection is performed to determine if required repairs have been properly made. This pond inspection can be made within just a few days or as many as six months after the initial pond inspection; and

(d) More stringent penalties can be levied against the pond owner if they fail to correct the specified violation(s).

CHAPTER 7: STORM WATER UTILITY ORDINANCE

Section

- 14-701 Title and purpose
- 14-702 Jurisdiction
- 14-703 Definitions
- 14-704 Funding of storm water utility
- 14-705 Storm water utility management fund
- 14-706 Operating budget
- 14-707 Storm water user fee established
- 14-708 Equivalent residential unit
- 14-709 Property classification for storm water user fees
- 14-710 Base rate
- 14-711 Property owners to pay charges
- 14-712 Billing procedures and penalties for late payment
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- 14-714 Storm water user fee credit and adjustment policy
- 14-715 Effective date

Editor's note:

This chapter was modified in the 2017 update

§ 14-701 TITLE AND PURPOSE.

This chapter shall be known as the “storm water utility ordinance” for the town.

(1) *Introduction.* The town finds, determines, and declares that the storm water system, which provides for the collection, treatment, storage, and disposal of storm water, provides benefits and services to all property within the incorporated town limits. Such benefits include, but are not limited to: the provision of adequate systems of collection, conveyance, detention, retention, treatment, and release of storm water; the reductions of hazards to property and life resulting from storm water runoff; improvements in general health and welfare through reduction of undesirable storm water conditions; and improvements to water quality in the storm water and surface water system and its receiving waters.

(2) *Purpose.* In accordance with T.C.A. §§ 68-221-1101 et seq., the town desires to develop a storm water utility in order to provide a funding mechanism to operate and maintain the town's storm water management program and finance the necessary storm water repairs, replacements, improvements, and extensions necessary to protect the health, safety, and welfare of the public. The storm water utility purpose is to:

- (a) Administer and enforce the town storm water management ordinance;
- (b) Administer, plan, and implement storm water projects to protect, maintain, and enhance the environment of the town;
- (c) Implement activities necessary to maintain compliance with the National Pollutant Discharge Elimination System (NPDES) permit and applicable regulations, 40 C.F.R. § 122.26 for storm water discharges;
- (d) Annually analyze the cost of services and benefits provided, and the system and structure of fees, charges, civil penalties, and other revenues of the utility; and
- (e) Advise the Town Council and other town departments on matters relating to the utility.

(3) *Administering entity.* The storm water utility shall be part of the Public Works Department. The storm water utility, under the direction and supervision of the Director of Public Works or his or her designee, shall administer the provisions of this storm water utility ordinance as approved by the Town Manager.

§ 14-702 JURISDICTION.

The storm water utility ordinance shall govern all properties within the corporate limits of the town.

§ 14-703 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words used in the singular shall include the plural, and the plural shall include the singular; words used in the present tense shall include the future tense. The word “shall” is mandatory and not discretionary. The word “may” is permissive. Words not defined in this section shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster’s Dictionary.

AGRICULTURAL PROPERTY. Property which is zoned agricultural and/or property which yields an annual minimum, or in which the annual minimum has been met in two of the last five years, of \$1,000 of agricultural products produced and/or sold from the operation of the property. Agricultural production shall include agricultural, forest, and/or livestock production as defined by the United States Department of Agriculture, Natural Resources Conservation Service, Environmental Quality Incentive Program. Proof of agricultural producer status may include IRS from 1040 Schedule F or other accounting records certified by a tax preparer.

BASE RATE. The storm water user fee for a detached single-family residential property in the town.

BEST MANAGEMENT PRACTICES (BMPs). The physical, structural, and/or managerial practices that, when used singly or in combination, prevent or reduce pollution of water, that have been approved by the town, and that have been incorporated by reference into the storm water management ordinance as if fully set out therein.

CONSTRUCTION. The erection, building, acquisition, alteration, reconstruction, improvement, or extension of storm water facilities; preliminary planning to determine the economic and engineering feasibility of storm water facilities; the engineering, architectural, legal, fiscal, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary in the construction of storm water facilities; and the inspection and supervision of the construction of storm water facilities.

DEFICIENT PROPERTY. Real property that does not have adequate storm water facilities as required in the latest edition of the town's subdivision regulations.

DEVELOPED PROPERTY. Real property which has been altered from its natural state by the creation or addition of impervious areas, by the addition of any buildings, structures, pavement, or other improvements.

EQUIVALENT RESIDENTIAL UNIT (ERU). The average of the total square footage of the impervious surface areas of developed single-family residential property within the town as approved by the Town Council.

EXEMPT PROPERTY. All public rights-of-way, public streets and public roads, public alleys, public sidewalks and public greenways, public "park and ride" facilities and bus stops, and railroad right-of-way properties within the town. For purposes of this definition, "public" shall mean that which is maintained by or is or is to be dedicated to the town and/or the state or the government of the United States.

FISCAL YEAR. July 1 of a calendar year to June 30 of the next calendar year, both inclusive.

IMPERVIOUS SURFACE. A surface which is compacted or covered with material that is resistant to infiltration by water, including, but not limited to, most conventionally surfaced streets, roofs, sidewalks, patios, driveways, parking lots, and any other oiled, graveled, graded, compacted, or any other surface which impedes the natural infiltration of surface water.

IMPERVIOUS SURFACE AREA. The number of square feet of horizontal surface covered by buildings, and other impervious surfaces. All building measurements shall be made between exterior faces of walls, foundations, columns, or other means of support or enclosure.

OTHER DEVELOPED PROPERTY. Developed property other than single-family residential property. Such property shall include, but not be limited to, commercial properties, industrial properties, parking lots, hospitals, schools, recreational and cultural facilities, hotels, offices, and churches. Such property shall also include single-family dwellings which are attached to or otherwise a part of a building

housing a commercial enterprise. Any single-family residential structure which contains more than two attached dwelling units is specifically included in this definition.

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.

PROPERTY OWNER. The property owner of record as listed in the county's tax assessment roll. A property owner includes any individual, corporation, firm, partnership, or group of individuals acting as a unit, and any trustee, receiver, or personal representative.

SINGLE-FAMILY RESIDENTIAL PROPERTY. A developed property which serves the primary purpose of providing a permanent dwelling unit to a single family. A single-family detached dwelling, a townhouse, an accessory apartment or second dwelling unit, a duplex, a condominium, a villa, or a garden home is included in this definition. A single-family dwelling which is attached to, or otherwise a part of, a building housing a commercial enterprise is not included in this definition.

STORM WATER. Storm water runoff, snow melt runoff, surface runoff, infiltration, and drainage.

STORM WATER MANAGEMENT. The programs to manage quality and quantity of storm water runoff.

STORM WATER SYSTEM. The natural or human-made system that collects, conveys, stores, or otherwise treats or affects storm water or surface water.

STORM WATER USER FEE or FEE. The utility service fee established under this chapter and levied on owners or users of parcels or pieces of real property to fund the costs of storm water management and of operating, maintaining, and improving the storm water system in the town. The **STORM WATER USER FEE** is in addition to other fees that the town has the right to charge under any other rule or regulation of the town.

STORM WATER UTILITY. A management structure that is responsible solely and specifically for the storm water management program and system.

STORM WATER UTILITY MANAGEMENT FUND or FUND. The fund created by this chapter to operate, maintain, and improve the town's storm water system.

SURFACE WATER. Waters upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other watercourses, lakes, ponds, wetlands, marshes, and sinkholes.

USER. The owner or customer of record of property subject to the storm water user fee imposed by this chapter.

VACANT/UNDEVELOPED PROPERTY. Property on which there is no structure for which a certificate of occupancy has been issued.

§ 14-704 FUNDING OF STORM WATER UTILITY.

(1) Funding for the storm water utility’s activities may include, but not be limited to, the following:

(a) Storm water user fees;

(b) Civil penalties and damage assessments imposed for or arising from the violation of the town storm water management ordinance and town storm water utility ordinance;

(c) Storm water permit and inspection fees; and

(d) Other funds or income obtained from federal, state, local, and private grants, or revolving funds, and from the Local Government Public Obligations Act of 1986 (T.C.A. Title 9, Chapter 21).

(2) To the extent that the storm water user fees collected are insufficient to construct needed storm water drainage facilities, the cost of the same may be paid from such town funds as may be determined by the Town Council.

§ 14-705 STORM WATER UTILITY MANAGEMENT FUND.

All revenues generated by or on behalf of the storm water utility shall be deposited in a Storm Water Utility Management Fund and used to fulfill the purposes of the storm water utility.

§ 14-706 OPERATING BUDGET.

The Town Council shall adopt, based on a recommendation from the storm water utility, an operating budget for the Storm Water Utility Management Fund each fiscal year. The operating budget shall set forth for such fiscal year the estimated revenues and the estimated costs for operations and maintenance, extension and replacement, and debt service.

§ 14-707 STORM WATER USER FEE ESTABLISHED.

There shall be imposed on each and every developed property in the town, except exempt property, a storm water user fee, which shall be set from time to time by ordinance in the fee schedule as adopted by the Town Council, and in the manner and amount prescribed by this chapter. Prior to establishing or amending the storm water user fee, the town shall advertise its intent to do so by publishing notice in a newspaper of general circulation in the town at least 30 days in advance of the meeting of the Town Council which shall consider the adoption of the fee or its amendment.

§ 14-708 EQUIVALENT RESIDENTIAL UNIT.

(1) *Establishment.* There is established, for purposes of calculating the storm water user fees, the equivalent residential unit (ERU) as a method of measurement.

(2) *Definition.* The ERU is the average of the total square footage of the impervious surface areas of developed single-family residential property within the town as approved by the Town Council.

(3) *Setting the ERU.* The ERU shall be set by the Town Council in the fee schedule as adopted by the Town Council.

(4) *Source of ERU.* The Town Council shall have the discretion to determine the source of the data from which the ERU is established, taking into consideration the general acceptance and use of such source on the part of other storm water systems, and the reliability and general accuracy of the source, including, but not limited to, property tax assessor's rolls, site examination, mapping information, aerial photographs, and other reliable information.

(5) *Evaluation of ERU.* The ERU shall be evaluated by the storm water utility as necessary, but the ERU shall be evaluated at least every five years.

§ 14-709 PROPERTY CLASSIFICATION FOR STORM WATER USER FEES.

(1) *Property classifications.* For purposes of determining the storm water user fee, all properties in the town are classified into one of the following categories:

- (a) Single-family residential property;
- (b) Other developed property;
- (c) Vacant/undeveloped property;
- (d) Agricultural property; or
- (e) Exempt property.

(2) *Single-family residential fee.* The Town Council finds that the intensity of development of most parcels of real property in the town classified as single-family residential is similar and that it would be excessively and unnecessarily expensive to determine precisely the square footage of the impervious surface on each such parcel. Therefore, all single-family residential properties in the town shall be charged a flat storm water user fee, equal to the ERU base rate, regardless of the size of the parcel or the impervious surface area of the improvements, except as provided herein. Single-family residential property in which the impervious surface exceeds 10,000 square feet, including any detached accessory structures, shall be charged the same as the fee for other developed property.

(3) *Other developed property fee.* The fee for other developed property (i.e., non-single-family residential property) in the town shall be the base rate multiplied by the numerical factor obtained by dividing the total impervious area (square feet) of the property by one ERU. The minimum storm water user fee for other developed property shall equal the base rate for a single family residential property.

(4) *Vacant/undeveloped property fee.* The fee for vacant/undeveloped property in the town shall be as follows:

(a) If the property contains less than 1,800 square feet of impervious surface, then no storm water user fee shall be charged; and

(b) If the property contains 1,800 square feet or more of impervious surface, then property shall be charged based on the amount of impervious surface as other developed property, with the minimum charge being the single-family residential fee.

(5) *Agricultural property.* The fee for agricultural property in the town shall be as follows:

(a) If the property contains impervious surface in an amount equal to or less than the average ERU, then the minimum storm water user fee for such property shall equal the base rate for a single-family residential property; and

(b) If the property contains impervious surface in an amount greater than the average ERU, then the property shall be charged in the same manner as other developed property.

(6) *Exempt property.* There shall be no storm water user fee for exempt property or as otherwise provided by state law.

§ 14-710 BASE RATE.

The Town Council shall, by ordinance in the fee schedule as adopted by the Town Council, establish the base rate for the ERU. The base rate shall be calculated to ensure adequate revenues to fund the costs of storm water management and to provide for the operation, maintenance, and capital improvements of the storm water system in the town.

§ 14-711 PROPERTY OWNERS TO PAY CHARGES.

(1) The owner of each property shall be obligated to pay the storm water user fee as provided in this chapter, provided however, that if no water or sewer service is being provided at the property to the owner as a customer of record and such service is being provided to a customer of record other than the owner, it shall be presumed that the owner and such customer of record have agreed that the customer of record shall be obligated to pay such storm water user fee. If the customer of record other than the owner refuses to pay the storm water user fee, the owner of each developed property shall be obligated to pay the storm water user fee as defined in this chapter.

(2) Non-residential multi-tenant properties shall be billed according to the placement of utility meters (i.e., if the property contains individual unit meters, then billing for the storm water user fee shall be billed to individual units based on the unit's pro-rata percentage of impervious surface). If the multi-tenant property contains a master meter, then the storm water user fee for the entire impervious surface area shall be billed to the customer of record for such master meter.

(3) Each unit of a multi-tenant residential building shall be billed a minimum charge, the same being the single-family residential fee, to the customer of record for the unit. If an individual unit is not individually billed for any water or sewer service (i.e., water and sewer utilities are billed to a master meter), then the customer of record for the master meter shall be billed as other developed property based on the total impervious surface area.

§ 14-712 BILLING PROCEDURES AND PENALTIES FOR LATE PAYMENT.

(1) *Rate and collection schedule.* A storm water user fee shall be set at a rate as set forth in the fee schedule as adopted by Town Council by ordinance, collected at a location and collected on a schedule, established in accordance with this chapter. The storm water user fee shall be billed and collected monthly with the monthly utility services bill for those properties within the corporate limits. The storm water user fee for those properties utilizing town utilities is part of a consolidated statement for utility customers, which is generally paid by a single payment to the town's Utility Department. The storm water user fee for those properties utilizing utilities not provided by the town shall be billed and collected monthly as part of a monthly consolidated statement through the applicable utility providing water or sewer service for the user. All bills for the storm water user fee shall become due and payable in accordance with the rules and regulations of the applicable utilities department pertaining to the collection of the storm water user fees.

(2) *Delinquent bills.* The storm water user fee shall be considered delinquent if not received by the town by the due date stated in the utility statement and subsequent late fees shall be imposed as set forth in the fee schedule as adopted by the Town Council as established by an ordinance.

(3) *Penalties for late payment; failure to pay.* Storm water user fees shall be subject to a late fee established by ordinance. The town shall be entitled to recover attorney's fees incurred in collecting delinquent storm water user fees. The town or other collecting utility provider may discontinue utility service to any storm water user who fails or refuses to pay the storm water user fees and may refuse to accept payment of the utility bill from any user without receiving at the same time, payment of the storm water user fee charges owned by such user, and further may refuse to re-establish service until all such fees have been paid in full.

(4) *Mandatory statement.* Pursuant to T.C.A. § 68-221-1112, each bill that shall contain storm water user fees shall contain the following statement in bold: "THIS TAX HAS BEEN MANDATED BY CONGRESS". Although the mandatory statement will be placed on each bill, the Town Council hereby finds and declares that the storm water user fee is a utility service fee and not a tax.

§ 14-713 APPEALS OF FEES.

(1) Any person who disagrees with the calculation of the storm water user fee, as provided in this chapter, may appeal such fee determination to the Storm Water Advisory Committee within ten days after the date the payment is due. Any appeal not filed within the time permitted by this section shall be deemed waived.

(2) All appeals shall be filed in writing addressed to the Director of Public Works and shall state the grounds for the appeal and the amount of the storm water user fee the appellant asserts is appropriate. The appeal shall provide such information and documentation supporting the basis of the appeal. The appeal shall be accompanied by an appeal review fee as set forth in the fee schedule adopted by the Town Council. The appeal review fee shall be refunded to any party who prevails in an appeal of the calculation of the storm water user fee. As a condition to maintaining an appeal, the appellant shall pay all charges billed under protest prior to or at the time of the filing of the appeal.

(3) The Storm Water Advisory Committee shall review the appeal and determine whether the challenged determination is consistent with the provisions of this chapter. Appeals related to the storm water user fee shall be decided based on substantiated evidence with a sound engineering and factual basis. All appeal determinations shall be applied utilizing a strict interpretation of the storm water utility ordinance. At any hearing related to an appeal or credit determination, the town shall be allowed to present evidence, findings, and recommendations; appealing parties and applicants shall be given an opportunity to present evidence, findings, and recommendations. The Storm Water Advisory Committee may request additional information from the appealing party; the Committee may defer the determination of an appeal one time to the next regularly scheduled meeting of the Storm Water Advisory Committee. Each appeal shall be placed on the Storm Water Advisory Committee agenda for the next regularly scheduled meeting, which meeting is at least 20 days after the Director of Public Works receives the written appeal. The Director of Public Works shall notify the appellant customer of the date of the appeal review hearing in writing; such written notice shall be given at least ten days prior to the hearing by regular mail at the address provided in the written appeal document. The decision of the Storm Water Advisory Committee shall be final and conclusive with no further administrative review.

(4) If a refund is due, the Director of Public Works shall authorize the refund which will be provided as a credit against the customer's storm water user fee billings until such credit is exhausted.

§ 14-714 STORM WATER USER FEE CREDIT AND ADJUSTMENT POLICY.

Storm water user fee credits and adjustments are available to other developed property (i.e., non-single-family residential property) with exception to a small homes credit, which is available exclusively for single-family residential property as outlined in the *Storm Water Utility Credit and Adjustment Policy Manual*.

§ 14-715 EFFECTIVE DATE.

This chapter shall become effective as of the date of its passage on second reading by the Town Council. Storm water user fees shall be charged as a utility billing for all customers within the corporate town limits no earlier than August 1, 2008.

CHAPTER 8: DEVELOPMENT AGREEMENT

Section

- 14-801 Development agreement to be used
- 14-802 Model development agreement
- 14-803 Authority to execute on behalf of town
- 14-804 Execution of developer agreement
- 14-805 Failure to execute developer's agreement
- 14-806 Failure to abide by the developer's agreement
- 14-807 Violation and penalty

Editor's note:

This chapter was modified in the 2017 update

§ 14-801 DEVELOPMENT AGREEMENT TO BE USED.

(1) In any instance in which there is to be a subdivision of land or any development on a parcel of land, a development agreement shall be entered into by the developer with the town. For purposes of this chapter, subdivision shall have the same meaning as in the subdivision regulations for the town. Additionally, in any instance in which upon request of a developer or as required by any law, ordinance, or regulation, the town will consider plans for the installation of mainline water and/or sanitary sewer, roads, and/or storm water facilities, a development agreement shall be entered into by the developer with the town.

(2) As used in this chapter, **DEVELOPER** shall mean any person(s) or business owning real property or seeking develop to real property for which site plan approval by the Planning Commission is necessary, for which a subdivision of property will occur, or for which it will be necessary to obtain approval to install a mainline water and/or sanitary sewer, roads, and/or storm water facilities.

(3) As used in this chapter, **DEVELOPMENT** shall mean any activity upon any parcel of land for which a building or grading permit must issue and shall include the installation of mainline water and/or sanitary sewer, roads, and/or storm water facilities.

§ 14-802 MODEL DEVELOPMENT AGREEMENT.

The model development agreement to be used by the town is on file in the Clerk's office and may be changed from time to time and as necessary in order to address specific concerns of each development.

§ 14-803 AUTHORITY TO EXECUTE ON BEHALF OF TOWN.

The development agreement shall be executed on behalf of the town by the Town Manager or his or her designee, if such designee is designated in writing.

§ 14-804 EXECUTION OF DEVELOPER AGREEMENT.

The development agreement shall be executed on behalf of the developer or builder prior to any permits being issued and prior to any construction beginning on the property, including construction of any mainline water and/or sanitary sewer lines, roads, and/or storm water facilities.

§ 14-805 FAILURE TO EXECUTE DEVELOPER'S AGREEMENT.

No permits, inspections, or certificates of occupancy may be granted for any development after the effective date of this chapter unless a development agreement is on file. Failure to execute a developer agreement may result in a "stop work" order being issued and may include legal action, including, but not limited to, injunctive relief to enforce a cessation of activity on the site to be developed.

§ 14-806 FAILURE TO ABIDE BY THE DEVELOPER'S AGREEMENT.

No permits, inspections, or certificates of occupancy may be granted if the developer fails to abide by the development agreement as determined by the Town Manager or his or her designee. Failure to abide by the terms of the developer agreement may result in a "stop work" order being issued and may include legal action, including, but not limited to, injunctive relief to enforce a cessation of activity on the site to be developed.

§ 14-807 VIOLATION AND PENALTY.

(1) Notwithstanding the provisions in §§ 14-805 and 14-806, and in addition to the remedies provided in §§ 14-805 and 14-806, and the development agreement itself, violations of this chapter shall subject the offender to a penalty under the general penalty provision of this code. Each day a violation is allowed to continue shall constitute a separate offense.

(2) Violators of this chapter are subject to the termination of town utility services to the site subject to a development agreement or to which a development agreement should be executed.

(3) A developer in violation of any provisions of this chapter shall not be eligible for and may not obtain approval for any other site plans, any other subdivision requiring approval of the town, or obtain approval from the Department of Public Works or the Utilities Department, as applicable, for plans for

any other installation of a mainline water and/or sanitary sewer, roads, and/or storm water facilities unless and until all violations of this chapter related to that developer are resolved.

