



APPENDIX A – Stormwater Management Ordinance



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AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF KINGSPORT, TENNESSEE, CHAPTER 42, ENVIRONMENT TO PROVIDE STORMWATER MANAGEMENT FOR THE CITY OF KINGSPORT; TO FIX A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; TO PROVIDE FOR SEVERABILITY OF THIS ORDINANCE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

WHEREAS, a stormwater management ordinance is needed to regulate stormwater drainage and treatment facilities, erosion prevention and sediment control, illicit discharge, grading, excavation, clearance, and other alteration of the land in order to limit the dangers of personal injury, property or environmental damage that may be caused by stormwater runoff; and

WHEREAS, the ordinance is needed to comply with state and federal regulations of the Clean Water Act; and

WHEREAS, the ordinance is needed to secure eligibility for flood insurance under Public Law 1016, 84th Congress which will promote the public health, safety, and general welfare of the citizens of the City of Kingsport.

Now therefore,

BE IT ORDAINED BY THE CITY OF KINGSPORT, as follows:

SECTION I. That Chapter 42, Article III of the Code of Ordinances, City of Kingsport, Tennessee, is hereby amended by deleting in their entirety Article III, Soil and Erosion Control and Article IV, Storm Water Illicit Discharges and Connections and substituting in their place the following:

Chapter 42
ENVIRONMENT
Article III. Stormwater Management

DIVISION 1 – GENERAL PROVISIONS

Sec. 42-76. Purpose.

It is the purpose of this article to:

- (a) Apply to all areas located within the jurisdiction of the City of Kingsport.
- (b) Protect, maintain, and enhance the environment of the city and the public health, safety and the general welfare of the citizens of the city, by controlling discharges of pollutants to the public stormwater system, with the intent of maintaining and improving the quality of the receiving waters



into which the stormwater outfalls flow, including, without limitation, lakes, rivers, streams, ponds, wetlands, and groundwater of the state in the city.

- (c) Enable the city to comply with the National Pollution Discharge Elimination System permit (NPDES) and applicable regulations, 40 CFR 122.26 for stormwater discharges.
- (d) Allow the city to exercise the powers granted in Tennessee Code Annotated 68-221-1105, which provides that, among other powers municipalities have with respect to stormwater facilities, is the power by ordinance or resolution to:
 - (1) Exercise general regulation over the planning, location, construction, and operation and maintenance of stormwater facilities in the municipality, whether or not owned and operated by the municipality;
 - (2) Adopt any rules and regulations deemed necessary to accomplish the purposes of this statute, which may include the adoption of a system of fees for services and permits;
 - (3) Establish standards to regulate the quantity and contaminants of stormwater as may be necessary to protect water quality;
 - (4) Review and approve plans and plats for stormwater management in proposed subdivisions or commercial developments;
 - (5) Issue permits for stormwater discharges or for the construction, alteration, extension, or repair of stormwater facilities;
 - (6) Suspend or revoke permits when it is determined that the permittee has violated any applicable ordinance, resolution, or condition of the permit; and
 - (7) Expend funds to remediate or mitigate the detrimental effects of contaminated land or other sources of stormwater contamination, whether public or private.

Sec. 42-77. Definitions.

For the purpose of this article, 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.

Active Channel: The area of the stream that is most subject to water flow and that includes the portion of the channel below the top-of-bank.

Aquatic Resource Alteration Permit (ARAP): A permit issued by the Tennessee Department of Environment and Conservation for physically altering Waters (streams and wetlands) of the State.



As-Built Certification: As-built, field-verified plans signed and sealed by a registered professional engineer and/or a registered land surveyor, both licensed to practice in the State of Tennessee, showing contours, elevations, grades, locations, drainage and hydraulic structures, and detention basin volumes.

Best Management Practices (BMP or BMPs): Schedules of activities, prohibitions of practices, maintenance procedures, structural controls and other management practices designed to prevent or reduce the pollution of waters of the United States. BMPs may include structural devices, such as stormwater management facilities, or non-structural practices such as buffers or natural open spaces.

Building Official: The City's representative charged with issuing land disturbing permits.

CFR: Code of Federal Regulations.

Channel: A natural or man-made watercourse of perceptible extent, with definite bed and banks to confine and conduct continuously or periodically flowing water.

City Manager: The City Manager of the City of Kingsport, or designee.

Clearing: In the definition of discharges associated with construction activity, clearing does not refer to clearing of vegetation along roadways, highways or power lines for sight distance or other maintenance and/or safety concerns, or cold planing, milling, and/or removal of concrete and/or bituminous asphalt roadway pavement surfaces. Clearing typically refers to removal of vegetation and/or disturbance of soil prior to grading or excavation in anticipation of construction activities. Clearing may also refer to wide area land disturbance in anticipation of non-construction activities; for instance, cleared forested land in order to convert forest land to pasture for wildlife management purposes.

Commencement of Construction or Commencement of Land Disturbing Activities: The initial disturbance of soils associated with clearing, grading or excavating activities or other construction activities.

Construction: Any placement, assembly, or installation of facilities or equipment (including contractual obligations to purchase such facilities or equipment) at the premises where such equipment will be used, including preparation work at such premises.

Construction Related Wastes: Refuse or unused materials that result from construction activities. Construction related wastes can include, but are not limited to, unused building and landscaping materials, chemicals, litter, sanitary waste, and concrete truck washout.

Contaminant: Any physical, chemical, biological or radiological substance or matter in water.

Conveyance: The capacity of a channel or a pipe to carry stormwater.



Covenants for Permanent Maintenance of Stormwater Facilities and Best Management Practices: A legal document executed by the property owner, a homeowners' association or person as owner of record, and recorded with the County (Sullivan or Hawkins) Register of Deeds which guarantees perpetual and proper maintenance of stormwater facilities and best management practices.

Cross Drain: A pipe used to convey stormwater from one side of a roadway to another. A cross drain can also be called a culvert.

Design Professional: An engineer, landscape architect, or architect competent in civil and site design and licensed to practice in the State of Tennessee.

Development: Any land change that alters the hydrologic or hydraulic conditions of any property. Often referred to as "site development", development includes, but is not limited to, providing access to a site, clearing of vegetation, grading, earth moving, providing utilities, roads and other services such as parking facilities, stormwater management and erosion control systems, potable water and wastewater systems, altering land forms, or construction or demolition of a structure on the land.

Director: The City Engineer of the City of Kingsport or designee who is responsible for the approval of development and redevelopment plans, and implementation of the provisions of this article.

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 stormwater system by any means intentional or otherwise.

Disturbed Area: Portion of any site that has been altered from existing conditions, including but not limited to the following: providing access to a site, clearing of vegetation, grading, earth moving, providing utilities and other services such as parking facilities, stormwater management and erosion control systems, potable water and wastewater systems, altering land forms, or construction or demolition of a structure on the land.

Drainage Basin: The area contributing stormwater runoff to a single point.

Drainage System: The system of pipes, channels, culverts and ditches that convey stormwater from and through public and private land in the City of Kingsport.

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

Excavation: A cavity or hole in the land surface that is caused by the cutting, digging, or scooping and removal of soil, rock, or other materials.



Filling: Any deposit or stockpiling of dirt, rocks, stumps, or other natural or man-made solid waste material.

Grading: Any clearing, excavating, filling or other disturbance of terrain.

Hazardous Substance: Any substance designated under 40 CFR part 116, as amended, pursuant to section 116 of the Federal Clean Water Act.

High Quality Waters: Surface waters of the State of Tennessee that are identified by TDEC as “high quality waters.” Characteristics of high quality waters are listed at Rule 1200-4-3-.06 of the official compilation – rules and regulations of the State of Tennessee. Characteristics include waters designated by the Water Quality Control Board as Outstanding National Resources Waters (ONRW); waters that provide habitat for ecologically significant populations of certain aquatic or semi-aquatic plants or animals; waters that provide specialized recreational opportunities; waters that possess outstanding scenic or geologic values; or waters where existing conditions are better than water quality standards. High quality waters are sometimes referred to as Tier II or Tier III (ONRW) waters.

Hotspot: An area where the land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in stormwater.

Human Occupancy: Any portion of any enclosed structure wherein humans principally live, work, or sleep such as mobile homes, residential activities, basements, health care facilities, restaurants, office buildings, etc.

Illicit Connections: Illegal and/or unauthorized connections to the municipal separate storm sewer system whether or not such connections result in discharges into that system.

Impaired Waters: Waters of the State not meeting their prescribed uses.

Impervious Area: Impermeable surfaces which prevent the percolation of water into the soil including, but not limited to, pavement, parking areas and driveways, packed gravel or soil, or rooftops.

Lake: An inland body of standing water, usually of considerable size.

Land Disturbing Activity: Any activity on a property that results in a change in the existing soil (both vegetative and non-vegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, development, re-development, demolition, construction, reconstruction, clearing, grading, filling, logging and/or tree chipping operations (excluding silviculture operations), haul roads associated with the development, and excavation.

Land Disturbing Permits: A building, demolition or grading permit approved by the director and issued by the building official, authorizing commencement of land disturbing activities.



Manual: Stormwater Management Manual.

Municipal Separate Storm Sewer System (MS4): A conveyance or system of conveyances (including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels, and storm drains) designed or used for collecting or conveying stormwater.

National Pollutant Discharge Elimination System (NPDES): The program administered by the United States Environmental Protection Agency to eliminate or reduce pollutant discharges to the waters of the United States.

NOC: Notice of Coverage from the Tennessee Department of Environment and Conservation.

NOT: Notice of Termination from TDEC.

Obstruction: The accumulation of debris, whether intentional or otherwise, resulting in the interference of flow through a watercourse.

Outfall: The terminus of a stormwater system where the contents are released into a larger public or private stormwater management system, or into a stream.

Owner/Operator/Person (Owner): Any party associated with a construction project that meets any of the following two criteria: (a) The party has operational control over construction plans and specifications, including the ability to authorize modifications to those plans and specifications (this will typically be the owner or developer); or (b) The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a stormwater pollution prevention plan (SWPPP) for the site or other permit conditions, e.g., they are authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other permit conditions. (This will typically include the general contractor and would also include erosion prevention and sediment control contractors); or (c) Any individual, firm, corporation, partnership, association, organization or entity, including governmental entities, or any combination thereof.

Peak Discharge: The maximum, instantaneous rate of flow of water at a particular point resulting from a storm event. Also, the maximum discharge computed for a given design flood event.

Plan: Stormwater Management Plan.

Pollutant: Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste or any other substance that is detrimental to the quality of the waters of the State.

Pond: An inland body of standing water that is usually smaller than a lake.



Priority Construction Activity: Land disturbing activities that are located in a watershed that discharges directly into waters recognized by the State of Tennessee as impaired for siltation, or high quality waters. A property is considered to have a direct discharge if stormwater runoff from the property does not cross any other property before entering the water of the State.

Public Water: Stormwater runoff that originates in whole or part from or is conveyed by publicly owned facilities such as roads.

Redevelopment: The improvement of a lot or lots that have been previously developed.

Riprap: A combination of large stone, cobbles and boulders used to line channels, stabilize stream banks, and reduce runoff velocities.

Runoff: The water resulting from precipitation that is not absorbed by the soil.

Sanitary Sewer: A system of underground conduits that collects and delivers wastewater from toilets, sinks and other plumbing fixtures to a wastewater treatment plant.

Sediment: Solid material, either mineral or organic, that is in suspension, is being transported, or has been moved from its site of origin by erosion.

Sewage: Human wastes carried by water from residences, buildings, industrial establishments or other places, together with such industrial wastes, stormwater or other water as may be present; or any substance discharged from a sanitary sewer collection system.

Sinkhole: A depression characterized by closed contours on a topographic map. A sinkhole throat, or opening to the subsurface, may or may not be visible. Field verification may be required in areas where the depth of the depression is below the tolerance of currently available topographic mapping. The extent of the area considered to be a sinkhole is, at a minimum, the limits determined by the 100-year water surface elevation, assuming plugged conditions (0 cfs outflow).

Small Lot Erosion Prevention and Sediment Control Plan: A plan designed to eliminate and/or reduce erosion and off-site sedimentation from a site during construction activities, applicable to development and redevelopment sites that disturb less than one acre and are not part of a larger plan of development.

Special Flood Hazard Area: The land in the floodway and/or floodplain that is subject to flooding during the 100-year frequency storm. The areas of special flood hazard identified by FEMA in its Flood Hazard Boundary Map dated April 2, 1981, and any revisions thereto are adopted by reference and declared to be a part of this article.

Stormwater: Runoff from rain, snow or other forms of precipitation, which results in surface runoff and drainage.



Stormwater Management Facilities: Structures and constructed features designed for the collection, conveyance, storage, treatment and disposal of stormwater runoff into and through the stormwater system. Stormwater management facilities include structural or nonstructural measures, or both, to control the increased volume, rate and quality of stormwater runoff caused by manmade changes to the land.

Stormwater Management Manual (Manual): The document adopted by the City to provide guidance in understanding and implementing the requirements for stormwater management.

Stormwater Management Plan (Plan): An engineering plan for the design of stormwater management facilities and best management practices for a proposed development or redevelopment. The plan includes a map showing the extent of the land development activity, stormwater management facilities, and may contain as-built certifications and Covenants for Permanent Maintenance of Stormwater Facilities and Best Management Practices.

Stormwater Master Plan: An engineering and planning study for the drainage system of a watershed that consists of a plan for stormwater management in the watershed. Stormwater master plans can address flooding problems, water quality problems, potential stormwater capital improvements, land use patterns, and regulatory issues for existing and future conditions.

Stormwater Pollution Prevention Plan (SWPPP): A written plan (including site map(s), plat(s), drawings or other graphic representations that identifies construction/contractor activities that could cause pollutants in the stormwater, and a description of best management practices to control these pollutants and keep sediments on site. The SWPPP shall be prepared in accordance with the Tennessee Erosion Prevention and Sediment Control Handbook.

Stormwater System: The system of roadside drainage, roadside curbs and gutters, curb inlets, swales, catch basins, culverts, cross drains, headwalls, junction boxes, outlets, manholes, gutters, ditches, pipes, lakes, ponds, sinkholes, channels, creeks, streams, storm drains, water quality best management practices, and similar conveyances and facilities, both natural and manmade, located within the City which are designated or used for collecting, storing, or conveying stormwater, or through which stormwater is collected, treated, stored or conveyed, whether owned or operated by the City of Kingsport or other owner/operator/person.

Stream: For the specific purpose of water quality buffers, a stream is defined as a linear surface water conveyance that can be characterized with either perennial or ephemeral base flow and:

- a. is regulated by the city as a Special Flood Hazard Area (SFHA); or
- b. is, or has been, identified by the city, USACE or TDEC as a stream.

Structure: Anything constructed or erected such that the use of it requires a more



or less permanent location on or in the ground.

Subdivision: The division, subdivision, or resubdivision of any lot or parcel of land as defined in the “Subdivision Regulations of the City of Kingsport and its Planning Region”.

Surface Water: Waters upon the surface of the earth in bounds created naturally or artificially.

TDEC: The Tennessee Department of Environment and Conservation.

Top of Bank: The uppermost limit of the active channel of a stream containing normal flows, usually marked by a break in slope.

Total Maximum Daily Load (TMDL): A calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the source(s) of the pollutant.

Transporting: Any moving of earth materials from one place to another, other than such movement incidental to grading, as authorized on an approved plan.

USACE: United States Army Corps of Engineers.

Utility, public or private: Any agency which under public franchise or ownership, or under certification of convenience and necessity provides the public with electricity, natural gas, steam, communication, rail transportation, water, sewage collection, or other similar service.

Vegetated Buffer: A use-restricted vegetated area that is located along the perimeter of streams, ponds, lakes or wetlands, containing natural vegetation and grasses, or enhanced or restored vegetation.

Vegetation: A collection of plant life, including trees, shrubs, bushes, and grass.

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 Tennessee or any portion thereof except those bodies of water confined to and retained within the limits of private property in single ownership which do not combine or effect a junction with natural surface or underground waters.

Watercourse: A channel, natural depression, gully, stream, creek, pond, reservoir or lake in which stormwater runoff and floodwater flows either regularly or infrequently. This includes major drainageways for carrying urban stormwater runoff.

Water Quality Volume: The volume of stormwater runoff from a proposed development or redevelopment that must be controlled for water quality treatment.

Water Quality Volume Credit Area(s): An area(s) within the proposed



development or redevelopment for which a reduction of the water quality volume can be obtained.

Watershed: A region or area bounded peripherally by a divide and draining ultimately to a particular watercourse or body of water.

Wetland: An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetland determination shall be made by the United States Army Corps of Engineers, and/or the Tennessee Department of Environment and Conservation, and/or the Natural Resources Conservation Service.

DIVISION 2 - ADMINISTRATION

Sec. 42-78. Duties and Authority of Director.

- (a) The director has the authority to adopt additional policies, criteria, specifications, standards, rules, regulations, and guidance for the proper implementation of the requirements of this article and the stormwater management manual. The manual shall be enforceable, consistent with other provisions of this article, as if it were a part of this article.
- (b) The director shall have the authority to prepare, or have prepared, master plans for drainage basins and to establish regulations or direct capital improvements to carry out said master plans.
- (c) In the event that the director determines that a violation of any provision of this article has occurred, or that work does not have a required plan or permit, or that work does not comply with an approved plan or permit, the director may issue enforcement responses as defined in Division 11 to the owner subject to the right of appeal set out in Section 42-110.
- (d) The director and the staff under the director's supervision shall administer the provisions of this article.

Sec 42-79. Stormwater Appeals Board.

- (a) There is created and established, pursuant to T.C.A. Section 68-221-1106 et seq., the Stormwater Appeals Board, referred to in this article as "appeals board", which shall be composed of four members as follows:
 - (1) A member of the Board of Mayor and Alderman, who shall serve as chairman, but shall have no vote unless there is a tie among voting members;



- (2) A member of the Planning Commission;
 - (3) The planning director; and
 - (4) The building official.
- (b) All appeals board members shall serve without pay or other compensation.
- (c) The appeals board shall promulgate such procedural rules as may be deemed necessary in the interest of justice, fairness and impartiality.
- (d) All members of the appeals board, except the planning director and building official shall be appointed by the Mayor, subject to confirmation by the BMA.

Sec. 42-80. Duties and Authority of the Appeals Board.

The appeals board shall have the power, duty and responsibility to:

- (a) Hear appeals from orders issued by the director assessing penalties, damages or revoking or modifying permits;
- (b) Affirm, modify or revoke such actions or orders of the director;
- (c) Issue notices of appeals and subpoenas requiring attendance of witnesses and the production of evidence;
- (d) Administer oaths and examine witnesses;
- (e) Take such testimony as the appeals board deems necessary; and
- (f) Hear appeals of owners for the purpose of reviewing the denial of a permit or imposition of terms or conditions in permits or any exceptions granted by the director.

DIVISION 3 – STORMWATER MANAGEMENT

Sec. 42-81. General Requirements.

- (a) Owners of land development activities not exempted under Section 42-83 must submit a stormwater management plan. The plan shall be submitted as part of the preliminary development plan, as required by Ordinance No. 2555, as amended, of the City of Kingsport.
- (b) The plan shall include the specific required elements that are listed and/or described in the stormwater management manual. The director may require submittal of additional information in the plan as necessary to allow an adequate review of the existing or proposed site conditions.



- (c) The plan shall be subject to any additional requirements set forth in the minimum subdivision regulations, design standards, zoning ordinance or other city regulations.
- (d) Stormwater management plans shall be prepared and stamped by a design professional. Portions of the plan that require hydraulic or hydrologic calculations and design shall be prepared and stamped by a professional engineer competent in civil and site design and licensed to practice in the State of Tennessee.
- (e) The approved plan shall be adhered to during grading and construction activities. Under no circumstances is the owner or operator of land development activities allowed to deviate from the approved plan without prior approval of a plan amendment by the director.
- (f) The approved plan shall be amended if the proposed site conditions change after plan approval is obtained, or if it is determined by the director during the course of grading or construction that the approved plan is inadequate.
- (g) The plan shall include a listing of any legally protected state or federally listed threatened or endangered species and/or critical habitat (if applicable) located in the area of land disturbing activities, and a description of the measures that will be used to protect them during and after grading and construction.
- (h) Stormwater management facilities, BMPs, vegetated buffers and water quality volume credit areas shall be maintained through the declaration of a protective covenant, entitled Covenants for Permanent Maintenance of Stormwater Facilities and Best Management Practices, which must be approved and shall be enforceable by the city. The covenant shall be recorded with the deed and shall run with the land and continue in perpetuity.
- (i) Stormwater management facilities, BMPs, vegetated buffers and areas that receive water quality volume reductions shall be placed into a permanent stormwater easement that is recorded with the deed to the parcel and held by the city.
- (j) A maintenance right-of-way or permanent easement, having a minimum width of twenty (20) feet shall be provided to all stormwater management facilities, BMPs and areas that receive water quality volume reductions from a driveway, public or private road.
- (k) Owners of land development activities not exempted from submitting a stormwater management plan may be subject to additional watershed or site-specific requirements than those stated in Section 42-82 in order to satisfy local or State NPDES, TMDL or other regulatory water quality requirements for developments or land uses that are considered pollutant



hotspots, discharging to critical areas with sensitive resources or in areas where the director has determined that additional restrictions are needed to limit adverse impacts from the proposed development on water quality or channel protection.

- (l) The director may waive or modify any of the requirements of Division 3 if adequate water quality treatment and/or channel protection is suitably provided by a downstream or shared off-site stormwater facility, or if engineering studies determine that installing the required stormwater management facilities would actually cause adverse impact to water quality, increased channel erosion or downstream flooding.
- (m) This article is not intended to repeal, abrogate or impair any existing easements, covenants, deed restrictions or existing ordinances and regulations. However, where the provisions of this article and other regulations conflict or overlap that provision which is more restrictive or imposes higher standards or requirements shall prevail. It is required that the director be advised of any such regulatory conflicts upon submittal of the plan.

Sec. 42-82. Design Criteria.

- (a) All developments or redevelopments that must submit a stormwater management plan shall provide water quality treatment in accordance with the following requirements:
 - (1) Stormwater runoff from the development or redevelopment site must be treated for water quality prior to discharge from the development or redevelopment site in accordance with the stormwater treatment standards and criteria provided in the stormwater management manual.
 - (2) Water quality treatment shall be achieved through the use of one or more structural and/or non-structural BMPs that are designed and constructed in accordance with the criteria, guidance, and specifications provided in the manual.
 - (3) Stormwater quality control methods, designs or technologies not provided in the manual may be submitted for approval if it is proven that such alternatives will meet or exceed the water quality control requirements set forth in the manual and this chapter.
 - (4) BMPs shall not be installed within public rights-of way or on public property without prior approval of the director.
- (b) All developments or redevelopments that must submit a plan shall provide downstream channel protection using the design criteria and guidance provided in Section 3.4 of the manual. Downstream channel protection can be provided by an alternative approach in lieu of controlling the channel protection volume subject to prior approval by the director. Sufficient hydrologic and hydraulic analysis that shows that the alternative approach will offer adequate channel protection from erosion must be presented in the plan.



- (c) All developments and redevelopments that must submit a plan shall provide a downstream impact analysis addressing overbank flood control in accordance with Section 3.5 of the manual.

- (d) All developments or redevelopments that must submit a plan shall establish, protect and maintain a vegetated buffer, having a minimum width of twenty five (25) feet, along all streams, ponds, lakes and wetlands in accordance with the policies criteria and guidance set forth in the manual. For priority streams affected by siltation, an average width of sixty (60) feet shall be required with a 25 foot minimum at any point. Exemptions from this requirement are as follows:
 - (1) Vegetated buffers are not required around the perimeter of ponds that have no known connection to streams, other ponds, lakes or wetlands.
 - (2) Vegetated buffers are not required around stormwater management facilities or BMPs that are designed, constructed and maintained for the purposes of stormwater quality and/or quantity control, unless expressly required by the design standards and criteria for the facility are provided in the manual.

- (e) In addition to the above requirements, all developments or redevelopments that must submit a stormwater management plan shall include the following:
 - (1) Account for both onsite and offsite stormwater;
 - (2) Maintain natural drainage divides and hydrologic characteristics;
 - (3) Provide soils information; and
 - (4) Control stormwater runoff and provide peak discharge/volume control in accordance with this article using:
 - a. Predeveloped conditions unless otherwise specified by the director;
 - b. NOAA Atlas 14 rainfall data (Technical Paper Number 40);
 - c. 2, 10, 25 and 100-year rainfall events;
 - d. Longitudinal storm drains designed for a 10-year frequency storm, provided that no residential or commercial structures are flooded by a 100-year frequency storm;
 - e. Roadway cross drains designed for a 10-year frequency storm for a local street and 100-year frequency storm for a collector street provided no residential or commercial structures are flooded by the 100-year frequency storm. All tiles lying under the roadway shall be reinforced concrete pipe unless otherwise approved by the director;
 - f. Drainage easements delineating the 100-year frequency storm flood fringe to prevent flooding and future disturbance; and
 - g. Pipe materials approved by the director.



- (f) All structures or fill located in floodways designated by the Federal Flood Insurance Study shall be designed to pass a 100-year frequency flood and adhere to all local floodplain development requirements in accordance with city regulations.
- (g) The Rational method shall be used to determine peak flow rates only. NRCS methods and those provided in the manual for water quality and channel protection shall be used in determining storage requirements.
- (h) All supporting hydrologic and hydraulic assumptions shall be submitted, as well as all maps and references used in calculations.
- (i) The design must not adversely affect adjacent or neighboring properties.

Sec. 42-83. Exemptions.

- (a) Developments and redevelopments that conform to the criteria in subparagraph (c) are exempt from the requirements of this chapter, unless the director has determined that stormwater quality management is needed to satisfy local or state NPDES, TMDL or other regulatory water quality requirements, or the proposed development will be a pollutant hotspot, or to limit adverse stormwater quality or channel protection impacts of the proposed development.
- (b) The exemptions listed in subparagraph (c) shall not be construed as exempting these developments and redevelopments from compliance with stormwater requirements stated in the minimum subdivision regulations, zoning ordinance or other city regulations.
- (c) The following developments and redevelopments are exempt from the requirements for a stormwater management plan:
 - (1) Residential or non-residential developments or redevelopments that disturb less than one (1) acre of land and are not part of a larger common plan of development or sale that would disturb one (1) acre or more;
 - (2) Minor land disturbing activities such as residential gardens and residential or non-residential repairs, landscaping or maintenance work;
 - (3) Individual utility service connections, unless such activity is carried out in conjunction with the clearing, grading, excavating, transporting, or filling of a lot or lots for which a stormwater management plan would otherwise be required;
 - (4) Installation, maintenance or repair of individual septic tank lines or drainage fields, unless such activity is carried out in conjunction with the clearing, grading, excavating, transporting, or filling of a lot or lots for which a stormwater management plan would otherwise be required;
 - (5) Installation of posts or poles;



- (6) Farming activities, existing nursery and agricultural operations, but not including construction conducted as a permitted principal or accessory use by zoning ordinances;
- (7) Emergency work to protect life, limb or property, and emergency repairs, provided that the land area disturbed shall be shaped and stabilized in accordance with city requirements as soon as practicable;
- (8) Additions or modifications to existing, individual, single family structures; and
- (9) Silvicultural activities.

Sec. 42-84. Special Pollution Abatement Requirements.

- (a) A Special Pollution Abatement Plan shall be required for the following land uses, which are considered pollutant hotspots:
 - (1) Vehicle, truck or equipment maintenance, fueling, washing or storage areas including but not limited to: automotive dealerships, automotive repair shops and car wash facilities;
 - (2) Recycling and/or salvage yard facilities;
 - (3) Restaurants, grocery stores and other food service facilities;
 - (4) Commercial facilities with outside animal housing areas including animal shelters, fish hatcheries, kennels, livestock stables, veterinary clinics or zoos; and
 - (5) Other producers of pollutants identified by the director as a pollutant hotspot using information provided to or collected by the director, or reasonably deduced or estimated by the director from engineering or scientific study.
- (b) A special pollution abatement plan may be required for land uses or activities that are not identified by this article as hotspot land uses, but are deemed by the director to have the potential to generate highly contaminated runoff with concentrations of pollutants in excess of those typically found in stormwater.
- (c) The special pollution abatement plan shall be submitted as part of the stormwater management plan, and the BMPs submitted on the plan shall be subject to all other provisions of this article. Technical requirements for the plan shall be based on the provisions and guidelines set forth in the stormwater management manual.
- (d) Best management practices specified in the special pollution abatement plan must be appropriate for the pollutants targeted at the site and must be approved with the stormwater management plan.
- (e) A special pollution abatement plan will be valid for a period of five (5) years, at which point it must be renewed. At the time of renewal, any deficiency in the pollutant management method must be corrected.



Sec. 42-85. Sinkhole Requirements.

- (a) The following sinkhole and drainage well plan information or approval from the appropriate regulating agency must be provided prior to the alteration of the natural drainage for watershed discharging to such features as sinkholes and drainage wells:
- (1) Proposed onsite and offsite drainage channels that are tributary to a sinkhole throat or drainage well inlet shall be delineated, along with appropriate hydraulic calculations to define the existing and altered (if appropriate) 100-year flood plain and to confirm that offsite flooding will not be increased;
 - (2) Detailed contours are to be shown for all sinkholes that are to receive stormwater runoff from the site. These contours are to have a maximum interval of 2 feet and are to be verified by field surveys;
 - (3) A geologic investigation of all sinkholes receiving stormwater runoff from the site shall be performed. The report from this investigation shall be signed and sealed by a registered professional experienced in geology and groundwater hydrology and shall contain the following:
 - a. Location and nature of aquifers;
 - b. Potential for siltation problems;
 - c. Foundation problems that may be expected around sinkholes;
 - d. Details of drainage structures to be built in sinkholes;
 - e. Any other factors relevant to the design of drainage from sinkholes;
 - f. Plans showing the 100-year flood plain;
 - g. This flood plain shall be designated as a drainage easement on final subdivision plat; and
 - h. Details of plan for grading and clearing of vegetation within the 100-year flood plain.
 - (4) Compliance with any and all conditions that may be required by the federal government or the State of Tennessee shall be documented. The Tennessee Division of Groundwater is the primary regulatory agency for sinkholes and drainage wells. Drainage into a sinkhole may require a permit for a Class V well under rules for Underground Injection Control (UIC); and
 - (5) Demonstration that development will not occur within the area flooded by the 100-year flood. The 100-year elevation may be lowered by construction of a detention pond. Calculations that document a lowering of the 100-year flood elevation shall be based on the 100-year, 24-hour storm using an appropriate safety factor for discharge into the sinkhole.

Sec 42-86. Drainage Requirements.

- (a) Drainage pipe, appurtenances and any other material shall be provided by the owner wherever a ditch, swale, etc., is to be encased and used for



conveyance purposes in the public right-of-way. The following criteria apply:

- (1) The director will specify the size and type of pipe;
- (2) The city will install the pipe at the director's discretion; and
 - (3) The owner is responsible for any finishing (asphalt replacement, landscaping, etc.) work.
- (b) Private drainage systems, where drainage originates in its entirety on private property and terminates on same said property, shall be the sole responsibility of the owner.
- (c) Private drainage originating on private property and draining to an adjacent parcel of private property shall be resolved by the owners involved.
- (d) In cases where flooding stemming from the drainage system or stream(s) are of significant magnitude, the health and welfare of private and/or public property may prompt the city to participate in mitigating the frequency and effects. All such projects shall meet with the approval of the director prior to implementation.
- (e) The previous subsections may be waived and emergency measures taken to protect the public safety during those circumstances in which, due to unforeseen events, development and/or acts of nature, the public welfare requires it. The director and/or city manager shall have the power to exercise all due discretion, judgment and executive directives to address any such situation and/or emergency.
- (f) No watercourse shall be obstructed.
- (g) Stormwater drainage shall not:
 - (1) Adversely impact adjacent properties or public rights-of-way;
 - (2) Circumvent stormwater management facilities for which that flow contribution was designed; or
 - (3) Be directed through a curb without a permit approved by the director.
- (h) Additional curbing to control stormwater shall be installed only with approval of the director.

DIVISION 4 - NPDES PERMITS

Sec. 42-87. General Requirements.

Owners who hold NPDES general, individual and/or multi-sector permits shall provide either a copy of such permit or the permit number assigned to them by the Tennessee Department of Environment and Conservation to the director no later than sixty (60) calendar days after issuance of the permit.



DIVISION 5 - EROSION PREVENTION AND SEDIMENT CONTROL

Sec. 42-88. General Requirements.

- (a) Land disturbing activity or construction that in any way causes off-site sedimentation or sediment discharges to waters of the state or that causes the city to be in violation of its NPDES General Permit for Discharges from Small Municipal Separate Storm Sewer Systems, or its replacement, shall be a violation of this article.
- (b) No owner of any property within the city shall commence land-disturbing activity greater than or equal to one acre unless a land disturbing permit is issued by the building official. The issuance of a land disturbing permit shall be conditioned upon the receipt and approval by the director of a stormwater pollution prevention plan (SWPPP), a NOC provided by TDEC and perimeter controls are in place and properly functioning.
- (c) The city shall serve as the plan approval agency only, and in no instance are its regulations to be construed as designing erosion prevention and sediment control measures or other stormwater management facilities.
- (d) No building permit, where applicable, shall be issued until the owner has obtained and is in compliance with the land disturbing permit.
- (e) All land disturbing activities shall employ adequate erosion prevention and sediment control BMPs.
- (f) No land disturbing activities shall commence until a certified erosion prevention and sediment control inspector has been appointed by the owner and acknowledged by the director.
- (g) The owner must notify the director ten (10) working days in advance of the commencement of construction.

Sec. 42-89. Exemptions From Plan Submittal.

- (a) The following activities shall not require submittal and approval of a stormwater pollution prevention plan or small lot erosion and sediment control plan:
 - (1) Minor land disturbing activities such as home gardens and individual home landscaping, repairs or maintenance work;
 - (2) Additions or modifications to existing, individual, single family structures;
 - (3) Emergency work to protect life, limb or property, and emergency repairs, provided that the land area disturbed shall be



shaped and stabilized in accordance with the requirements of this article;

(4) Existing nursery and agricultural operations, but not including construction, conducted as a permitted principal or accessory use by zoning ordinances;

(5) State and federal projects subject to the submission requirements of TDEC; and

(6) Silviculture operations.

(b) All other provisions of this article shall apply to the exemptions set out in this section.

Sec. 42-90. Design Criteria.

The city adopts as its erosion and sediment control design standards and best management practices manual the TDEC Erosion Prevention & Sediment Control Handbook, as amended.

Sec 42-91. Stormwater Pollution Prevention Plan (SWPPP).

(a) The requirements of the plan are as follows:

(1) The SWPPP shall be sealed by a qualified design professional licensed in the State of Tennessee;

(2) BMPs shall meet or exceed the requirements of the *TDEC* Erosion Prevention and Sediment Control Handbook;

(3) The SWPPP shall include measures to address legally protected state or federally listed threatened or endangered aquatic fauna and/or critical habitat, if applicable;

(4) The SWPPP shall be subject to any additional requirements set forth in the city's subdivision regulations, zoning ordinance, or other city ordinances or regulations; and

(5) Construction at the site in accordance with the approved plan must commence within one year from the issue date of the grading permit, or the grading permit will become null and void and the plan must be resubmitted for approval.

(b) At a minimum, stormwater pollution prevention plans shall include the following:

(1) Existing site conditions;

(2) Project description;

(3) Site map(s) revealing existing and proposed topographic contours at 2-foot intervals;

(4) Runoff calculations using NOAA Atlas 14 rainfall data;

(5) Description of stormwater runoff controls;

(6) Erosion prevention and sediment control measures;



- (7) Stormwater management measures;
- (8) Special requirements if discharging into impaired waters;
- (9) Materials management plan;
- (10) Compliance with federal, state and local regulations;
- (11) Inspection and maintenance procedures;
- (12) Pollution prevention measures for non-stormwater discharges;
- (13) TMDL documentation;
- (14) A copy of the *Tennessee Construction General Permit Notice of Intent* (NOI) submitted to TDEC for the land disturbing activities; and
- (15) Any other information deemed necessary and appropriate by the owner or requested by the director.

Sec. 42-92. Small Lot Erosion Prevention and Sediment Control Plan.

- (a) Land disturbing activities that affect less than one acre and are not part of a larger common plan of development or sale where BMPs are continuing to be implemented on site, submission and approval by the director of a small lot erosion prevention and sediment control plan is required prior to obtaining a building, grading and/or demolition permit from the building official.
- (b) At a minimum the small lot erosion prevention and sediment control plans shall include the following:
 - (1) address/location of land disturbing activity;
 - (2) owner's name and contact information;
 - (3) building, grading or demolition permit number (if available);
 - (4) location of streams, wetlands, ponds, sinkholes, easements, existing drainage structures with respect to the site;
 - (5) a description of erosion prevention and sediment control measures;
 - (6) approximate disturbed area limits;
 - (7) location of silt fence(s);
 - (8) location of stabilized construction exits; and
 - (9) roof drainage accommodations.
- (c) The small site erosion prevention and sediment control plan shall be included with the grading or building permit.
- (d) The director has the discretion to require a fully engineered erosion prevention and sediment control plan.

Sec. 42-93. Grading Requirements.

- (a) Except as otherwise provided in this Section, an owner shall not initiate any land disturbing activity until the city has issued written approval by the director, the SWPPP is approved by the director and an NOC supplied (where applicable), the appropriate fees are paid and any required



performance bond or financial assurance is provided, as may be required in Section 42-114. Such permit shall expire two (2) years from the date of issuance. Once a permit has expired, it is a violation to continue work on the property for which the permit has been granted without obtaining a renewal of such permit, which shall include a submission of and approval of a plan as set out in this article and other requirements to obtain a permit as set out in or authorized by this article.

- (b) No approval shall be required for the following:
- (1) Building grading and excavation. Finished grading and excavation below the finished grade for basements and footings of a single-family or duplex residential structure, for retaining walls, swimming pools, cemeteries for human or animal burial or accessory structures related to single-family residences or duplex structures authorized by a valid building permit, provided the disturbed material or fill is handled in such a manner as to conform to any approved erosion prevention and sediment control plan for the area or, where no such plan is in effect, such work must be done in a manner which presents no significant erosion hazard.
 - (2) General excavation. An excavation or fill, provided it is less than four feet in vertical depth at its deepest point, as measured from the original grade; does not result in a total quantity of more than 100 cubic yards of material being removed from, or deposited on or disturbed on any lot, parcel or subdivision thereof; does not constitute a potential erosion hazard or act as a source of sedimentation to any adjacent land or watercourse; has no final slopes greater than or equal to one foot vertical in two feet horizontal; has proper vegetative cover reestablished as soon as possible on all disturbed areas; and has no fill placed on a surface having a slope steeper than three feet horizontal to one foot vertical.
 - (3) Agricultural. Accepted agricultural land management practices such as plowing, cultivation; construction of agricultural structures; nursery operations such as the removal and transplanting of cultivated sod, shrubs and trees; tree cuttings at or above existing ground level; and logging operations leaving the stump, ground cover and root mat intact.
 - (4) Landscaping. Grading, as a maintenance measure, or for landscaping purposes on existing developed lots or parcels, provided the aggregate are affected or stripped at any one time does not exceed 10,000 square feet and is not within a designated floodplain; the grade change does not exceed 18 inches at any point and does not alter the drainage pattern; vegetative cover is reestablished as soon as possible on all disturbed areas, use of kudzu is prohibited; and the grading does not involve a quantity of material in excess of 100 cubic yards.
 - (5) Utilities. The installation of water and sewer lines, telephone lines, electricity lines, gas lines or other public service facilities.



Sec. 42-94. Compliance.

The owner is responsible for maintaining compliance with the approved SWPPP, building, demolition and/or grading permit. The approved SWPPP shall be followed during the entire duration of construction at the site. The director may require reports or records from the owner. No land disturbing activity shall be allowed to commence without prior SWPPP approval by the director.

Sec. 42-95. Amendments to the approved SWPPP.

- (a) The owner must modify and update the SWPPP in accordance with Section 3.4.1 of the Tennessee Construction General Permit.
- (b) The SWPPP, as amended, shall be submitted to the director for approval.

DIVISION 6 - AS-BUILT CERTIFICATIONS

Sec. 42-96. General Requirements.

- (a) Prior to the release of a bond or approval of final plat, an as-built certification shall be provided to the director, certifying that all drainage and treatment structures or facilities, BMPs, volumes, sizes, slopes, locations, elevations and hydraulic structures have been field verified, represent the as-built field conditions, and comply with the approved stormwater management plan(s). Features such as roadway lines, grades, cross slopes, locations, contours, elevations, boundaries of vegetated buffers and areas that receive stormwater quality volume reductions shall be provided to verify approved plans. Other contents of the as-built certification must be provided in accordance with guidance provided in the stormwater management manual.
- (b) As-built certifications shall include sufficient design information to show that stormwater management facilities required by this article will operate as approved. This shall include all necessary computations used to determine percent pollutant removal, the flow rates and treatment volumes required to size stormwater management facilities and BMPs.
- (c) The as-built certification must be stamped by the appropriate design professional required to stamp the original stormwater management plan, as stated in Section 42-81(d).
- (d) The owner shall also supply stormwater management facility certification forms, provided by the city, attesting that the facilities are constructed according to the approved design.

DIVISION 7 – INSPECTIONS AND MAINTENANCE

Sec. 42-97. Right-of-Entry.



- (a) During and after construction, the director may enter upon any property which has a stormwater management facility, BMP, vegetated buffer, water quality volume credit area, discharges or contributes, or is believed to discharge or contribute, to stormwater runoff or the stormwater system, stream(s), natural drainageway(s) or via any other private or public stormwater management system during all reasonable hours to inspect for compliance with the provisions of this article, or to request or perform corrective actions.
- (b) Failure of an owner to allow such entry onto a property for the purposes set forth in Section 42-97(a) shall be cause for the issuance of a cease and desist order, withholding of a certificate of occupancy, and/or civil penalties and/or damage assessments in accordance with Division 12 of this article.

Sec. 42-98. Requirements.

- (a) The owner(s) of stormwater management facilities, BMPs, vegetated buffers and water quality volume credit areas shall at all times inspect, properly operate and maintain all facilities and systems of stormwater treatment and control (and related appurtenances), and all vegetated buffers and water quality volume credit areas in such a manner as to maintain the full function of the facilities or best management practices which are installed or used by the owner(s) to achieve compliance with this article.
- (b) Inspection and maintenance of privately-owned stormwater management facilities, best management practices, vegetated buffers and water quality volume reduction areas shall be performed at the sole cost and expense of the owner(s) of such facilities/areas.
- (c) Inspection and maintenance shall be performed in accordance with specific requirements and guidance provided in the stormwater management manual. Inspection and maintenance activities shall be documented by the owner (or their designee), and such documentation shall be maintained by the owner for a minimum of three (3) years, and shall be made available for review by the director upon request.
- (d) The director has the authority to impose more stringent inspection requirements as necessary for purposes of water quality protection and public safety.
- (e) Prior to release of the performance bond, the owner shall provide the city with an accurate as-built of the property and an executed protective covenant for all BMPs, vegetated buffers and areas that a final operations and maintenance plan, which shall include an executed legal document entitled "Covenants for Permanent Maintenance of Stormwater Facilities and Best Management Practices". The owner shall record these items in the Office of the County Register of Deeds. The location of the stormwater



management facilities, best management practices, vegetated buffers, water quality volume reduction areas and the water quality easements associated with these facilities/areas, shall be shown on a plat that is also recorded in the Office of the County Register of Deeds.

- (f) The removal of sediment and/or other debris from stormwater management facilities and best management practices shall be performed in accordance with all city, state, and federal laws. Guidelines for sediment removal and disposal are referenced in the stormwater management manual. The director may stipulate additional guidelines if deemed necessary for public safety.
- (g) The director may order corrective actions as are necessary to properly maintain and operate erosion prevention and sediment control measures, best management practices, stormwater management facilities, vegetated buffer areas and/or water quality volume reduction areas within the city for the purposes of stormwater pollution prevention, water quality treatment, channel erosion protection, adherence to local performance standards and/or public safety. If the owner(s) fails to perform corrective action(s), the director shall have the authority to order the corrective action(s) to be performed by the city or others. In such cases where a performance bond exists, the city shall utilize the bond to perform the corrective actions. In such cases where a performance bond does not exist, the owner shall reimburse the city for all of its direct and related expenses. If the owner fails to reimburse the city, the city is authorized to file a lien for said costs against the property and to enforce the lien by judicial foreclosure proceedings.
- (h) This article does not authorize access to adjoining private property by the owner or site operator. Arrangements concerning removal of sediment or pollutants on adjoining property must be settled by the owner or operator with the adjoining landowner.

DIVISION 8 - PERMIT CONTROLS AND STORMWATER SYSTEM INTEGRITY

Sec. 42-99. General Requirements.

- (a) Any alteration, improvement, or disturbance to stormwater management facilities, vegetated buffers or water quality volume reduction areas shown in as-built drawings shall be prohibited without written authorization from the director. This does not include alterations that must be made in order to maintain the intended performance of the stormwater management facilities or BMPs.
- (b) Other state and/or federal permits that may be necessary for construction in and around streams and/or wetlands shall be approved through the appropriate lead regulatory agency prior to submittal of a stormwater management plan to the city.



DIVISION 9 - NON-STORMWATER DISCHARGES (ILLICIT DISCHARGE, DETECTION AND ELIMINATION)

Sec. 42-100. General Requirements.

- (a) Except as set out in subsection (b) of this section no owner shall introduce or cause to be introduced into the municipal separate storm sewer system any discharge that is not composed entirely of stormwater. The commencement, conduct, or continuance of any non-stormwater discharge to the municipal separate storm sewer system is prohibited.

- (b) For purposes of this article the following are not Illicit discharges:
 - (1) landscape irrigation or lawn watering with potable water;
 - (2) diverted stream flows permitted by the State of Tennessee;
 - (3) rising ground water;
 - (4) groundwater infiltration (as defined at 40 CFR 35.2005(20)) to separate storm sewers;
 - (5) pumped groundwater;
 - (6) foundation or footing drains;
 - (7) water discharged from crawl space pumps;
 - (8) air conditioning condensate;
 - (9) springs;
 - (10) individual, residential washing of vehicles;
 - (11) flows from natural riparian habitat or wetlands;
 - (12) swimming pools (if dechlorinated – less than one part per million chlorine);
 - (13) street cleaning and deicing;
 - (14) from emergency fire fighting activities;
 - (15) pursuant to a valid and effective NPDES permit issued by the State of Tennessee;
 - (16) discharges necessary to protect public health and safety, as specified in writing by the city; and
 - (17) dye testing permitted by the city.

Sec. 42-101. Prohibition of Illicit Connections.

The construction, use, maintenance, and continued existence of illicit connections to the separate municipal storm sewer system are prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, even if the connection was permissible under law or practices applicable or prevailing at the time.



Sec. 42-102. Elimination of Discharges or Connections.

- (a) Any owner or tenant of a property or premises, which is, or may be, the source of an illicit discharge, may be required to implement, at such person's expense, the BMPs necessary to prevent the further discharge of pollutants to the municipal separate storm sewer system.
- (b) Any owner or tenant of a property or premises where an illicit connection is located shall be required, at such person's expense, to eliminate the connection to the municipal separate storm sewer system.
- (c) Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed in compliance with the provisions of this article.

Sec. 42-103. Notification of Spills.

- (a) Notwithstanding other requirement of law, when any owner or tenant, or agent thereof or 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 a pollutant which results in, or may result in a discharge into stormwater and/or the municipal separate storm water system, such person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.
- (b) When any owner or tenant, or agent thereof or 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 hazardous substance such person shall immediately notify emergency response agencies of the occurrence by emergency dispatch services, and shall notify the director no later than the next business day of the release of hazardous materials.
- (c) When any owner or tenant, or agent thereof or 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 non-hazardous substance such person shall notify the director no later than the next business day.
- (d) Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the director within three (3) business days of the telephone notice.
- (e) If the discharge of a pollutant 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 the actions taken to prevent its recurrence. Such records shall be retained for at least five (5)



years.

Sec. 42-104. Actions in Violation of the City's NPDES Permit.

Notwithstanding any other provision in this article no person or entity shall allow any discharge into the municipal separate storm sewer system that would be a violation of the city's NPDES General Permit for Discharges from Small Municipal Separate Storm Sewer System or would cause the city to be in violation of its permit.

DIVISION 10 - SEVERABILITY AND RESPONSIBILITY

Sec. 42-105. Severability.

- (a) Each separate provision of this article is deemed independent of all other provisions herein so that if any provision or provisions of this article shall be declared invalid, all other provisions thereof shall remain enforceable.
- (b) If any provisions of this article and any other provisions of law impose overlapping or contradictory regulations, or contain any restrictions covering any of the same subject matter, that provision which is more restrictive or imposes higher standards or requirements shall govern.

Sec. 42-106. Responsibility.

Nothing in this article shall be construed to imply a warranty or the assumption of responsibility on the part of the city for the suitability, fitness or safety of any structure with respect to flooding, water quality, or structural integrity. This article is a regulatory instrument only, and is not to be interpreted as an undertaking by the city to design any structure or facility.

DIVISION 11 - ENFORCEMENT

Sec. 42-107. Remedies Nonexclusive.

The remedies provided for in this article are not exclusive and the director may take any, all or any combination of these actions against a noncompliant owner. The director is empowered to take more than one enforcement action against any noncompliant owner that is in violation.

Sec 42-108. Adoption of Enforcement Response Plan.

An Enforcement Response Plan, including a schedule of civil penalties which may be assessed for certain specific violations or categories of violations, shall be established by resolution of the board of mayor and aldermen. Any civil penalty assessed to a violator pursuant to this section may be in addition to any other penalty assessed by a State or Federal authority.

Sec. 42-109. Show Cause Hearing.



An owner that has been issued an assessment or order under this article may submit a written request to appear before the director and show cause why the proposed enforcement action should not be taken. Notice of hearing shall be served by the director specifying the time and place for the hearing. The notice of hearing shall be served personally or by certified mail, return receipt requested, at least 10 days prior to the hearing. A show cause hearing shall not be a bar against or prerequisite for taking any other action against the owner, but shall be a prerequisite for issuing any administrative order or assessment of civil penalties, except as provided by Section 42-113.

Sec. 42-110. Appeals Process.

- (a) Except in emergency suspensions pursuant to Section 42-113, any owner against whom a penalty has been assessed for a violation of this article, a permit denied, revoked, suspended, against whom the director has issued an order or who is otherwise aggrieved by an act of the director shall have fifteen (15) days after having been served with the assessment or order, or after a permit has been denied, revoked or suspended, or such person has been aggrieved to appeal the action by filing with the city recorder a written petition for appeal setting forth the grounds and reasons for the appeal. The failure to serve the administrative appeals board within fifteen (15) days with the written petition for appeal is jurisdictional, and if an appeal is not taken within the fifteen (15) days the matter shall be final.
- (b) Upon receipt of a written petition from an aggrieved owner under this article but not less than 15 days after notice of a matter to be appealed, the city recorder shall give the petitioner 30 days' written notice of the time and place of the hearing, but in no case shall such hearing be held more than 60 days from the receipt of the written petition unless the director and the petitioner agree to a postponement.
- (c) An appeal to the appeals board shall be a de novo review.
- (d) Hearings before the appeals board shall be conducted in accordance with the following:
 - (1) The presence of at least three members of the appeals board shall be necessary to conduct a hearing.
 - (2) A verbatim record of the proceedings shall be taken, together with the findings of fact and conclusions of law. The transcript so recorded shall be made available to any party upon prepayment of a charge adequate to cover the costs of preparation.
 - (3) In connection with the hearing, subpoenas shall be issued in response to any reasonable request by any party to the hearing requiring the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in the hearing. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under this section, the chancery court shall



- have jurisdiction, upon application of the appeals board or the director, to issue an order requiring such person to appear and testify or produce evidence as the case may require, and any failure to obey such order of the court may be punished as contempt under law.
- (4) On the basis of the evidence produced at the hearing, the appeals board shall make findings of fact and conclusions of law and enter such decisions and orders as in its opinion will best further the purposes of this article and shall give written notice of such decisions and orders to the petitioner. The order so issued shall be issued no later than 30 days following the close of the hearing.
 - (5) The decision of the appeals board shall become final and binding on all parties unless appealed as provided in Section 42-117.
 - (6) Any person to whom an emergency order is directed pursuant to Section 42-113 shall comply therewith immediately but on petition to the appeals board shall be afforded a hearing not later than three working days from the receipt of such petition.
- (e) The following shall not be applicable to emergency suspensions pursuant to Section 42-113:
- (1) If a written petition of appeal is filed by an owner, the effective date of the matter properly appealed shall be stayed until a decision is announced by the appeals board; provided, however, that in no case shall such a stay exceed a period of 90 days, except as provided in Section 42-116, from the date of receipt of a written petition to the director to appeal as set out in this section.
 - (2) If a continuance of a hearing before the appeals board is requested by an owner, no additional time shall be added to the limitations of subsection (c) of this section.
 - (3) If the appeals board is not able, for good cause, to hold a hearing within the 60-day limit, the stay shall be extended by the number of days such period is exceeded.
 - (4) If a continuance is requested by the city, the time of the stay shall be extended by the same number of days as the continuance.

Sec. 42-111. Civil Penalties.

- (a) Pursuant to T.C.A. Section 68-221-1106 (a), any owner in violation of the provisions of this article shall be subject to a civil penalty of not less than fifty dollars (\$50) or more than five thousand dollars (\$5,000) per day for each day of violations. Each day of violation may constitute a separate violation. This penalty may be determined by application of the Enforcement Response Plan as defined in Section 42-108.
- (b) The director may recover reasonable attorney's fees, court costs and other expenses associated with enforcement of this article and the cost of any actual damages incurred by the city.



- (c) Civil penalties assessed hereunder are intended to be remedial to protect the public health, safety and welfare of the public by protecting the waters of the state and adjoining properties. When a civil penalty is assessed to disgorge undeserved profits, or reimburse the city or a private party for fixing damages caused by the noncompliance by the owner, such penalty may be imposed without regard to whether the owner corrects or remedies the violation. Otherwise, when a civil penalty is assessed against an owner found in violation such assessment should be conditioned on providing the owner time to correct or remedy the violation in which event the penalty shall be suspended pending future compliance. If the owner fails or refuses to remedy the violation, the penalty may be imposed per diem until the violation is corrected or remedied. In determining the amount of the penalty to assess, the director shall consider the factors listed in Enforcement Response Plan and may consider all relevant circumstances, including but not limited to the extent of harm caused by the violation, the magnitude and duration of the violation, the compliance history of the owner and any other factor provided by law.

Sec 42-112. Method of Assessment for Non-compliance.

Civil penalties shall be assessed in the following manner:

- (a) The director may issue an assessment against any owner responsible for the violation;
- (b) Any person against whom an assessment has been issued may secure a review of said assessment by filing with the director a written petition setting forth the grounds and reasons for their objections and asking for a hearing on the matter before the appeals board. If a petition for review of the assessment is not filed within thirty (30) days after the date the assessment is served, the owner shall be deemed to have consented to the assessment and it shall become final;
- (c) If any assessment becomes final because of an owner's failure to appeal the municipality's assessment, the director may apply to the appropriate court for a judgment and seek execution of said judgment, and the court in such proceedings shall treat a failure to appeal such assessment as a confession of judgment in the amount of the assessment. Upon final order, if payment is not made, the director may issue a cease and desist order.
- (d) In assessing a civil penalty, the following factors may be considered:
 - (1) The harm done to the public health or the environment;
 - (2) Whether the civil penalty imposed will be substantial economic deterrent to the illegal activity;
 - (3) The economic benefit gained by the violator;
 - (4) The amount of effort put forth by the violator to remedy this violation;
 - (5) Any unusual or extraordinary enforcement costs incurred by the



- municipality;
 - (6) The amount of penalty established by ordinance or resolution for specific categories of violations; and
 - (7) Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.
- (e) Damages may also include any expenses incurred in investigating and enforcing the requirements of this article; removing, correcting and terminating any discharge or connection; and also compensation for any actual damages to the property or personnel of the city caused by the violation, and any reasonable expenses incurred in investigating and enforcing violations of this article.

Sec. 42-113. Emergency Suspensions.

- (a) Under this article, if the director finds that an emergency exists imperatively requiring immediate action to protect the public health, safety or welfare; the health of animals, fish or aquatic life, or a public water supply; the director may, without prior notice, issue an order reciting the existence of such an emergency and requiring that such action be taken as the director deems necessary to meet the emergency, including suspension of a permit issued under this article.
- (b) Any owner notified of a suspension shall immediately eliminate the violation. If an owner fails to immediately comply voluntarily with the suspension order, the director may take such steps as deemed necessary to remedy the endangerment. The director may allow the owner to recommence when the owner has demonstrated to the satisfaction of the director that the period of endangerment has passed.
- (c) A owner that is responsible, in whole or in part, for any discharge or connection presenting imminent danger to the public health, safety or welfare; the health of animals, fish or aquatic life, or a public water supply; shall submit a detailed written statement, describing the causes of the harmful discharge or connection and the measures taken to prevent any future occurrence, to the director prior to the date of any show cause hearing under Section 42-109.
- (d) Nothing in this article shall be interpreted as requiring a hearing prior to any emergency suspension under this section.
- (e) Any owner whose permit or operation is suspended pursuant to this section, on petition to the appeals board, shall be afforded a hearing as soon as possible, but in no case shall such hearing be held later than three (3) working days from the receipt of such a petition by the director.

Sec. 42-114. Financial Assurance.

- (a) A performance bond which guarantees satisfactory completion of



construction work related to stormwater management facilities, channel protection, vegetative buffers and any best management practices shall be required.

- (b) Performance bonds shall name the City of Kingsport as beneficiary and shall be guaranteed in the form of a surety bond, cashier's check or letter of credit from an approved financial institution or insurance carrier. The surety bond, cashier's check or letter of credit shall be provided in a form and in an amount to be determined by the director. The actual amount shall be based on submission of plans and estimated construction, installation or potential maintenance and/or remediation expenses.
- (c) The city recorder may refuse brokers or financial institutions the right to provide a surety bond, cashier's check or letter of credit based on past performance, ratings of the financial institution or other appropriate sources of reference information.
- (d) The director may decline to approve a plan or issue or reissue a permit to any owner who has failed to comply with any section of this article, a permit or order issued under this article unless such owner first files a satisfactory bond, payable to the city, in a sum not to exceed a value determined by the director to be necessary to achieve consistent compliance.

Sec. 42-115. Injunctive Relief.

When the director finds that an owner has violated or continues to violate any section of this article, or a permit or order issued under this article, the director may petition the appropriate court, through the city attorney, for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the permit, order or other requirement imposed by this article on activities of the owner. The director may also seek such other action as is appropriate for legal and equitable relief, including a requirement for the owner to conduct environmental remediation. A petition for injunctive relief shall not be a bar against or a prerequisite for taking any other action against an owner.

Sec. 42-116. Additional Stay.

The appeals board may grant an additional continuance and stay beyond that set out in Section 42-110 upon the request of an owner/operator and upon the posting of an appeal bond payable to the city in a sum to be determined by the director as necessary to protect the interests of the city.

Sec. 42-117. Judicial Review.

The alleged violator may appeal a decision of the appeals board pursuant to the provisions of title 27, chapter 8, of the Tennessee Code Annotated.

SECTION II. That this ordinance shall take effect from and after the date of its passage and publication, as the law directs, the public welfare of the City of



Kingsport, Tennessee requiring it.