

CHAPTER 3**GRADING, SOIL EROSION AND SEDIMENTATION CONTROL****SECTION**

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19-301. Purpose. The City of Maryville has in the past experienced development causing the displacement of large quantities of earth. Soil erosion and sediment deposition can result from such development. Sediment is one cause of the contamination of water supplies and water resources, and is a cause of pollution. A build-up of sediment can negatively impact resources, clog watercourses and cause flooding, which can result in damage to public and private lands. The result is a threat to the health, safety, and general welfare of the community. Therefore, the purpose of this chapter is to provide regulations within the City of Maryville to accomplish the following:

- (1) To safeguard the health, safety, and general welfare of the citizens;
- (2) To preserve the value of land throughout the city;
- (3) To establish reasonable and accepted standards of design and procedures for development that prevent sediment damage;

- (4) To prevent the pollution of streams, ponds and other watercourses by erosion and sediment deposition;
- (5) To minimize property damage by means of flooding;
- (6) To preserve the natural beauty and aesthetics of the community;
- (7) To enable the City of Maryville to comply with the NPDES General Permit for Discharges from Small Municipal Separate Storm Sewer Systems, TMDLs and other applicable state and federal regulations. (1985 Code, § 4-901, as replaced by Ord. #2005-27, July 2005, Ord. #2008-14, March 2008, and Ord. #2013-02, Jan. 2013)

19-302. Rules applying to chapter. For the purpose of this chapter, certain rules of construction shall apply herein as follows:

- (1) Words used in the present tense shall include the future tense and the singular includes the plural, unless otherwise indicated in the text.
- (2) The term "shall" or "must" is always mandatory and not discretionary. The words "may" and "should" are permissive in nature.
- (3) Except as herein provided, all words used in this chapter shall have their common dictionary definition. (1985 Code, § 4-902, as replaced by Ord. #2005-27, July 2005, Ord. #2008-14, March 2008, and Ord. #2013-02, Jan. 2013)

19-303. Definitions. (1) "Applicant." Person submitting the application for a grading permit. Typically, this is the owner or operator of the land-disturbing activity.

(2) "Construction related waste." Waste that is generated through construction, land development and land-disturbing activities that may cause adverse impacts to water quality. Construction related waste includes, but is not limited to, discarded building materials, concrete truck washout, chemicals, litter, hazardous materials, oil and sanitary waste at the construction site.

(3) "Cut and fill slopes." Sloped areas constructed by excavating or adding soil, rock or other materials.

(4) "Clearing." The removal of vegetation and 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, clearing forested land in order to convert forest land to pasture for wildlife management purposes. In the definition of discharges associated with construction activity, clearing, grading, and excavation do not refer to the clearing of vegetation along existing or new roadways, highways, dams, or power lines for sight distance or other maintenance and/or safety concerns, or cold planning, milling, and/or removal of concrete and/or bituminous asphalt roadway pavement surfaces.

(5) "Development." The process of grading, clearing, filling, quarrying, construction, or reconstruction to improved or unimproved real estate or other similar activities when not excluded by exemptions from this chapter.

(6) "Erosion." The wearing away of land by action of wind, water, ice, or gravity.

(7) "Erosion Prevention and Sediment Control plan (EPSC plan)." A formal plan for the control of soil erosion and sediment resulting from land-disturbing activity. The EPSC plan mirrors the SWPPP and shall be reviewed and approved before a grading permit may be issued. The plan may be included as part of a site plan required under another city ordinance or a separate plan following the specifications set out in this chapter.

(8) "Grading." Any operation or occurrence by which the existing site elevations are changed by cutting, filling, borrowing, stock piling, or where any ground cover, natural or man-made, is removed, or any building or other structures are removed or any water course or body of water, either natural or man-made, is relocated on any site, thereby creating an unprotected area. "Grading" shall be synonymous with "land-disturbing activity."

(9) "Grading permit." A permit issued to authorize excavation and/or fill to be performed under the guidelines of this chapter.

(10) "Grading policy manual." The document entitled Grading and Construction Site Pollution Management Policies and Procedures Manual. A document prepared and maintained by the City of Maryville which contains policies, procedures, technical criteria and guidelines and other supporting documentation or tools for implementation of the provisions of this chapter.

(11) "Land-disturbing activity." Any activity on private or public land that may result in soil erosion and the movement of sediments. Land disturbing activities include, but are not limited to, development, re-development, demolition, construction, reconstruction, clearing, grading, filling, logging and/or tree chipping operations, haul roads associated with the development, and excavation.

(12) "NPDES." National Pollutant Discharge Elimination System.

(13) "Operator." For the purpose of this chapter and in the context of stormwater associated with construction activity, operator means any person associated with a construction project that meets either of the following two (2) criteria:

(a) This person has operational control over construction plans and specifications, including the ability to authorize modifications to those plans and specifications. This person is typically the owner or developer of the project or a portion of the project; or

(b) This person has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a site plan, EPSC plan or sketch plan for the site or other permit conditions. This person is typically a contractor or commercial builder and is often authorized to direct workers at a site to carry out activities required by approved plans or comply with other permit conditions.

(14) "Owner." The legal owner of the property as recorded in the Blount County Register of Deeds office at the time of application of the grading permit.

(15) "Priority construction activity." Any land-disturbing activity that is one (1) acre or greater that discharges into, or immediately upstream of, waters the State of Tennessee recognizes as impaired for siltation or habitat alterations or are recognized by the State of Tennessee as Exceptional Tennessee Waters. Also, priority construction activities can include land-disturbing activities of any size that, in the judgment of the director of engineering and public works or his/her designee, require coordination with adjacent construction activities or have conditions that indicate a higher than normal risk for discharge of sediment or other construction related wastes.

(16) "Project." The entire proposed development regardless of the size of the area of land to be disturbed.

(17) "Redevelopment." The improvement of a lot or lots that have been previously developed.

(18) "Sketch plan." An erosion prevention and sediment control plan required for land-disturbing activities that are greater than one-tenth (0.1) acre and less than one (1) acre.

(19) "Soil stabilization." Measures which protect soil from erosion.

(20) "Stormwater Pollution Prevention Plan (SWPPP)." A written plan required by and prepared in conformance with the State of Tennessee General NPDES Permit for Discharges of Stormwater Associated with Construction Activities.

(21) "Variance." a grant of relief from the requirements of this chapter that permit construction or activities in a manner otherwise prohibited by this chapter, where specified enforcement would result in unnecessary hardship. (1985 Code, § 4-903, as replaced by Ord. #2005-27, July 2005, Ord. #2008-14, March 2008, and Ord. #2013-02, Jan. 2013)

19-304. Authority. (1) The director of engineering and public works or his/her designee has the authority to promulgate rules, regulations, policies and guidance consistent with this chapter in order to carry out the meaning and intent in a Grading and Construction Site Pollution Management Policies and Procedures Manual (henceforth referred to as the "grading policy manual"). The policies, criteria and requirements stated in the grading policy manual shall be enforceable, consistent with other provisions of this chapter.

(2) In the event that the director of engineering and public works or his/her designee determines that a violation of any provision of this chapter has occurred, or that work does not have a required grading permit, or that work does not comply with an approved plan or grading permit, the director of engineering and public works or his/her designee may issue a notice of violation to the permittee or property owner and/or any other person or entity having responsibility for construction work performed at a site development, at which time the penalty provisions of this chapter shall be implemented. (1985 Code, § 4-904, as replaced by Ord. #2005-27, July 2005, Ord. #2008-14, March 2008, and Ord. #2013-02, Jan. 2013)

19-305. Existing eroding areas. Upon written notification from the director of engineering and public works or his/her designee, the owner or operator of a parcel of land which exhibits unstable or eroding soil conditions shall correct the problem within the time specified in the written notice. This period may be extended upon request if conditions warrant. Minimum correction measures shall include soil stabilization and revegetation of all exposed soil surfaces and otherwise engaging in vegetative erosion prevention and sediment control practices. Before commencing corrective measures, the owner or operator shall consult with the director of engineering and public works or his/her designee to determine an acceptable method of correction. (1985 Code, § 4-905, as replaced by Ord. #2005-27, July 2005, Ord. #2008-14, March 2008, and Ord. #2013-02, Jan. 2013)

19-306. Grading permit required. No individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, county, city, or other political subdivision, cooperative, or any other legal entity shall engage in any land-disturbing activity within the corporate limits of the City of Maryville without meeting the requirements of this chapter, unless exempted under § 19-307.

(1) The owner or operator of the following land disturbing activities must obtain a grading permit prior to commencing land-disturbing activities, unless exempted from this requirement under § 19-307:

(a) Any new development or redevelopment that will result in land-disturbing activity that is greater than one-tenth (0.1) of an acre.

(b) Installation, maintenance and repair of any underground public utility lines when such activities occur within fifty feet (50') of waters of the state.

(2) Owners or operators of land-disturbing activities are responsible for obtaining all applicable state and federal permits or approvals prior to requesting a grading permit from the City of Maryville.

(3) Land-disturbing activities not exempted under § 19-307 shall require:

(a) Grading permit application;

(b) Five (5) copies of an EPSC plan (required for land disturbing activities equal to or greater than one (1) acre, including those activities less than one (1) acre that are part of a larger plan of development or sale) or, one (1) copy of a sketch plan (required for land disturbing activities less than one (1) acre), prepared in conformance with this chapter;

(c) Appropriate fee, if applicable;

(d) Review of the EPSC plan or sketch plan by director of engineering and public works or his/her designee for compliance with City of Maryville regulations and policies;

- (e) Grading permit;
- (f) Site inspection, performed in accordance with this chapter;
- (g) Ongoing and final inspection.

(4) The director of engineering and public works or his/her designee may require land disturbing activities that are less than one (1) acre to develop a full EPSC plan, as set forth in this chapter and the grading policy manual, as deemed necessary to protect streams and adjacent properties from erosion and off-site sediment deposition.

(5) Land-disturbing activities not exempted under § 19-307 of this chapter shall not commence until:

(a) The owner or operator obtains a Notice of Coverage (NOC) under the State of Tennessee General NPDES Permit for Discharge of Stormwater Associated with Construction Activities, or certification that the land-disturbing activity does not require coverage under the state permit, prior to obtaining a grading permit. A copy of the NOC and the associated Stormwater Pollution Prevention Plan (SWPPP) or certification that the site does not require coverage under the state permit must be submitted with the EPSC plan or sketch plan.

(b) The owner or operator obtains all applicable permits for the applicable development or redevelopment from state and federal agencies. A copy of the permit(s) obtained must be submitted with the EPSC plan or sketch plan. (1985 Code, § 4-906, as replaced by Ord. #2005-27, July 2005, Ord. #2008-14, March 2008, and Ord. #2013-02, Jan. 2013)

19-307. Exemptions. The exemptions listed in this section shall not be construed as exempting these land-disturbing activities from providing adequate erosion prevention and sediment control measures to protect adjoining property owners, nearby watercourses and the public right-of-way from sediment impacts. The owner or operator whose activities have been exempted from the requirements for a grading permit shall nevertheless be responsible for otherwise conducting all land-disturbing activities in accordance with the provisions of this chapter and other applicable laws including responsibility for controlling erosion, sediment deposition and runoff. The director of engineering and public works or his/her designee may require owners or operators of exempt activities to obtain a grading permit as deemed necessary to protect adjacent properties or streams from erosion and off-site sediment deposition.

Grading permits are not required for the following land-disturbing activities:

(1) Installation, maintenance and repair of any underground public utility line when such activity has a land-disturbance less than one (1) acre, occurs on an existing right-of-way, and a cut or excavation permit has been obtained, except within fifty feet (50') of waters of the state, in which event a grading permit is required.

(2) Agricultural practices involving the establishment, cultivation or harvesting of products of the field or orchard, preparing and planting of pasture land, forestry land management practices including harvesting, farm ponds, dairy operations, and livestock and poultry management practices.

(3) Emergency work to protect life or property. Upon completion of emergency work the disturbed area shall be shaped and stabilized in accordance with this chapter. The city must be contacted within seventy-two (72) hours of the incident.

(4) Minor residential and land-disturbing activities such as home gardens and individual home repairs, landscaping, or maintenance work. (1985 Code, § 4-907, as replaced by Ord. #2005-27, July 2005, Ord. #2008-14, March 2008, and Ord. #2013-02, Jan. 2013)

19-308. Application and plan review process. (1) No grading permit shall be issued until an EPSC or sketch plan (if required) has been approved by the director of engineering and public works or his/her designee.

(2) The EPSC plan shall comply with the requirements set forth in State of Tennessee General NPDES Permit for Discharges of Stormwater Associated with Construction Activities, this chapter and in the grading policy manual. The director of engineering and public works or his/her designee may require additional information if deemed necessary prior to reviewing a plan. (1985 Code, § 4-908, as replaced by Ord. #2005-27, July 2005, Ord. #2008-14, March 2008, and Ord. #2013-02, Jan. 2013)

19-309. EPSC and sketch plan required components. (1) EPSC plans submitted to the director of engineering and public works or his/her designee shall be prepared in accordance with the Tennessee Construction General Permit.

(2) EPSC plans submitted to the director of engineering and public works or his/her designee shall contain the required components of a SWPPP, as listed in and in accordance with the Tennessee General NPDES Permit for Discharges of Stormwater Associated with Construction Activities, and shall include any additional required elements listed in the grading policy manual and as applicable to the proposed land-disturbing activity.

(3) Sketch plans submitted to the director of engineering and public works or his/her designee shall contain the required components, as listed in and in accordance with the grading policy manual and as applicable to the proposed land-disturbing activity.

(4) The director of engineering and public works or his/her designee may request that additional information be submitted as necessary to allow a thorough review of the site conditions and proposed erosion prevention and sediment control measures.

(5) Omission of any required items shall render the plans incomplete and they will be returned to the applicant prior to review by the director of engineering and public works or his/her designee.

(6) All EPSC and sketch plans shall be developed by the owner or his/her agent.

(7) All EPSC plans shall be prepared and certified by qualified persons as set forth in the Tennessee General NPDES Permit for Discharges of Stormwater Associated with Construction Activities.

(8) Any legally protected state or federally listed threatened or endangered species and/or critical habitat located in the area of land-disturbing activities (if any) shall be identified in the EPSC plan. If such species are identified in the EPSC plan or by the city, then the EPSC plan shall also include written documentation from the United States Fish and Wildlife Service that indicates:

(a) Approval of the best management practices that will be utilized to eliminate potential impacts to legally protected state or federally listed threatened or endangered species and/or critical habitat. Said best management practices shall also be included on the EPSC plan; or

(b) A finding of no potential impact as a result of the proposed land-disturbing activity. (1985 Code, § 4-909, as replaced by Ord. #2005-27, July 2005, Ord. #2008-14, March 2008, and Ord. #2013-02, Jan. 2013)

19-310. Conformity and amendments to approved plans. (1) The approved EPSC or sketch plan, upon which subsequent permits may be issued by the City of Maryville, shall be adhered to during all grading and construction activities. Under no circumstance is the owner or operator allowed to deviate from the approved EPSC or sketch plan without prior approval of a plan amendment by the director of engineering and public works or his/her designee.

(2) The director of engineering and public works or his/her designee shall require the grading permit holder to take corrective actions, which may include amendment of an approved EPSC or sketch plan, if it is determined that the approved plan does not adequately protect against erosion, off-site sediment deposition or discharges of other construction related wastes despite the adherence of the owner or operator with approved protective practices.

(3) The owner or operator is required to resubmit an EPSC or sketch plan for approval by the director of engineering and public works or his/her designee if site plans or conditions change during land-disturbing activities.

(4) Plan amendments must comply with this chapter and the grading policy manual. (1985 Code, § 4-910, as replaced by Ord. #2005-27, July 2005, and Ord. #2008-14, March 2008)

19-311. Pre-construction inspection and meeting. (1) For all land-disturbing activities greater than 0.10 acres, a grading permit shall be issued only after a pre-construction inspection by the director of engineering and public works or his/her designee indicates that perimeter erosion prevention and sediment control measures have been installed in accordance with the approved plan.

(2) Attendance at a pre-construction meeting with the director of engineering and public works or his/her designee prior to issuance of a grading permit is required for owners and operators of developments or redevelopments that are:

- (a) New residential subdivisions; or
- (b) A priority construction activity, as defined in this chapter;

or

- (c) Will discharge stormwater runoff to Exceptional Tennessee Waters.

(3) Owners and operators of land development activities not listed in subsection (2) of this section may be required to attend a pre-construction meeting when coordination with adjacent construction activities is needed or when conditions indicate a higher than normal risk for pollutant discharges. (1985 Code, § 4-911, as replaced by Ord. #2005-27, July 2005, Ord. #2008-14, March 2008, and Ord. #2013-02, Jan. 2013)

19-312. Grading permits--time limitations, phasing and conditions. (1) Grading permits shall expire one (1) year from the date of permit issuance. After one (1) year, the grading permit will become null and void and the plan must be resubmitted for approval.

(2) If a tract is to be developed in phases, then a separate grading permit may be required for each phase.

(3) The issuance of a grading permit does not authorize the discharge of hazardous substances or oil resulting from a spill that occurs on the site of the land-disturbing activity. (1985 Code, § 4-912, as replaced by Ord. #2005-27, July 2005, Ord. #2008-14, March 2008, and Ord. #2013-02, Jan. 2013)

19-313. Documentation kept at the project site. Owners or operators of land disturbing activities that require an EPSC or sketch plan shall keep the documentation listed below at the site of the land-disturbing activity from the date that the grading permit is approved to the date of termination of coverage of the State of Tennessee General NPDES Permit for Discharges of Stormwater Associated with Construction Activities, as identified on the Notice of Termination (NOT). Owners or operators with day-to-day operational control over implementation of the EPSC or sketch plan shall have a copy of the plan available at a central location on-site for the use of all operators and those identified as having responsibilities under the plan whenever they are on the site of the land-disturbing activity:

- (1) A copy of the approved EPSC or sketch plan;
- (2) Documentation of inspection of the erosion prevention and sediment control practices located on the site of the land-disturbing activity, prepared in accordance with the inspection documentation requirements of State of Tennessee General NPDES Permit for Discharges of Stormwater Associated with Construction Activities;
- (3) Any other records required by the Tennessee General NPDES Permit for Discharges of Stormwater Associated with Constructed Activities. (1985 Code, § 4-913, as replaced by Ord. #2005-27, July 2005, Ord. #2008-14, March 2008, and Ord. #2013-02, Jan. 2013)

19-314. Inspections. The owner or operator, or his/her designee, shall perform regular, documented inspections of the land-disturbing activity in accordance with the inspection requirements of the State of Tennessee NPDES Permit for Discharges of Stormwater Associated with Construction Activities, this chapter and the City of Maryville Grading and Construction Pollution Management Policies and Procedures Manual. (1985 Code, § 4-914, as replaced by Ord. #2005-27, July 2005, Ord. #2008-14, March 2008, and Ord. #2013-02, Jan. 2013)

19-315. Bond requirements. (1) When reviewing any application for a grading permit, the city shall consider the past record of the permit applicant in complying with previous grading permits, plans, and this chapter. The city may require the permit applicant to post a performance bond prior to issuing the grading permit. If a permit applicant has had three (3) or more violations of previous permits or this chapter as amended within three (3) years prior to the date of filing of the application under construction with city shall require a performance bond with the permit application.

(2) Upon forfeiture, the city at its election may use the performance bond proceeds or any part thereof to hire a contractor to stabilize and place erosion control measures on the site of the land-disturbing activity.

(3) A performance bond in the form of government security, cash, irrevocable letter of credit, or any combination must be provided for the following conditions:

(a) Rough grading, site development, large residential developments, or commercial development when there is a disturbed area greater than five (5) acres.

(b) Where there exists a substantial likelihood for runoff or sediment problems to adversely impact city rights-of-way, other property, or waters of the state.

(c) When a site drains into sinkholes or when the site is used for a borrow pit or waste area.

(4) Any bond amount shall be based on a remediation and completion estimate as determined by the director of engineering and public works or his/her designee based on the size of the disturbed area.

(5) The city may refuse brokers or financial institutions the right to provide surety bonds, letter of credit, etc. based upon past performance, ratings or the financial institution, or other appropriate sources of reference information.

(6) Within sixty (60) days of the final inspection, the balance of all bonds not extended or obligated shall be refunded or terminated except as otherwise provided therein.

(7) Performance bond is released upon receiving NOT from TDEC along with site visit and release approval by the director of engineering and public works or his/her designee. (as added by Ord. #2007-27, July 2005, and replaced by Ord. #2008-14, March 2008, and Ord. #2013-02, Jan. 2013)

19-316. Fees. The city council at its discretion may set fees for obtaining a grading permit. Such fee schedule may be established by resolution.

All development activities which require right-of-way cuts or excavation within the development site and shown on a site plan shall be subject to all applicable fees. Grading activities which involve no construction or right-of-way cuts shall be subject to the grading permit fee schedule only.

After the city completes three (3) documented final land disturbance inspections requested by the permit holder for the same permit, a fee of fifty dollars (\$50.00) shall be required for each additional inspection request of the same land disturbance permit. (as added by Ord. #2005-27, July 2005, and replaced by Ord. #2008-14, March 2008, and Ord. #2013-02, Jan. 2013)

19-317. General criteria. The following general rights are minimum requirements for the control of pollutants from land-disturbing activities. All soil erosion prevention and sediment control measures and practices shall conform to the requirements of this chapter. The application or measures and practices shall apply to all features of the site including street, utility installations, drainage facilities and other temporary and permanent improvements. Measures shall be installed to prevent or control erosion and sediment pollution during all stages of any land-disturbing activity.

(1) Requirements for best management practices. Owners and operators of land-disturbing activities shall implement appropriate erosion prevention and sediment control Best Management Practices (BMPs) in accordance with the State of Tennessee General NPDES Permit for Discharges of Stormwater Associated with Construction Activities and the Tennessee Erosion and Sediment Control Handbook.

(2) Technical design criteria. The design of erosion prevention and sediment and pollution management controls, including BMPs, stabilization practices and structural practices, shall be performed in accordance with criteria

and requirements stated in State of Tennessee General NPDES Permit for Discharges of Stormwater Associated with Construction Activities and the Tennessee Erosion and Sediment Control Handbook, except where more stringent criteria are required by the director of engineering and public works or his/her designee.

(3) Control measure construction and maintenance standards. The installation, inspection and maintenance of erosion prevention and sediment control practices, stabilization practices and structural practices shall be performed in accordance with the standards provided in the State of Tennessee General NPDES Permit for Discharges of Stormwater Associated with Construction Activities and the Tennessee Sediment and Erosion Control Handbook, latest edition, except where more stringent standards are required by the director of engineering and public works or his/her designee. If periodic inspections or other information indicate that a control measure has been used inappropriately, or incorrectly, the owner or operator must replace or modify the control for relevant site situations.

(4) More stringent criteria or standards. The director of engineering and public works or his/her designee may require more stringent criteria and standards where deemed necessary to reduce the potential for pollution impacts to streams, public property or adjacent property from sediment-laden stormwater runoff or discharges of other construction related wastes.

(5) Control of other construction related wastes. Owners and operators of land-disturbing activities shall control other construction related wastes, as defined in this chapter, in accordance with the State of Tennessee General NPDES Permit for Discharges of Stormwater Associated with Construction Activities, except where more stringent criteria are required by the director of engineering and public works or his/her designee. The discharge of such wastes in the stormwater discharges from a land-disturbing activity shall be prevented or minimized in accordance with the EPSC or sketch plan for the site of the activity.

(6) Installation of controls before grading begins. Erosion prevention and sediment controls and measures for the control of other construction related wastes shall be in place and functional before earth moving operations begin, and must be constructed and maintained throughout land-disturbing activities. Temporary controls and measures may be removed at the beginning of the work day, but must be replaced at the end of the work day.

(7) Establishment of permanent vegetation. A permanent vegetative cover shall be established on disturbed areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved in accordance with the final stabilization requirements of the State of Tennessee General NPDES Permit for Discharges of Stormwater Associated with Construction Activities and if the vegetation is, in the opinion of the director of engineering and public works or his/her designee, mature enough to control soil erosion satisfactorily and to survive seasonal weather

conditions. If it is determined by the director of engineering and public works or his/her designee that the vegetation will not withstand seasonal weather conditions, the release of unobligated monies or bonds shall be determined by the development standards board of appeals and may be reasonably delayed.

(8) Protection of adjacent properties. Sediment controls shall be designed to retain mobilized sediment on the site of the land-disturbing activity. Properties adjacent to the site of a land-disturbance activity shall be protected from sediment deposition. If sediment escapes the construction site, off-site accumulations of sediment that have not reached a stream must be removed at a frequency sufficient to minimize offsite impacts or in accordance with the State of Tennessee General NPDES Permit for Discharges of Stormwater Associated with Construction Activities, whichever is more stringent. (For example, fugitive sediment that has escaped the construction site and has collected in a street must be removed so that it is not subsequently washed into storm sewers and streams by the next rain and/or so that it does not pose a safety hazard to users of public streets). Owners or operators shall not initiate remediation/restoration of a stream without first receiving approval from the City of Maryville and TDEC. Approval for remediation/storation efforts from the City of Maryville does not authorize access to private property. Arrangements concerning removal of sediment on adjoining property must be settled by the owner or operator with the adjoining landowner.

(9) Timing and stabilization of sediment trapping measures. Sediment basins and traps, perimeter dikes, and other measures intended to trap sediment on-site must be constructed as a first step in grading and be made functional before up slope land disturbance takes place. Earthen structures such as dams, dikes, and diversions must be stabilized within seven (7) days of construction or in accordance with the State of Tennessee General NPDES Permit for Discharges of Stormwater Associated with Construction Activities, whichever is more stringent. These measures must be maintained in good working order and must remain in place until such time as the director of engineering and public works or his/her designee deems the area to be stabilized or in accordance with the State of Tennessee General NPDES Permit for Discharges of Stormwater Associated with Construction Activities, whichever is more stringent.

(10) Sediment basins. Temporary sediment basins shall be designed in accordance with the State of Tennessee General NPDES Permit for Discharges of Stormwater Associated with Construction Activities, except where more stringent criteria are required by the director of engineering and public works or his/her designee. Any equivalent control measure that is substituted for a temporary sediment basin must be justified and approved by the director of engineering and public works or his/her designee.

Permanent detention ponds that will be used as sediment basins during construction shall be designed so that the permanent detention pond outlet structure serves as the outlet structure of the sediment basin. All permanent

detention ponds used as sediment basins shall be cleaned of loose sediments, re-graded to ensure design capacity, and stabilized prior to conversion. Converted detention ponds must be approved by the director of engineering and public works or his/her designee prior to release of bond. In addition, sod shall be used as the stabilization method on sediment basins that must remain in place for an indefinite period of time, such as during residential subdivision development. Sod shall be installed from the permanent pool elevation to the top of the berm. Stabilization measures other than sod may be approved by the director of engineering and public works or his/her designee.

(11) Sodding detention ponds, ditches and draining swales. Sod shall be used on detention ponds, ditches and drainage swales or if velocities warrant stabilization. Stabilization methods other than sod may be approved by the director of engineering and public works or his/her designee. The owner or operator shall maintain sodded areas until vegetation is permanently established.

(12) Cut and fill slopes. Cut and fill slopes must be designed and constructed in a manner which will prevent erosion. Consideration must be given to the length and steepness of the slope, the soil type, up slope drainage area, groundwater conditions, and other applicable factors. Slopes which are found to be eroding excessively within one (1) year of project completion must be provided with additional slope stabilizing measures until the problem is corrected.

The following guidelines shall be utilized to prepare and implement an adequate design for cut and fill slopes:

(a) Topsoil for the area should be stockpiled and then used for replacement on the graded area.

(b) Roughened soil surfaces are generally preferred to smooth surfaces on slopes.

(c) Diversions should be constructed at the top of long steep slopes which have significant drainage areas above the slope. Diversions or terraces may also be used to reduce slope length.

(d) Concentrated stormwater should not be allowed to flow down cut or fill slopes unless contained within an adequate temporary or permanent channel, flume, or slope drain structure.

(e) Wherever a slope face crosses a water seepage plane which endangers the stability of the slope, adequate drainage or other protection should be provided.

(f) Slopes 3:1 or greater shall be stabilized with erosion control matting or other method(s) approved by the director of engineering and public works or his/her designee. The owner or operator shall maintain matted areas until permanent vegetation is established.

(13) Working in or crossing watercourses. Construction vehicles shall be kept out of watercourses. The channel (including bed and banks) must always be re-stabilized immediately after in-channel work is completed. Where a live

watercourse must be crossed by construction vehicles regularly during construction, a temporary stream crossing must be provided, the design of which must be approved by the director of engineering and public works or his/her designee and the State of Tennessee where appropriate.

(14) Underground utility construction. The construction of underground utility lines shall be subject to the following criteria:

(a) Where consistent with safety and space considerations, excavated material shall be placed on the uphill side of trenches.

(b) Trench dewatering devices shall discharge in a manner which will not adversely affect flowing streams, drainage systems, or off-site property.

(15) Temporary stone construction entrance. Wherever construction access routes intersect paved public roads, provisions must be made to minimize the transport of sediment by runoff or vehicle tracking onto the paved surface by installation of a temporary stone construction exit in accordance with the Tennessee Erosion and Sediment Control Handbook. The temporary construction exit shall be maintained for the duration of the project or until a permanent access drive is constructed. The stone layer shall be replaced or overlain with new stone when necessary to ensure that sediment is not transported off the site of the land-disturbing activity. Where sediment is transported onto a public road surface, the roads shall be cleaned thoroughly at the end of each day or more often if deemed necessary. Sediment shall be removed from roads by shoveling or sweeping and be transported to a sediment-controlled disposal area. Street washing shall be allowed only after sediment is removed in this manner.

(16) Disposition of temporary measures. All temporary erosion prevention and sediment control measures shall be disposed of within thirty (30) days after final site stabilization is achieved or after the temporary measures are no longer needed, unless otherwise authorized by the director of engineering and public works or his/her designee. Trapped sediment and other disturbed soft areas resulting from the disposition of temporary measures shall be properly disposed of and/or permanently stabilized to prevent further erosion and off-site sediment deposition.

(17) Stripping, clearing and grading to be minimized. Stripping of vegetation, re-grading, and other development activities shall be conducted so as to minimize erosion. Clearing and grubbing must be held to the minimum necessary. Pre-construction vegetative cover shall not be destroyed, removed, or disturbed more than ten (10) calendar days prior to grading or earth moving. Construction must be sequenced to minimize the exposure time of cleared areas. (as added by Ord. #2005-27, July 2005, and replaced by Ord. #2008-14, March 2008, and Ord. #2013-02, Jan. 2013)

19-318. Variances. The director of engineering and public works or his/her designee may waive or modify any of the general criteria which are

deemed inappropriate or too restrictive for site conditions, by granting a variance as set forth herein. Variances may be granted in writing under the following conditions:

(1) At the time of plan submission, an applicant may request variances to become part of the approved erosion prevention and sediment control plan. The applicant must explain the reasons for requesting variances in writing. Specific variances which are allowed must be documented on the approved erosion prevention and sediment control plan.

(2) During construction, a permit holder may request variances to the approved erosion prevention and sediment control plan. Until such time as the amended plan is approved by the city, the land-disturbing activity shall not proceed, except in accordance with the erosion prevention and sediment control plan as originally approved.

(3) Absent universal circumstances, a response to the variance request should be given by the city within twenty (20) working days. Without a written approval, no variance shall be considered valid. (as added by Ord. #2005-27, July 2005, and replaced by Ord. #2008-14, March 2008, and Ord. #2013-02, Jan. 2013)

19-319. Right of entry. The director of engineering and public works or his/her designee may enter upon any property which discharges or contributes, or is believed to discharge or contribute, to stormwater runoff or the stormwater system; stream; natural drainage way; or other stormwater system during reasonable hours to monitor, remove foreign objects or blockages, and to inspect for compliance with the provisions of this chapter. (as added by Ord. #2005-27, July 2005, and replaced by Ord. #2008-14, March 2008, and Ord. #2013-02, Jan. 2013)

19-320. Unlawful acts. The following are unlawful acts, any person who may:

- (1) Violate any provision of this chapter;
- (2) Violate the provisions of any permit issued pursuant to this chapter;
- (3) Fail or refuse to comply with any lawful notice to abate issued by the manager, which has not been timely appealed to the development standards board of appeals, within the time specified by such notice; or
- (4) Violate any lawful order of the city or the development standards board of appeals within the time allowed by such order shall be guilty of a violation. Each day of such violation or failure or refusal to comply shall be deemed a separate offense and punishable accordingly. (as added by Ord. #2005-27, July 2005, and replaced by Ord. #2008-14, March 2008, and Ord. #2013-02, Jan. 2013)

19-321. Penalties and enforcement. (1) Any person violating the provisions of this chapter shall be guilty of a misdemeanor and punished as provided in the general provisions of the city code. Each day that a continuing violation of this chapter is maintained or permitted to remain shall constitute a separate offense.

(2) Any person violating the provisions of this chapter may be assessed a civil penalty by the city of not less than fifty dollars (\$50.00) nor more than five thousand dollars (\$5,000.00) per day for each day of the violation. Each violation shall constitute a separate violation. The city may also recover all damages proximately caused to the city by such violation.

(3) In assessing the civil penalty, the city shall follow the provisions of the chart set forth herein and for any violation not listed may consider the following in determining the appropriate amount:

- (a) The harm done to the public health or the environment;
- (b) Whether the civil penalty imposed will be of substantial economic detriment 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 municipality;
- (f) The amount of penalty established by ordinance or resolution for specific categories for violations; and
- (g) All equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.

(4) In addition to the civil penalty, the city may recover all damages proximately caused by the violator to the city which may include any reasonable expenses and attorney's fees incurred in investigating, enforcing and/or correcting the violations of this chapter.

(5) The city may bring legal action to enjoin the continuing violation of this chapter and the existence of any other remedy in law or equity shall be no defense to any such action. The city attorney may also initiate civil proceedings in any court of competent jurisdiction seeking monetary damages for any damages caused to publicly owned stormwater facilities by any person.

(6) The remedies set forth in this section shall be cumulative, not exclusive, and is not to be a defense to any action, civil or criminal, that one (1) or more of the remedies set forth herein has been sought or granted.

(7) If the director of engineering and public works or his/her designee finds any person, firm, or entity has engaged in or directed land-disturbing activities without having obtained a required grading permit from the City of Maryville, the following shall occur:

- (a) First offense. A stop work order and a notice of violation will be issued.

(b) If work continues. Assessment of civil penalties in the minimum amount of fifty dollars (\$50.00) and a maximum amount of five thousand dollars (\$5,000.00) for each day work continues without a grading permit.

(c) The permit fees will automatically double.

(8) If the director of engineering and public works or his/her designee finds any person, firm, or entity has engaged in or directed land-disturbing activities that is subject to the State of Tennessee General NPDES Permit for Discharges of Stormwater Associated with Construction Activities without having obtained the required NPDES permit, the following shall occur:

(a) First offense. A stop work order and a notice of violation will be issued. TDEC will be notified of the violation. The owner/operator will be required to obtain a grading permit per § 19-306(3). The stop work order will not be rescinded until the required NPDES and grading permits are obtained.

(b) If work continues. Assessment of civil penalties in the minimum amount of five hundred dollars (\$500.00) and a maximum amount of five thousand dollars (\$5,000.00) for each day work continues without the required permits.

(c) The permit fees will automatically double.

(9) Enforcement and penalties for all other violations of this chapter shall occur in the following manner:

(a) First offense. Written warning with a maximum of two (2) days for compliance. If conditions warrant in the judgment of the director of engineering and public works or his/her designee, a stop work order will be immediately issued.

(b) Second offense. Notice of violation, stop work order, suspension of all city inspections until violation is corrected.

(c) Third offense. Notice of violation, stop work order, suspension of all city inspections until the violation is corrected, TDEC notification and the imposition of a civil penalty in accordance with the following:

<u>Violation</u>	<u>Max. Penalty</u>	<u>Min. Penalty</u>
Failure to obtain grading permit coverage	\$5,000.00	\$2,500.00
Notice of coverage and grading permit not posted on site	\$5,000.00	\$500.00
No SWPPP and/or EPSC plan on site	\$5,000.00	\$1,000.00

<u>Violation</u>	<u>Max. Penalty</u>	<u>Min. Penalty</u>
EPSC plan incomplete or not kept current with site conditions and best management practices	\$5,000.00	\$500.00
Failure to resubmit EPSC plan for approval (after direction to do so by the director of engineering and public works or his/her designee)	\$5,000.00	\$500.00
EPSC measures not constructed in accordance with approved plan	\$5,000.00	\$1,000.00
EPSC measures not properly maintained	\$5,000.00	\$1,000.00
Disturbance more than that allowed by the State of Tennessee General NPDES Permit for Discharges of Stormwater Associated with Construction Activities at one time	\$5,000.00	\$1,000.00
Failure to designate and maintain buffer zone (where applicable)	\$5,000.00	\$1,000.00
Failure to have certified inspector	\$5,000.00	\$500.00
Failure to retain sediment on site	\$5,000.00	\$1,000.00
Pollutant (sediment or other construction related waste) discharge into waters of the state	\$5,000.00	\$2,500.00
Violating any other term or condition of this chapter and/or a stormwater NPDES permit	\$5,000.00	\$500.00

(d) An additional penalty of five hundred dollars (\$500.00) shall be added to the schedule of penalties, up to a maximum of five thousand dollars (\$5,000.00), for any person or entity that has more than three (3) related offenses or has a documented history of three or more offenses at multiple development or redevelopment sites in the City of Maryville.

(10) Any performance bond posted may be forfeited based on the circumstances if compliance is not achieved after notice of violation within the time specified in the notice. Any grading permit granted may also be suspended.

(11) All stop work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred, and the City of Maryville has released the stop work order after inspection of the site indicates conformance. Such notice shall be in writing and shall be given to the owner of the property, or an agent of the owner, or the person in charge of the job site, or conspicuously posted at the project location, and shall state the necessary corrective actions with a completion date before other activities can resume.

(12) Any person or entity who receives three (3) related written notices of violations shall be required to retake or, in the case of an entity, to have its management retake the Level I Fundamentals of Erosion Prevention and Sediment Control Workshop sponsored by the TDEC or approved equal. If after completing the course again, the same person or entity receives a subsequent written environmental violation within three (3) years of completing the course, requests for other city grading permits will be denied to that person. The person may appeal within thirty (30) days of the denial by requesting a hearing by the city manager or his designee to attempt to obtain the desired permits. (as added by Ord. #2005-27, July 2005, and replaced by Ord. #2008-14, March 2008, and Ord. #2013-02, Jan. 2013)

19-322. Notice of violation. Whenever the director of engineering and public works or his/her designee determines that a violation of any provision of this chapter has occurred, or that a land-disturbing activity is being performed without a required plan or permit, or that the land-disturbing activity does not comply with an approved plan or permit, the director of engineering and public works or his/her designee may issue a notice of violation to the property owner or operator, utility, facility operator, lessee, tenant, contractor, permittee, the equipment operator and/or any other person or entity doing work on the site of the land-disturbing activity. The notice of violation shall:

- (1) Be in writing;
- (2) Include a description of the property sufficient for identification of where the violation has occurred;
- (3) List the violation;
- (4) State the action required;
- (5) Provide a deadline for compliance or to stop work. (as added by Ord. #2005-27, July 2005, and replaced by Ord. #2008-14, March 2008, and Ord. #2013-02, Jan. 2013)

19-323. Appeals. Appeal or review of a civil penalty or damage assessment under this section shall be made to the City Council of the City of Maryville by any person incurring a damage assessment or civil penalty. Such review shall be requested within thirty (30) days after the damage assessment or civil penalty is served by filing a written notice of appeal with the city manager's office. If a petition for review of such damage assessment or civil

penalty is not filed within thirty (30) days after the damage assessment or civil penalty is served in any manner authorized by law, the violator shall be deemed to have consented to the damage assessment or civil penalty and it shall become final. The alleged violator may appeal a decision of the city council, pursuant to the provisions of state law found in title 27, chapter 8. Upon receipt of an appeal, the city council shall hold a public hearing within sixty (60) days or a later date mutually agreed upon by both parties. Ten (10) days prior, notice of the time, date and location of said hearing shall be published in the Maryville-Alcoa Daily Times or its equivalent local paper. Ten (10) days notice shall be provided to the aggrieved party at the address provided at the time of the appeal. (as added by Ord. #2005-27, July 2005, and replaced by Ord. #2008-14, March 2008, and Ord. #2013-02, Jan. 2013)

19-324. Special fund created. All damages and civil penalties collected under this chapter, following adjustment for the expenses incurred in making such collections, shall be allocated and appropriated for the administration of the city's stormwater program. (as added by Ord. #2008-14, March 2008, and Ord. #2013-02, Jan. 2013)

19-325. [Deleted.] (as added by Ord. #2008-14, March 2008, and deleted by Ord. #2013-02, Jan. 2013)