

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE TO REPEAL TITLE 19, CHAPTER 5, VEGETATED BUFFER ZONE AND STORMWATER QUALITY MANAGEMENT ORDINANCE OF THE CITY OF MARYVILLE MUNICIPAL CODE AND REPLACE THE SAME WITH A NEW TITLE 19, CHAPTER 5, VEGETATED BUFFER ZONE AND STORMWATER QUALITY MANAGEMENT ORDINANCE**

**WHEREAS**, the City of Maryville previously adopted a Vegetated Buffer Zone and Stormwater Quality Management Ordinance; and,

**WHEREAS**, such Vegetated Buffer Zone and Stormwater Quality Management Ordinance is set forth in Title 19, Chapter 5 of the Maryville Municipal Code: and,

**WHEREAS**, the City wishes to revise the ordinance to bring it into compliance with the requirements of the State of Tennessee’s NPDES General Permit for Discharges from Small Municipal Separate Storm Sewer Systems.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MARYVILLE, TENNESSEE** as follows:

**SECTION 1.** That Title 19, Chapter 5, Vegetated Buffer Zone and Stormwater Quality Management Ordinance of the City of Maryville Municipal Code be deleted in its entirety and replaced with a new Title 19, Chapter 5, Vegetated Buffer Zone and Stormwater Quality Management Ordinance of the City of Maryville Municipal Code attached hereto as Exhibit A and incorporated herein by reference.

**SECTION 2.** That the provisions of this ordinance shall take effect immediately upon final passage, the public welfare requiring it.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Recorder

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

Passed 1<sup>st</sup> reading on this \_\_\_\_\_ day of \_\_\_\_\_, 2024 \_\_\_\_\_  
City Recorder

Passed 2<sup>nd</sup> reading on this \_\_\_\_\_ day of \_\_\_\_\_, 2024 \_\_\_\_\_  
City Recorder

## **EXHIBIT A**

### **VEGETATED BUFFER ZONE AND STORMWATER QUALITY MANAGEMENT ORDINANCE**

**SECTION 1: Purpose.** The purpose of the Vegetated Buffers and Stormwater Quality Management Ordinance is as follows:

- (1) To apply to all areas located within the jurisdiction of the City of Maryville;
- (2) To safeguard the health, safety, and general welfare of the citizens;
- (3) To preserve the value of land throughout the city;
- (4) To establish reasonable and accepted standards of design and procedures that prevent or reduce the discharge of pollutants from developed or redeveloped land;
- (5) To preserve the natural beauty and aesthetics of the community; and
- (6) 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.

**SECTION 2. Rules applying to chapter.** For the purpose of this chapter, certain rules of construction shall apply 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)

**SECTION 3. Definitions.**

- (1) “Applicant.” Person submitting the application for a grading permit. Typically, this is the owner or operator of the land-disturbing activity.
- (2) “As-Built Drawings.” 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, and location of drainage and hydraulic structures and permanent stormwater control measures.
- (3) “Best Management Practices (BMP or BMPs).” Schedules of activities, prohibitions of practices, maintenance procedures, stormwater control measures, structural controls and other management practices designed to prevent or reduce the pollution of waters of the United States and to provide water quality treatment and channel protection in accordance with this ordinance.
- (4) “Buffer Enhancement Plan.” A plan required by the City of Maryville for any alteration to a Water Quality Buffer.
- (5) “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.
- (6) “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.
- (7) “Detailed Plans.” Plans required by the City of Maryville Land Development and Public Works Standards that present detailed information on the stormwater drainage structures and control measures that will be constructed for a proposed development or redevelopment.
- (8) “Developer.” The person, firm or corporation, either public and private, engaged in the development of land, as defined below.

- (9) “Development.” A development includes any of the following activities:
- (a) The improvement of one lot or two or more contiguous lots, tracts or parcels of land for any purpose involving:
    - i. One or more residential or nonresidential buildings, or a single nonresidential building on a lot or lots regardless of the number of occupants or tenure; or,
    - ii. The division or allocation of land or space, between or among two or more existing or prospective occupants by means of, or for the purposes of streets, common areas, leaseholds, condominiums, building groups or other features.
  - (b) A subdivision of land.
- (10) “City Council.” The governing body of the City of Maryville and the body that has the authority to hear appeals concerning decisions made by the director regarding the interpretation of the meaning of this code.
- (11) “Director.” The Director of Engineering and Public Works for the City of Maryville, Tennessee, or their designee.
- (12) “Easement.” A legally dedicated right-of-way on property for the purposes of allowing the city to manage and maintain infrastructure, site access or stormwater flow within specified boundaries.
- (13) “EPSC.” Acronym for erosion prevention and sediment control.
- (14) “Grading Permit.” A permit issued to authorize land-disturbing activities to be performed under the guidelines of this chapter.
- (15) “Hotspot.” An area where the land use or activities generate or have the potential to generate highly contaminated runoff, with concentrations in excess of those typically found in stormwater.
- (16) “Impervious Surfaces.” Areas that prevent or impede the infiltration of stormwater into the soil as it infiltrated in natural conditions prior to development. Common impervious areas include, but are not limited to, rooftops, sidewalks, walkways, patio areas, driveways, parking lots, storage areas, compacted gravel and soil surfaces, awnings and other fabric or plastic coverings.
- (17) “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.
- (18) “NPDES.” National Pollutant Discharge Elimination System.
- (19) “Operator.” In the context of construction activity, operator means any person associated with a development that meets either of the following two criteria:
- (a) this person has operational control over development 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 site which are necessary to ensure compliance with a site plan, EPSC plan, WQMP, 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.
- (20) “Owner or Property 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.
- (21) “Person.” Any individual, firm, corporation, partnership, association, organization, or entity, including governmental entities, or any combination thereof.
- (22) “Project.” The entire proposed development regardless of the size of the area of land to be disturbed.
- (23) “Redevelopment.” The improvement of a lot or lots that have been previously developed.
- (24) “Sediment.” Solid material, both inorganic (mineral) and organic, that is in suspension, is being transported, or has been moved from the site of origin by wind, water, gravity, or ice as a result of erosion.
- (25) “Sedimentation.” The action or process of forming or depositing sediment.
- (26) “Stormwater.” Also “stormwater runoff” or “runoff”. Surface water resulting from rain, snow, or other form of precipitation, which is not absorbed into the soil and results in surface water flow and drainage.

- (27) “Stormwater Control Measure (SCM or SCMs)”. Non-structural land development design strategies and structural stormwater facilities intended to prevent or reduce the discharge of pollution in, and/or regulate the volume or peak discharge of, stormwater runoff from a property. SCMs may include structural devices, such as stormwater ponds, detention ponds, and bioretention areas, and non-structural practices such as water quality buffers and natural open spaces.
- (28) “Stormwater Management Manual (or manual)” Documents prepared and maintained by the City of Maryville that contain policies, technical criteria, tools and guidelines and other supporting documentation for implementation of the provisions of this ordinance. When used in this ordinance, “manual” shall denote the latest version of the documents comprising the Stormwater Management Manual, as amended.
- (29) “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) has published floodplain elevations that have been computed as part of an approved flood study; or
  - (b) are identified as a blue line on a 7.5-minute USGS quadrangle, unless otherwise designated by Tennessee Department of Environmental Conservation (TDEC); or
  - (c) are determined to be Streams by the City of Maryville, the United States Army Corps of Engineers (USACE) or Tennessee Department of Environmental Conservation (TDEC).
- (30) “Structure.” Anything constructed or erected such that the use of it requires a more or less permanent location on or in the ground. Structures include but are not limited to buildings, towers, smokestacks, overhead transmission lines, carports, and walls.
- (31) “Total Maximum Daily Load (TMDL).” A calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality standards, and an allocation of that amount to the source(s) of the pollutant.
- (32) “Variance.” A grant of relief from the requirements of this article, that permits construction or activities in a manner otherwise prohibited by this article, where specified enforcement would result in unnecessary hardship.
- (33) “Water Quality Buffer.” A use-restricted, vegetated area that borders waters of the State located within the City of Maryville, containing vegetation and grasses, and exists or is established to protect the physical and ecological integrity of the buffered waterbody, reduce the potential for flooding, provide tree canopy and stabilize the banks of the buffered waterbody, and filter runoff from developed areas..
- (34) “Water Quality Management Plan (WQMP).” An engineering plan for the location and/or design of SCMs and BMPs within a proposed development or redevelopment. A WQMP includes a map showing the extent of the land development activity and location and design calculations for SCMs, BMPs, water quality buffers, and water quality volume reduction areas, and, when applicable, includes as-built drawings.
- (35) “Water Quality Volume Reduction.” A decrease in the water quality volume for one or more areas of a proposed development that may be obtained for qualified site development features or approaches that can reduce or eliminate the discharge of pollutants in stormwater runoff. Water quality volume reductions can only be obtained when technical criteria, as defined in the manual, are met.
- (36) “Water Quality Volume Reduction Areas.” Areas within the proposed development or redevelopment for which a water quality volume reduction can be obtained.
- (37) “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 affect a junction with natural surface or underground waters.
- (38) “Waters with unavailable parameters.” Any segment of surface waters that have been identified by the Tennessee Department of Environment and Conservation (TDEC) as failing to support one or more classified uses.
- (39) “Watercourse.” Any natural or artificial watercourse, stream, river, creek, channel, ditch, canal, conduit, culvert, drain, waterway, gully, ravine, or wash in which water flows either continuously or

intermittently and that has a defined channel, bed and banks, and including any area adjacent thereto subject to inundation by reason of overflow or floodwater. (1985 Code, § 4-903, as replaced by Ord. #2005-27, July 2005)

- (40) "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 USACE, and/or the TDEC, and/or the Natural Resources Conservation Service (NRCS), or a qualified professional that has been trained in the identification and delineation of wetland areas.

#### **SECTION 4. Authority.**

- (1) The Director of Engineering and Public Works and the staff under the director's supervision shall administer the provisions of this ordinance.
- (2) The director has the authority to promulgate rules, regulations, policies, and guidance consistent with this chapter in order to carry out the meaning and intent through a City of Maryville Stormwater Management Manual (or manual). The policies, criteria, and requirements stated in the manual shall be enforceable, consistent with other provisions of this ordinance.
- (3) In the event that the director determines that a violation of any provision of this ordinance has occurred, or that work does not have a required permit, or that work does not comply with an approved plan or permit, the director may issue a notice of violation to the permittee or property owner and/or any other person or entity having responsibility for activities performed at a development, at which time the penalty provisions of this ordinance shall be implemented.

#### **SECTION 5. Requirement for a Water Quality Management Plan (WQMP).**

- (1) 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 from obtaining a grading permit under Title 19, Chapter 2, of the City of Maryville Municipal Code.
- (2) Any development or redevelopment that will result in a land-disturbing activity that is equal to or greater than one (1) acre, or less than one acre if part of a larger common plan of development, shall submit a WQMP as part of the EPSC plan or detailed plans. The WQMP shall be prepared in accordance with this chapter, the manual, and the Maryville Land Development and Public Works Standards.
- (3) No grading or building permit shall be issued until a WQMP has been approved by the director.
- (4) Developments and redevelopments of any size that received approval of detail plans prior to the effective date of this chapter or developments and redevelopments for which a WQMP was not required prior to the effective date of this chapter shall be exempted from the requirements of this chapter.

#### **SECTION 6. General requirements.**

- (1) The WQMP shall include all the required elements that are listed and/or described in the manual. The director may require submittal of additional information in the WQMP as necessary to allow an adequate review of the existing or proposed site conditions. Omission of any required items shall render the plans incomplete, and they will be returned to the applicant prior to review.
- (2) The WQMP shall be subject to any additional requirements set forth in the minimum subdivision regulations, zoning ordinance, or other City of Maryville regulations.
- (3) The WQMP shall be prepared and stamped by a professional engineer, landscape architect, or architect competent in civil and site design and licensed to practice in the State of Tennessee. Portions of the WQMP that require hydraulic and/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.
- (4) The approved WQMP shall be followed during grading and construction activities. Under no circumstance is the owner or operator of land development activities, or any person(s) acting on the

owner's behalf, allowed to deviate from the approved WQMP without prior written approval of a plan amendment by the director.

- (5) The approved WQMP 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.
- (6) The WQMP shall include a listing of any legally protected state or federally-listed threatened or endangered species and/or critical habitat located in the area of development or redevelopment (if any) and a description of the measures that will be used to protect them during and after grading and construction. United States Fish and Wildlife approval is required for all protection measures.
- (7) Other state and/or federal permits that may be necessary for construction in and around streams or wetlands should be approved through the appropriate lead regulatory agency prior to approval of the WQMP by the director.
- (8) SCMs, BMPs, water quality buffers, and water quality volume reduction areas shall be placed into a permanent easement that is recorded with the deed to the parcel and held by the City of Maryville, unless otherwise specified in the manual. A maintenance right-of-way or easement, having a minimum width of twenty (20) feet from a driveway, public road or private road shall also be provided.
- (9) The owner or operator of any land development activities may be subject to additional watershed or site specific requirements other than those stated in this chapter in order to satisfy local, state or federal requirements, or where the director has determined through stormwater master plans, engineering studies, a history of existing or documented water quality problems, or engineering judgment that additional restrictions are needed to limit adverse impacts of the proposed development or redevelopment on water quality or channel protection. Areas subject to additional requirements may also include land uses that are considered pollutant hotspots.
- (10) The director may waive or modify the requirements of this chapter if adequate water quality treatment and channel protection are suitably provided by a downstream or shared off-site SCM, or if engineering studies determine that installing the required SCM(s) would actually cause adverse impact to water quality or cause channel erosion or downstream flooding.

**SECTION 7. Water quality treatment requirements.** Treatment of stormwater runoff shall be provided in accordance with the following requirements at developments and redevelopments for which a WQMP is required:

- (1) Stormwater runoff generated from the development or redevelopment must be treated for water quality prior to discharging from the property, in accordance with the stormwater quality treatment standard and criteria provided in the manual.
- (2) The treatment of stormwater runoff shall be achieved through the use of one or more SCMs or BMPs that are designed and constructed in accordance with the design criteria, guidance and specifications provided in the manual.
- (3) Methods, designs, or technologies for SCMs or BMPs that are not specified in the manual may be submitted for approval by the director if it is proven that such methods, designs or technologies will meet or exceed the stormwater treatment standards set forth in the manual and this chapter. Certification of the pollutant removal efficiency of an SCM or BMP by an independent agency identified in the manual may be required.
- (4) SCMs and BMPs shall not be installed within the public right-of-way without prior approval of the director.

**SECTION 8. Channel protection requirements.** Downstream channel protection shall be provided as set forth in the manual at developments and redevelopments for which a WQMP is required.

**SECTION 9. Requirement for a Special Pollutant Abatement Plan (SPAP).**

- (1) A Special Pollution Abatement Plan may be required for the following land uses:
  - a. Vehicle, truck or equipment maintenance, fueling, washing or storage areas including but not limited to automotive dealerships, automotive repair shops, and car wash facilities;

- b. Any property containing more than 400 parking spaces or 120,000 square feet of impervious parking area;
  - c. Recycling and/or salvage yard facilities;
  - d. Restaurants, grocery stores, and other food service facilities;
  - e. Commercial facilities with outside animal housing areas including animal shelters, fish hatcheries, kennels, livestock stables, veterinary clinics, or zoos;
  - f. Other producers of pollutants identified by the director from information provided to or collected by him or his representatives, or reasonably deduced or estimated by him or his representatives from engineering or scientific study.
- (2) When required, the SPAP shall be submitted with the WQMP in accordance with the City of Maryville Policy Manual for Stormwater Quality Management.

**SECTION 10. General requirements for water quality buffers.**

- (1) A water quality buffer shall be established, protected, and maintained as set forth in the manual along all streams, wetlands, ponds, and lakes, or portions thereof located in the City of Maryville for the following properties:
- a. Developments and redevelopments for which a WQMP is required;
  - b. Any property or portion thereof that includes a platted water quality buffer.
- (2) Public or private property that is being developed or redeveloped for purposes of the City of Maryville greenway or linear park system is exempt from all water quality buffer requirements.
- (3) The director may require any owner of a water quality buffer to remove and/or install vegetation if the buffer does not conform and is unlikely to conform in the future through growth of existing vegetation, to the vegetation standards established in the manual.
- a. When required for new developments and redevelopments, vegetation removal and/or installation shall be described in a buffer enhancement plan provided to the director for approval with the WQMP.
  - b. One (1) year after completion of the vegetation removal and/or installation activity, the portion of the performance bond related to the buffer can be released provided the buffer has been enhanced as required, that soils within the buffer are stable and not eroding, and that buffer vegetation is healthy and growing as expected.

**SECTION 11. The protection of water quality buffers during construction.**

- (1) Unless otherwise provided in this chapter, all water quality buffer areas shall remain protected from land disturbance, vegetation removal, construction of impervious surfaces not included in an approved WQMP, and discharges of sediment and other construction-related wastes during land-disturbing activities.
- (2) Water quality buffers shall be clearly identified on all construction drawings and marked with the statement “Water Quality Buffer. Do not disturb.”
- (3) The entire perimeter of water quality buffer must be clearly marked at the site of development or redevelopment prior to the initiation of land-disturbing activities. A combination of stakes, flagging, silt fence and/or orange construction fence may be used to ensure adequate visibility of the water quality buffer perimeter. The perimeter markings must be inspected and approved by the director prior to approval of a grading permit.
- (4) Water quality buffers cannot be encroached upon or disturbed during land-disturbing activities, unless they are being established, restored, or enhanced in accordance with an approved buffer enhancement plan.
- (5) All areas of the water quality buffer, including streambanks, shall be left in a stabilized condition upon completion of construction activities. No actively eroding, bare or unstable areas shall remain.

**SECTION 12. Protection of water quality buffers after construction.**

- (1) Once construction has ceased on a project, water quality buffers must be protected in accordance with the recorded plat.

- (2) The owner shall have the responsibility for the protection and maintenance of the water quality buffers located on their property, including protection from the prohibitions established in section 13 of this chapter.
- (3) In order to provide for long-term protection and maintenance, the City of Maryville shall require that the water quality buffer be protected in perpetuity by placing the buffer in a permanent water quality or other easement that is recorded with the property's deed.
- (4) Permanent boundary markers, in the form of signage approved or provided by the director may be required prior to recording of the final plat, and the issuance of a Certificate of Occupancy. The director has the authority to require replacement of permanent boundary markers that are damaged or have been removed or destroyed.

**SECTION 13. Prohibitions in water quality buffers.**

- (1) The following activities, materials, substances, facilities, and land uses are prohibited in a platted water quality buffer:
  - a. the storage and use of pesticides, herbicides, and fertilizers, except as provided in this chapter;
  - b. all types of impervious surfaces including structures, buildings, storage facilities, parking lots, driveways, pools, patios, and other accessories that are not included in an approved WQMP;
  - c. parking, storage, or maintenance of vehicles and equipment;
  - d. wastes of any type, and waste areas or receptacles for disposal, storage, and transfer, and landfills;
  - e. septic tanks and septic drain fields;
  - f. mining activities, borrow or fill pits, or similar areas and activities, unless prior approval is granted by the director;
  - g. animal concentration areas, where animals gather in groups for migration, breeding, feeding, exercise, loafing, relief, or sheltering, including but not limited to kennels, pens, barns, holding areas, and animal lots;
  - h. SCMs and BMPs, except as allowed by the manual; and,
  - i. other activities, materials, substances, or uses that are known to contribute pollutants to waterways.

**SECTION 14. Plats prepared for recording.**

Unless otherwise provided herein, all site development plans and plats prepared for recording shall:

- (1) show the extent of all water quality buffers on the subject property by metes and bounds and be labeled as "water quality buffer";
- (2) provide a note with reference to the water quality buffer stating that there shall be no clearing, grading, construction or disturbance of vegetation except as permitted by the City of Maryville.

**SECTION 15. Conflicts with state requirements for buffer areas.**

The State of Tennessee may require water quality buffers during construction activities via provisions contained in the State of Tennessee General NPDES Permit for Discharge of Stormwater Associated with Construction Activities or other regulatory permits and processes. The State's requirements may, or may not, align with the City of Maryville's requirements and policies for water quality buffers. It is the responsibility of the site developer to be informed about and follow the requirements of any state-level buffer requirements. If State of Tennessee and City of Maryville buffer requirements differ, the more stringent requirement shall apply.

**SECTION 16. Performance bond.**

- (1) Prior to plat approval, a performance bond which guarantees satisfactory completion of construction work related to BMPs and/or the establishment of water quality buffers may be required for a period of two (2) years.



- (2) Performance bonds shall name the City of Maryville as beneficiary and shall be guaranteed in the form of a surety bond or letter of credit from an approved financial institution or insurance carrier. The surety bond 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.
- (3) The director may refuse brokers or financial institutions the right to provide a surety bond or letter of credit based on past performance, ratings of the financial institution, or other appropriate sources of reference information.

**SECTION 17. NPDES permits.** Persons or entities 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 TDEC to the director no later than sixty (60) calendar days after issuance of the permit.

**SECTION 18. As-Built Drawings.**

- (1) Prior to the release of a bond, as-built drawings shall be provided to and approved by the director. The as-built drawings shall certify that all SCMs, BMPs, water quality volume reduction areas, and water quality buffers comply with the design shown on the approved WQMP(s) and will operate as intended by their approved design.
- (2) As-built drawings shall include all required elements as set forth in the manual.
- (3) The as-built drawings shall be stamped by the appropriate design professional required to stamp the WQMP, as stated in section 6 of this chapter, and a registered land surveyor licensed to practice in the State of Tennessee. The engineer shall certify that the as-built conditions will meet all water quality requirements and the surveyor shall certify the accuracy and completeness of the survey.
- (4) The director shall rely on the as-built drawings and related onsite inspections to determine construction conformance with the approved WQMP. Where conformance has not been achieved, corrective actions may be mandated in accordance with section 21 of this chapter and as follows.
  - a. Revision and resubmittal of WQMP(s) or as-built drawings or portions thereof may be required to prove the nonconforming features meet the requirements of this chapter and the manual, as constructed; or
  - b. Reconstruction/modification of the nonconforming features on the property may be required to meet the approved WQMP or requirements of this chapter and the manual.
- (5) Once approved, the property owner shall record the locations and extents of SCMs, water quality buffers, and water quality reduction areas, and the easements associated with each of these features on a plat that is recorded with the Blount County Register of Deeds.

**SECTION 19. Right of entry.**

- (1) The director may enter upon any property that discharges or contributes, or is believed to discharge or contribute, to stormwater runoff or the stormwater system; stream; natural drainageway; or other stormwater system during reasonable hours to monitor, remove foreign objects or blockages, and to inspect SCMs, BMPs, water quality volume reduction areas, and water quality buffers for compliance with the provisions of this chapter.
- (2) Failure of a property owner, person(s) working on behalf of the property owner, or other legal occupant of the property, such as a lessee, to allow such entry by the director onto a property for the purposes set forth in sub-section (1) above shall be cause for the issuance of a stop work order, withholding of a certificate of occupancy, and/or civil penalties, and/or damage assessments in accordance with sections 28-30 of this chapter.

**SECTION 20. Inspection and maintenance.**

- (1) The owner(s) of SCMs, BMPs, water quality buffers, and/or water quality volume reduction areas or their designee shall at regular and appropriate frequencies inspect and properly operate and maintain such features in such manner as to sustain their full and intended function as documented on the approved as-built drawings, or in approved WQMPs or detailed plans if as-built drawings are not available. Inspection and maintenance of privately-owned SCMs, BMPs, water quality buffers, and

water quality volume reduction areas shall be performed at the sole cost and expense of the owner(s) of such features.

- (2) Inspections and maintenance shall be performed in accordance with the requirements provided in the manual. Prevailing maintenance practices shall be used where the manual does not address onsite conditions. The director may impose more stringent inspection and maintenance requirements as necessary for purposes of water quality protection and public safety.
- (3) Inspection and maintenance activities shall be documented by the property owner or his/her designee. Such documentation shall be maintained by the property owner for a minimum of five (5) years and shall be made available for review by the director upon request.
- (4) The removal of sediment and other debris from BMPs shall be performed in accordance with all city, state and federal laws. The director may stipulate additional guidelines if deemed necessary for public safety.
- (5) This chapter does not authorize access to neighboring private property by the owner of SCMs, BMPs, water quality buffers, or water quality volume reduction areas or his/her designee. Arrangements for access to neighboring private property by the property owner or his/her designee for purposes of compliance with this chapter must be handled solely by the owner or his/her designee, and the owner(s) of the neighboring property.

#### **SECTION 21. Corrective actions.**

The director may order the property owner or his/her designee to perform corrective actions to SCMs, BMPs, water quality buffers, or water quality volume reduction areas as necessary to properly maintain the full and intended function of the features for the purposes of water quality treatment, channel erosion protection, or water quality volume reduction, to ensure adherence to local performance standards, and ensure public safety. If the property owner or his/her designee fails to perform corrective actions, the director shall have the authority to order the corrective actions 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 cases where a performance bond does not exist, or is not sufficient to perform the corrective actions, the city may perform such actions and the property owner shall reimburse the city for double its direct and related expenses. If the property owner fails to reimburse the city in accordance with this section, the city is authorized to file a lien for said costs against the property and to enforce the lien by judicial foreclosure proceedings.

#### **SECTION 22. Feature integrity.**

Any alteration, improvement, or disturbance to SCMs, BMPs, water quality buffers, or water quality volume reduction areas that are shown in certified as-built drawings shall be prohibited without authorization from the director. This does not include alterations or repairs that must be made in order to maintain the full and intended function of the SCMs, BMPs, water quality buffers, or water quality volume reduction areas.

#### **SECTION 23. Conflict and Severability.**

- (1) This chapter 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 chapter and other regulation 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 a WQMP.
- (2) Each separate provision of this chapter is deemed independent of all other provisions herein so that if any provision or provisions of this chapter shall be declared invalid, all other provisions thereof shall remain enforceable.

#### **SECTION 24. Responsibility.**

This chapter does not imply a warranty or the assumption of responsibility on the part of the City of Maryville for the suitability, fitness or safety of any structure with respect to flooding, water quality or

structural integrity. This chapter is a regulatory instrument only and is not to be interpreted as an undertaking by the City of Maryville to design any structure or facility.

**SECTION 25. Enforcement during construction.**

- (1) The requirements of this chapter shall be enforced by the director who shall inspect all the work, grading or construction involved. Failure to properly install or maintain SCMs, BMPs, water quality buffers, or water quality volume reduction areas as specified on the approved WQMP will result in the following actions:
  - (a) First offense – Written requirement for corrective action that includes a deadline for compliance. If conditions warrant, a stop work order will be immediately issued. Corrective actions will be in accordance with section 21 of this chapter.
  - (b) Second offense – A notice of violation, a stop work order and suspension of all city inspections until the violation is corrected.
  - (c) Third offense – A court citation and civil penalty of a minimum of fifty dollars (\$50.00) per day per violation and a maximum of five thousand dollars (\$5,000.00) per day per violation and possible damage assessment.
  - (d) 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 or building permit granted may also be suspended.
- (2) 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 director has approved the corrective action. 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.

**SECTION 26. Enforcement after construction.**

The requirements of this chapter shall be enforced by the director who shall inspect the SCMs, BMPs, water quality buffers and water quality volume reduction areas at regular and appropriate intervals. Failure of the owner(s) to properly maintain said features to their full and intended function shall result in a written requirement for corrective action that includes a deadline for compliance. Corrective actions will be in accordance with section 21 of this chapter. A court citation and civil penalty of a minimum of fifty dollars (\$50.00) per day per violation and a maximum of five thousand dollars (\$5,000.00) per day per violation and possible damage assessment may also be levied on the property owner by the City of Maryville.

**SECTION 27. Variances.** The director 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 WQMP. The applicant must explain the reasons for requesting variances in writing and must submit documentation that the issuance of a variance will not result in a reduction in water quality. Specific variances which are allowed must be documented on the approved WQMP.
- (2) During construction, a permit holder may request variances to the approved WQMP. Until such time as the amended plan is approved by the city, the land-disturbing activity and associated construction shall not proceed, except in accordance with the WQMP as originally approved.

Absent universal circumstances, a response to the variance request should be given by the city within ten (10) working days. Without a written approval, no variance shall be considered valid.

**SECTION 28. Unlawful acts.**

Any person who:

- (1) Violates any provision of this article;
- (2) Violates the provisions of any permit issued pursuant to this article;
- (3) Fails or refuses to comply with any lawful notice to abate issued by the director which has not been timely appealed to city council, within the time specified by such notice; or

(4) Violates any lawful order of the city 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)

**SECTION 29. Penalties.**

- (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 may consider:
  - 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 in sub-section (3) above, the city may recover all damages proximately caused by the violator to the city which may include any reasonable expenses and attorneys' 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.
- (6) The remedies set forth in this section shall be cumulative, not exclusive, and are not to be a defense to any action, civil or criminal, that one or more of the remedies set forth herein has been sought or granted.

**SECTION 30. Notice of violation.** Whenever the director determines that a violation of any provision of this chapter has occurred, they may issue a notice of violation to the property owner or operator. 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.

**SECTION 31. Judicial proceedings and relief.**

- (1) The city attorney may initiate proceedings seeking legal and/or equitable relief in any court of competent jurisdiction against any person who has or is making substantial steps towards:
  - (a) Violating the provisions of this article;
  - (b) Violating the provisions of any permit issued pursuant to this article;
  - (c) Failing or refusing to comply with any lawful order issued by the engineer which has not been timely appealed to city council within the time allowed by this article;
  - (d) Violating any lawful order of city council within the time allowed by such order.
- (2) 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.

**SECTION 32. Appeals.** Appeal or review of a civil penalty or damage assessment under this section may be made to the city council 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 director'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 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.

**SECTION 33. 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.

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