

ORDINANCE NO. 6632

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF KINGSFORT, TENNESSEE, SECTIONS 38-85 THROUGH 38-350 PERTAINING TO THE PROVISION OF STORMWATER MANAGEMENT FOR THE CITY OF KINGSFORT; TO FIX A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; TO PROVIDE FOR SEVERABILITY OF THIS ORDINANCE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

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

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

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

WHEREAS, the Tennessee Department of Environment and Conservation has issued a new NPDES General Permit for Small Municipal Storm Sewer Systems to the City of Kingsport; and

WHEREAS, the permit necessitates some changes to the ordinances governing stormwater management.

Now therefore,

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

SECTION I. That Sections 38-85 through 38-350, of the Code of Ordinances, City of Kingsport, Tennessee, is amended as follows:

ARTICLE III. STORMWATER MANAGEMENT

DIVISION 1. GENERALLY

Sec. 38-85. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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

Aquatic resource alteration permit (ARAP) means a permit issued by the state department of environment and conservation (TDEC) for physically altering waters (streams and wetlands) of the state.

As-built certification means 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, showing contours, elevations, grades, locations, and stormwater management facilities.

Best management practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, structural controls and other management practices designed to prevent or reduce the discharge of pollutants to waters of the state. BMPs may include structural devices, such as stormwater management facilities, non-structural practices such as buffers or natural open spaces, treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Borrow Pit means an excavation from which erodible material (typically soil) is removed to be used as fill for another site, and there is no processing or separation of erodible material conducted at the site, and is considered a construction activity for the purposes of this article.

Buffer Zone or "*Water Quality Riparian Buffer*" is a strip of dense undisturbed native vegetation, either original or re-established, that borders streams and rivers, ponds and lakes, wetlands and seeps. Buffer zones are established for the purposes of slowing water runoff, enhancing water infiltration and minimizing the risk of any potential sediments, nutrients or other pollutants from leaving the upland area and reaching surface waters.

Building official means the city's representative charged with issuing land disturbing permits.

CFR means the Code of Federal Regulations.

Channel means a natural or manmade watercourse of perceptible extent, with definite bed and banks to confine and conduct continuously or periodically flowing water.

Clearing.

(1) The term "clearing" means, in the definition of discharges associated with construction activity, the removal of vegetation and/or disturbance of soil prior to grading or excavation in anticipation of construction activities. Clearing may also refer to wide area land disturbance in anticipation of nonconstruction activities; for instance, cleared forested land in order to convert forest land to pasture for wildlife management purposes.

(2) The term "clearing" does not refer to clearing of vegetation along roadways, highways or powerlines for sight distance or other maintenance and/or safety concerns, or cold planing, milling, and/or removal of concrete and/or bituminous asphalt roadway pavement surfaces.

Common plan of development or sale is broadly defined as any announcement or documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot. A common plan of development or sale identifies a situation in which multiple areas of disturbance are occurring on contiguous areas. This applies because the activities may take place at different times, on different schedules, by different operators.

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

Construction-related wastes means refuse or unused materials that result from construction activities. The term "construction-related wastes" can include, but are not limited to, unused building and landscaping materials, chemicals, litter, sanitary waste and concrete truck washout.

Contaminant means any physical, chemical, biological or radiological substance or matter in water.

Conveyance means the capacity of a channel or a pipe to carry stormwater.

Covenants for permanent maintenance of stormwater facilities and best management practices means a legal document executed by the property owner, a homeowners' association or person as owner of record, and recorded with the county (Sullivan or Hawkins) register of deeds which guarantees perpetual and proper maintenance of stormwater facilities and best management practices.

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

Design professional means an engineer, landscape architect, or architect competent in civil and site design and licensed to practice in the state.

Development means new and redevelopment projects that disturb equal to or greater than one acre, or less than one acre if part of a larger common plan of development or sale, and includes, but is not limited to, providing access to a site, clearing of vegetation, grading, earth moving, providing utilities, roads and other services such as parking facilities, stormwater management and erosion control systems, potable water and wastewater systems, altering land forms, or construction or demolition of a structure on the land.

Director means the public works director or designee who is responsible for the approval of development and redevelopment plans, and implementation of the provisions of this article.

Discharge means to dispose, deposit, spill, pour, inject, seep, dump, leak or place by any means,

or that which is disposed, deposited, spilled, poured, injected, seeped, dumped, leaked or placed by any means including any direct or indirect entry of any solid or liquid matter into the stormwater system by any means intentional or otherwise.

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

Drainage basin means the area contributing stormwater runoff to a single point.

Drainage system means the system of pipes, channels, culverts and ditches that convey stormwater from and through public and private land in the city.

Erosion means the removal of soil particles by the action of water, air, ice, gravity or other geological agents, whether naturally occurring or acting in conjunction with or promoted by manmade activities or effects.

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

Exceptional Tennessee Waters are surface waters of the State of Tennessee that satisfy the characteristics as listed in Rule 0400-40-03-.06 of the official compilation rules and regulations of the State of Tennessee. Characteristics include waters within state or national parks, wildlife refuges, wilderness or natural areas; State or Federal Scenic Rivers; Federally-designated critical habitat; waters within an area designated as Lands Unsuitable for Mining; waters with naturally reproducing trout; waters with exceptional biological diversity or; other waters with outstanding ecological or recreational value as determined by the department.

Filling means any deposit or stockpiling of dirt, rocks, stumps or other natural or manmade solid waste material.

Grading means any clearing, excavating, filling or other disturbance of terrain.

Hazardous substance means any substance designated under 40 CFR 116, as amended, pursuant to section 116 of the Federal Clean Water Act.

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

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

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

Illicit discharge means an intentional or unintentional discharge of water into the municipal separate storm sewer system that is not composed entirely stormwater, except as otherwise set out in section 38-314(b).

Inspector means a person that has successfully completed (has a valid certification from) the "Fundamentals of Erosion Prevention and Sediment Control Level I" course or equivalent course.

Land disturbing activity means any activity on a property that results in a change in the existing soil (both vegetative and nonvegetative) and/or the existing soil topography. The term "land disturbing activities" include, but are not limited to, development, redevelopment, demolition, construction, reconstruction, clearing, grading, filling, logging and/or tree chipping operations (excluding silviculture operations), haul roads associated with the development and excavation.

Land disturbing permits means a building, demolition or grading permit approved by the director and issued by the building official, authorizing commencement of land disturbing activities.

Municipal separate storm sewer system. (MS4) means a conveyance or system of conveyances (including roads with drainage systems, streets, catchbasins, curbs, gutters, ditches, constructed channels, and storm drains) designed or used for collecting or conveying stormwater.

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

NOI means notice of intent as identified in the State of Tennessee General NPDES Permit for Discharges of Stormwater Associated with Construction Activities and administered by the City of Kingsport QLP.

NOC means notice of coverage as identified in the State of Tennessee General NPDES Permit for Discharges of Stormwater Associated with Construction Activities and administered by the City of Kingsport QLP.

NOT means notice of termination as identified in the State of Tennessee General NPDES Permit for Discharges of Stormwater Associated with Construction Activities and administered by the City of Kingsport QLP.

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

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

Owner / operator / person (owner) means any party associated with a construction project that meets any of the following two criteria:

(1) The party has design control over construction plans and specifications, including the ability to authorize modifications to those plans and specifications (this will typically be the owner or developer);

(2) The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a stormwater pollution prevention plan (SWPPP) for the site or other permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other permit conditions). (This will typically include the general contractor and would also include erosion prevention and sediment control contractors); or

(3) Any individual, firm, corporation, partnership, association, organization or entity, including governmental entities or any combination thereof.

Peak discharge means the maximum, instantaneous rate of flow of water at a particular point resulting from a storm event. The term "peak discharge" also means the maximum discharge computed for a given design flood event.

Plan means the stormwater management plan.

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

Priority construction activity means land disturbing activities that are located in a watershed that discharges directly into waters recognized by the state as unavailable parameter waters impaired for siltation or habitat alteration, or exceptional Tennessee waters. A property is considered to have a direct discharge, if stormwater runoff from the property does not cross any other property before entering the water of the state.

Public water means stormwater runoff that originates in whole or in part from or is conveyed by publicly owned facilities such as roads.

Qualifying Local Program (QLP) is an MS4 Stormwater Management Program for discharges associated with construction activity that has been formally approved by TDEC as having met specific minimum program requirements, including those identified in 40 CFR § 122.44(s).

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

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

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

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

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

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

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

Stormwater control measures (SCMs) are permanent practices and measures designed to reduce the discharge of pollutants from development.

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

Stormwater management manual (manual) means the document, as amended from time to time,

adopted by the city to provide guidance in understanding and implementing the requirements for stormwater management.

Stormwater management plan (plan) means an engineering plan for the design of stormwater management facilities and best management practices for a proposed development or redevelopment.

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

Stormwater pollution prevention plan (SWPPP) means a written plan (including site maps, plats, drawings or other graphic representations) that identifies construction/contractor activities that could cause pollutants in the stormwater, and a description of best management practices to control these pollutants and keep sediments on site.

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

Stream means a surface water that is not a wet weather conveyance (TCA 69-3-10.(40)). Stream include linear watercourses, lakes, ponds, and wetlands.

Structure means anything constructed or erected such that the use of it requires a more or less permanent location on or in the ground.

Subdivision means the division, subdivision or resubdivision of any lot or parcel of land as defined in the "Subdivision Regulations of the City of Kingsport and its Planning Region," on file in the city clerk's office.

Surface water means waters upon the surface of the earth in bounds created naturally or artificially.

TDEC means the Tennessee Department of Environment and Conservation.

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

Total maximum daily load (TMDL) means a calculation of the maximum amount of a pollutant that a body of water can receive and still meet water quality standards, and an allocation of that amount to the source of the pollutant.

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

USACE means the United States Army Corps of Engineers.

Unavailable Parameters Waters means any stream segment that has been identified by TDEC as failing to support classified uses.

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

Vegetation means an intentionally cultivated collection of plant life, including trees, shrubs, bushes, and grass, but does not include plant life that was not intentionally planted.

Waste Site means an area where waste material from a construction site is stored or deposited of, and when the material is erodible, such as soil, the site must be treated as a construction site.

Water quality volume means the volume of stormwater runoff from a proposed development or redevelopment that must be controlled for water quality treatment.

Water quality volume credit area means an area within the proposed development or redevelopment for which a reduction of the water quality volume can be obtained.

Watercourse means a channel, natural depression, gully, stream, creek, pond, reservoir or lake in which stormwater runoff and floodwater flows either regularly or infrequently. The term "watercourse" includes major drainageways for carrying urban stormwater runoff.

Waters or waters of the state means any and all waters, public or private, on or beneath the surface of the ground, which are contained within, flow through or border upon the state or any portion thereof except those bodies of water confined to and retained within the limits of private property in single ownership which do not combine or effect a junction with natural surface or underground waters.

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

Wet weather conveyance means, notwithstanding any other law or rule to the contrary, man-made or natural watercourses, including natural watercourses that have been modified by channelization:

- (A) That flow only in direct response to precipitation runoff in their immediate locality;
- (B) Whose channels are at all times above the groundwater table;
- (C) That are not suitable for drinking water supplies; and
- (D) In which hydrological and biological analyses indicate that, under normal weather conditions, due to naturally occurring ephemeral or low flow there is not sufficient water to support fish, or multiple populations of obligate lotic aquatic organisms whose life cycle includes an aquatic phase of at least two (2) months.

Wetland means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetland determination shall be made by the United States Army Corps of Engineers, and/or the state department of environment and conservation, and/or the natural resources conservation service.

Sec. 38-86. Purpose.

It is the purpose of this article to:

- (1) Apply to all areas located within the jurisdiction of the city.
- (2) Apply to all development unless exempted pursuant to Sec 38-141.
- (3) Protect, maintain, and enhance the environment of the city and the public health, safety and the general welfare of the citizens of the city, by controlling discharges of pollutants to the public stormwater system, while maintaining and improving the quality of the receiving waters of the state.
- (4) Enable the city to comply with the National Pollution Discharge Elimination System (NPDES) permit and applicable regulations, 40 CFR 122.26 for stormwater discharges.
- (5) Allow the city to exercise the powers granted in T.C.A. § 68-221-1105, which provides that, among other powers municipalities have with respect to stormwater facilities, is the power by ordinance or resolution to:
 - a. Exercise general regulation over the planning, location, construction, and operation and maintenance of stormwater facilities in the municipality, whether or not owned and operated by the municipality;
 - b. Adopt any rules and regulations deemed necessary to accomplish the purposes of this statute, which may include the adoption of a system of fees for services and permits;
 - c. Establish standards to regulate the quantity and contaminants of stormwater as may be necessary to protect water quality;
 - d. Review and approve plans and plats for stormwater management in proposed subdivisions or commercial developments;
 - e. Issue permits for stormwater discharges or for the construction, alteration, extension, or repair of stormwater facilities;
 - f. Suspend or revoke permits when it is determined that the permittee has violated any applicable ordinance, resolution or condition of the permit; and
 - g. Expend funds to remediate or mitigate the detrimental effects of contaminated land or other sources of stormwater contamination, whether public or private.

Sec. 38-87. Responsibility.

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

Secs. 38-88 - 38-117. Reserved.

DIVISION 2. ADMINISTRATION

Sec. 38-118. Duties and authority of director.

- (a) The director has the authority to adopt additional policies, criteria, specifications, standards, rules, regulations, and guidance for the proper implementation of the requirements of this article and the stormwater management manual. The manual shall be enforceable, consistent with other provisions of this article, as if it were a part of this article.
- (b) The director shall have the authority to prepare, or have prepared, master plans for drainage basins and to establish regulations or direct capital improvements to carry out said master plans.
- (c) In the event that the director determines that a violation of any provision of this article has occurred, or that work does not have a required plan or permit, or that work does not comply with an approved plan or permit, the director may issue enforcement responses as defined in division 10 of this article, pertaining to enforcement, to the owner subject to the right of appeal set out in

section 38-343.

(d) The director and the staff under the director's supervision shall administer the provisions of this article.

Sec. 38-119. Stormwater appeals board--Established; composition.

(a) There is created and established, pursuant to T.C.A. § 68-221-1106 et seq., the stormwater appeals board, referred to in this article as "appeals board," which shall be composed of four members as follows:

- (1) A member of the board of mayor and alderman, who shall serve as chair, but shall have no vote unless there is a tie among voting members;
- (2) A member of the planning commission;
- (3) The head of the planning department or designee; and
- (4) The building official.

(b) All appeals board members shall serve without pay or other compensation.

(c) The appeals board shall promulgate such procedural rules as may be deemed necessary in the interest of justice, fairness and impartiality.

(d) All members of the appeals board, except the planning director and building official shall be appointed by the mayor, subject to confirmation by the board of mayor and aldermen.

Sec. 38-120. Same--Duties and authority.

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

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

Secs. 38-121 - 38-138. Reserved.

DIVISION 3. EROSION PREVENTION AND SEDIMENT CONTROL

Sec. 38-139. General requirements.

(a) Land disturbing activity or construction that in any way causes off-site sedimentation or sediment discharges to waters of the state or that causes the city to be in violation of its NPDES general permit for discharges from small municipal separate storm sewer systems, or its replacement, shall be a violation of this article.

(b) No owner of any property within the city shall commence land disturbing activity greater than or equal to one acre unless a land disturbing permit is issued by the building official; provided this subsection (b) shall not apply if the land disturbance is less than one acre if part of a larger common plan of development or sale that would disturb one acre or more, or is a small lot as set out in section 38-142. The issuance of a land disturbing permit shall be conditioned upon the receipt and approval by the director of a stormwater pollution prevention plan (SWPPP) and an NOC provided by the city.

(c) The city shall serve as the plan approval agency only, and in no instance are its regulations to be construed as designing erosion prevention and sediment control measures or other stormwater management facilities.

(d) No building permit, where applicable, shall be issued until the owner has obtained and is in compliance with the land disturbing permit.

(e) All land disturbing activities shall employ adequate erosion prevention and sediment control BMPs.

(f) No land disturbing activities shall commence until a certified erosion prevention and sediment control inspector has been appointed by the owner and acknowledged by the director. Inspections must be performed in accordance with Sub-sections 3.1.2 and 3.5.8 of the CGP.

(g) The owner must notify the director ten working days in advance of the commencement of construction.

(h) A pre-construction meeting with construction site operators shall be held prior to commencement of land disturbing activity.

(i) At completion of land disturbing activities and approval of stormwater management facilities by

the director, a copy of the signed notice of termination (NOT) shall be provided to the city.

Sec. 38-140. Design criteria.

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

Sec. 38-141. Stormwater pollution prevention plan (SWPPP).

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

(1) The SWPPP shall be sealed by a qualified design professional licensed in the state provided the narrative portion of the SWPPP may be prepared by an individual that has a working knowledge of erosion prevention and sediment controls, such as a Certified Professional or a person that has successfully completed the Level II Design Principles for Erosion Prevention and Sediment Control for Construction Sites course;

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

(3) The SWPPP shall be subject to any additional requirements set forth in the city's subdivision regulations, chapter 114, zoning, or other city ordinances or regulations; and

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

(b) Stormwater pollution prevention plans shall be prepared in accordance with the Tennessee Erosion and Sediment Control Handbook and Sections 3, 4 and 5.4 of the Tennessee General NPDES Permit for Discharges Associated with Construction Activities, as amended, or any other information deemed necessary and appropriate by the owner or requested by the director.

Sec. 38-142. Small lot erosion prevention and sediment control plan.

(a) All land disturbing activities that affect less than one acre and are not part of a larger common plan of development shall adhere to the requirements of this subsection.

(b) Submittal of a small lot erosion prevention and sediment control plan is required and must be reviewed and approved by the director prior to issuance of a land disturbing permit.

(c) Small lot erosion prevention and sediment control plans shall include the following:

(1) Address/location of land disturbing activity.

(2) Owner's name and contact information;

(3) Building, grading or demolition permit number (if available);

(4) Location of streams, wetlands, ponds, sinkholes, easements, existing drainage structures with respect to the site;

(5) A description of erosion prevention and sediment control measures;

(6) Approximate disturbed area limits;

(7) Location of silt fences;

(8) Location of stabilized construction exits; and

(9) Roof drainage accommodations.

(d) The director has the discretion to require a fully engineered erosion prevention and sediment control plan in lieu of a small lot plan.

Sec. 38-143. Land disturbing requirements.

(a) *Land disturbing activity subject to approval.* Except as otherwise provided in this section, an owner shall not initiate any land disturbing activity until the city has issued written approval by the director, the SWPPP is approved by the director and an NOC supplied (where applicable), the appropriate fees are paid and any required performance bond or financial assurance is provided, as may be required in section 38-347. Such permit shall expire two years from the date of issuance. Once a permit has expired, it is a violation to continue work on the property for which the permit has been granted without obtaining a renewal of such permit, which shall include the submission and approval of a plan as set out in this article and other requirements to obtain a permit as set out in or authorized by this article.

(b) *Certain activities excepted.* No approval shall be required for the following:

(1) *Building grading and excavation.* Finished grading and excavation below the finished grade for basements and footings of a single-family or duplex residential structure, for retaining walls, swimming pools, cemeteries for human or animal burial or accessory structures related to single-family residences or duplex structures authorized by a valid building permit, provided the disturbed material or fill is handled in such a manner as to conform to any approved erosion prevention and sediment control plan for the area or, where no such plan is in effect, such work must be done in a manner which presents no significant erosion hazard.

(2) *General excavation.* An excavation or fill, provided it:

- a. Is less than four feet in vertical depth at its deepest point, as measured from the original grade;
- b. Does not result in a total quantity of more than 100 cubic yards of material being removed from, or deposited on or disturbed on any lot, parcel or subdivision thereof;
- c. Does not constitute a potential erosion hazard or act as a source of sedimentation to any adjacent land or watercourse;
- d. Has no final slopes greater than or equal to one foot vertical in two feet horizontal;
- e. Has proper vegetative cover reestablished as soon as possible on all disturbed areas; and
- f. Has no fill placed on a surface having a slope steeper than three feet horizontal to one foot vertical.

(3) *Agricultural.* Accepted agricultural land management practices such as plowing, cultivation; nursery operations such as the removal and transplanting of cultivated sod, shrubs and trees; tree cuttings at or above existing ground level; and logging operations leaving the stump, ground cover and root mat intact.

(4) *Landscaping.* Grading, as a maintenance measure, or for landscaping purposes on existing developed lots or parcels, provided the aggregate area affected or stripped at any one time does not exceed 10,000 square feet and is not within a designated floodplain; the grade change does not exceed 18 inches at any point and does not alter the drainage pattern; vegetative cover is reestablished as soon as possible on all disturbed areas, use of kudzu is prohibited; and the grading does not involve a quantity of material in excess of 100 cubic yards.

(5) *Utilities.* The installation of water and sewer lines, telephone lines, electricity lines, gas lines or other public service facilities.

Sec. 38-144. Compliance.

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

Sec. 38-145. Amendments to the approved SWPPP.

- (a) The owner must modify and update the SWPPP in accordance with section 3.4.1 of the state construction general permit No. TNR100000.
- (b) The SWPPP, as amended, shall be submitted to the director for approval.

Secs. 38-146 - 38-167. Reserved.

DIVISION 4. PERMANENT STORMWATER MANAGEMENT

Sec. 38-168. General requirements.

- (a) Owners of land development activities not exempted under section 38-141 shall be required to obtain a land disturbing permit. As a condition of this permit, a stormwater management plan (plan) shall be submitted in accordance with Section 2.3.1 of the manual.
- (b) The plan shall include the specific required elements that are listed and/or described in the manual. The director may require submittal of additional information in the plan as necessary to allow an adequate review of the existing or proposed site conditions.
- (c) The plan shall be subject to any additional requirements set forth in the minimum subdivision regulations, design standards, chapter 114, pertaining to zoning, or other city regulations.
- (d) Plans shall be prepared and stamped by a design professional. Portions of the plan that require hydraulic or hydrologic calculations and design shall be prepared and stamped by a professional engineer competent in civil and site design and licensed to practice in the state.
- (e) The approved plan shall be adhered to during grading and construction activities. Under no circumstances is the owner or operator of land disturbing activities allowed to deviate from the approved plan without prior approval of a plan amendment by the director.
- (f) The approved plan shall be amended if the proposed site conditions change after plan approval is obtained, or if it is determined by the director during the course of grading or construction that the approved plan is inadequate.
- (g) Requirements for the permanent operation and maintenance of stormwater management facilities, BMPs, buffer zones and water quality volume credit areas shall be submitted with the plan for approval by the director. These will be presented through the declaration of a protective covenant, for permanent maintenance of stormwater facilities and BMP's, which shall be enforceable by the city. The covenant shall be recorded with the deed and shall run with the land and continue in perpetuity.

- (h) Stormwater management facilities, BMPs, buffer zones and areas that receive water quality volume reductions shall be placed into a permanent management stormwater easement of sufficient area that is recorded with the deed to the parcel and held by the city.
- (j) A right-of-way or permanent easement of sufficient width shall be provided for vehicular and equipment ingress and egress for access to all stormwater management facilities, BMPs and areas that receive water quality volume reductions from a driveway, public or private road.
- (k) Owners of land development activities not exempted from submitting a stormwater management plan may be subject to additional watershed or site-specific requirements than those stated in section 38-140 in order to satisfy local or state NPDES, TMDL or other regulatory water quality requirements for developments or land uses that are considered pollutant hotspots, discharging to critical areas with sensitive resources or in areas where the director has determined that additional restrictions are needed to limit adverse impacts from the proposed development on water quality or channel protection.
- (l) The director may waive or modify any of the requirements of this division if adequate water quality treatment and/or channel protection is suitably provided by a downstream or shared off-site stormwater facility, or if engineering studies determine that installing the required stormwater management facilities would adversely impact water quality, increase channel erosion or downstream flooding.
- (m) This article is not intended to repeal, abrogate or impair any existing easements, covenants, deed restrictions or existing ordinances and regulations. However, where a provision of this article and other regulations conflict or overlap, the provision that is more restrictive or imposes higher standards or requirements on the owner shall control. The owner is required to notify the director of any such regulatory conflicts upon submittal of the plan.

Sec. 38-169. Design criteria.

- (a) All developments that must submit a stormwater management plan shall provide water quality treatment in accordance with the following requirements:
- (1) Stormwater runoff from the development site must be treated for water quality prior to discharge from the development site in accordance with the stormwater treatment standards and criteria provided in the manual.
 - (2) Water quality treatment shall be achieved through the use of one or more structural and/or nonstructural SCMs that are designed and constructed in accordance with the criteria, guidance, and specifications provided in the manual.
 - (3) Stormwater quality control methods, designs or technologies not provided in the manual may be submitted for approval if it is proven that such alternatives will meet or exceed the water quality control requirements set forth in the manual and this chapter.
 - (4) SCMs shall not be installed within public rights-of-way or on public property without prior approval of the director.
- (b) All developments that must submit a plan shall provide downstream channel protection using the design criteria and guidance provided in section 3.4 of the manual.
- (c) All developments that must submit a plan shall provide a downstream impact analysis addressing overbank flood control in accordance with section 3.5 of the manual.
- (d) All developments that must submit a plan shall establish, protect and maintain a buffer zone, in accordance with the policies criteria and guidance set forth in the manual. Exemptions from this requirement are as follows:
- (1) The perimeter of waterbodies that have no known connection to streams, other ponds, lakes or wetlands.
 - (2) Stormwater management facilities or BMPs that are designed, constructed and maintained for the purposes of stormwater quality and/or quantity control, unless expressly required by the design standards and criteria for the facility are provided in the manual.
- (e) In addition to the requirements set forth in subsections (a) through (d) of this section, all developments that must submit a stormwater management plan shall include the following:
- (1) Account for both on-site and off-site stormwater;
 - (2) Maintain natural drainage divides and hydrologic characteristics;
 - (3) Provide soils information; and
 - (4) Control stormwater runoff and provide peak discharge/volume control in accordance with this article using:
 - a. Predeveloped conditions unless otherwise specified by the director;
 - b. NOAA Atlas 14 rainfall data;
 - c. Post-development versus pre-development hydrologic/hydraulic modeling that shows attenuation of developed site runoff. Developed discharge from a site shall be less than or equal to pre-development discharge for the 2 year through 100 year design storms;

- d. Longitudinal storm drains designed for a ten-year frequency storm, provided that no residential or commercial structures are flooded by a 100 year frequency storm;
- e. Roadway cross drains designed for a ten-year frequency storm for a local street and 100 year frequency storm for a collector street, provided no residential or commercial structures are flooded by the 100 year frequency storm. All pipes lying under the roadway shall be reinforced concrete unless otherwise approved by the director;
- f. Drainage easements delineating the 100 year frequency storm flood fringe to prevent flooding and future disturbance; and
- g. Pipe materials approved by the director.
- (f) Pursuant to the City of Kingsport Zoning Ordinance, a floodplain development permit is required for all development or redevelopment within federally designated floodplains as shown on the applicable FEMA Flood Insurance Rate Map(s) of latest issue.
- (g) The rational method shall be used to determine peak flow rates only. National Resource Conservation Service (NRCS) methods and those provided in the manual for water quality and channel protection shall be used in determining storage requirements.
- (h) All supporting hydrologic and hydraulic assumptions shall be submitted, as well as all maps and references used in calculations.
- (i) The design must not adversely affect adjacent or neighboring properties.
- (j) The city may allow stormwater control measures to be implemented at another location within the same USGS 12-digit hydrologic unit code (HUC) watershed as the original project. Off-site mitigation must treat a minimum of 1.5 times the amount of water not treated on site. The off-site mitigation location must be approved by the city.
- (k) If the project cannot meet pollutant removal standards, and cannot provide for off-site mitigation, the city may allow the owner to make payment in a public stormwater project fund at a level sufficient to design, install, and maintain the stormwater mitigation measures.

Sec. 38-170. Exemptions.

- (a) Developments that conform to the criteria in subsection (c) of this section are exempt from the requirements of this chapter, unless the director has determined that stormwater quality management is needed to satisfy local or state NPDES, TMDL or other regulatory water quality requirements, or the proposed development will be a pollutant hotspot, or to limit adverse stormwater quality or channel protection impacts of the proposed development.
- (b) The exemptions listed in subsection (c) of this section shall not be construed as exempting these developments from compliance with stormwater requirements stated in the minimum subdivision regulations, chapter 114, pertaining to zoning, or other city regulations.
- (c) The following developments are exempt from the requirements for a stormwater management plan:
 - (1) Residential or nonresidential developments that disturb less than one acre of land and are not part of a larger common plan of development or sale that would disturb one acre or more;
 - (2) Minor land disturbing activities such as residential gardens and residential or nonresidential repairs, landscaping or maintenance work;
 - (3) Individual utility service connections, unless such activity is carried out in conjunction with the clearing, grading, excavating, transporting, or filling of a lot for which a plan would otherwise be required;
 - (4) Installation, maintenance or repair of individual septic tank lines or drainage fields, unless such activity is carried out in conjunction with the clearing, grading, excavating, transporting or filling of a lot for which a plan would otherwise be required;
 - (5) Installation of posts or poles;
 - (6) Farming activities, existing nursery and agricultural operations, but not including construction conducted as a permitted principal or accessory use by chapter 114, zoning;
 - (7) Emergency work to protect life, limb or property, and emergency repairs, provided that the land area disturbed shall be shaped and stabilized in accordance with city requirements as soon as practicable;
 - (8) Additions or modifications to existing, individual, single-family structures;
 - (9) Silvicultural activities; and
 - (10) State and federal projects subject to the submission requirements of TDEC.

Sec. 38-171. Special pollution abatement requirements.

- (a) A special pollution abatement plan shall be required for the following land uses, which are considered pollutant hotspots:
 - (1) Vehicle, truck or equipment maintenance, fueling, washing or storage areas, including but not limited to:

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

Sec. 38-172. Sinkhole requirements.

The following sinkhole and drainage well plan information or approval from the appropriate regulating agency must be provided prior to the alteration of the natural drainage for watershed discharging to such features as sinkholes and drainage wells:

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

Sec. 38-173. Drainage requirements.

- (a) Private drainage systems, where drainage originates in its entirety on private property and terminates on same said property, shall be the sole responsibility of the owner.
- (b) Private drainage originating on private property and draining to an adjacent parcel of private property shall be resolved by the owners involved.
- (c) In cases where flooding stemming from the drainage system or streams are of significant

magnitude, the health and welfare of private and/or public property may prompt the city to participate in mitigating the frequency and effects. All such projects shall meet with the approval of the director prior to implementation.

(e) The requirements of subsections (a) through (d) of this section may be waived and emergency measures taken to protect the public safety during those circumstances in which, due to unforeseen events, development and/or acts of nature, the public welfare requires it. The director shall have the power to exercise all due discretion, judgment and executive directives to address any such situation and/or emergency.

(f) No watercourse shall be obstructed.

(g) Stormwater drainage shall not:

(1) Adversely impact adjacent properties or public rights-of-way;

(2) Circumvent stormwater management facilities for which that flow contribution was designed; or

(3) Be directed through a curb without a permit approved by the director.

(h) Additional curbing to control stormwater shall be installed only with approval of the director.

Secs. 38-174 - 38-198. Reserved.

DIVISION 4 5. PERMITS

Sec. 38-199. General requirements.

Owners who hold NPDES general, individual and/or multisector permits shall provide either a copy of such permit or the permit number assigned to them by the state department of environment and conservation to the director no later than 60 calendar days after issuance of the permit.

Secs. 38-200--38-224. Reserved.

DIVISION 6. AS-BUILT CERTIFICATIONS

Sec. 38-225. General requirements.

(a) Prior to the release of a performance bond required in section 38-347, certificate of occupancy or approval of final plat, an as-built certification shall be provided to the director, certifying that all drainage and treatment structures or facilities, BMPs, volumes, sizes, slopes, locations, elevations and hydraulic structures have been field verified, represent the as-built field conditions, and comply with the approved stormwater management plans, and that all required protective covenants have been properly filed with the appropriate register of deeds. Features such as roadway lines, grades, cross slopes, locations, contours, elevations, boundaries of buffer zones and areas that receive stormwater quality volume credits shall be provided to verify approved plans. Other contents of the as-built certification must be provided in accordance with guidance provided in the manual.

(b) As-built certifications shall include sufficient design information to show that stormwater management facilities required by this article will operate as approved. This shall include all necessary computations used to determine percent pollutant removal, the flow rates and treatment volumes required to size stormwater management facilities and BMPs.

(c) The as-built certification must be stamped by the appropriate design professional required to stamp the original plan, as stated in section 38-168(d).

(d) The owner shall also supply stormwater management facility certification forms, provided by the city, attesting that the facilities are constructed according to the approved design.

Secs. 38-226 - 38-252. Reserved.

DIVISION 7. INSPECTIONS, OPERATION AND MAINTENANCE

Sec. 38-253. Right-of-entry.

(a) During and after construction, the director may enter upon any property which has a stormwater management facility, BMP, buffer zone, water quality volume credit area, discharges or contributes, or is believed to discharge or contribute, to stormwater runoff or the stormwater system, streams, natural drainage ways or via any other private or public stormwater management system during all reasonable hours to inspect for compliance with the provisions of this article, or to request or perform corrective actions.

(b) Failure of an owner to allow such entry onto a property for the purposes set forth in subsection (a) of this section shall be cause for the issuance of a cease and desist order, withholding of a certificate of occupancy, and/or civil penalties and/or damage assessments in accordance with division 10 of this article.

Sec. 38-254. Requirements.

(a) The owners of stormwater management facilities, BMPs, buffer zones and water quality volume credit areas shall at all times inspect, properly operate and maintain all facilities and systems of stormwater treatment and control (and related appurtenances), and all buffer zones and water quality volume credit areas in such a manner as to maintain the full function of the facilities or BMP's which are installed or used by the owners to achieve compliance with this article.

(b) Inspection and maintenance of privately owned stormwater management facilities, BMP's, buffer zones and water quality volume credit areas shall be performed at the sole cost and expense of the owners of such facilities/areas.

(c) Inspection and maintenance shall be performed in accordance with specific requirements and guidance provided in the manual. Inspection and maintenance activities shall be documented by the owner or their designee, and such documentation shall be maintained by the owner for a minimum of three years, and shall be made available for review by the director upon request.

(d) The director has the authority to impose more stringent inspection requirements as necessary for purposes of water quality protection and public safety.

(f) The removal of sediment and/or other debris from stormwater management facilities and BMP's shall be performed in accordance with all city, state, and federal laws. Guidelines for sediment removal and disposal are referenced in the manual. The director may stipulate additional guidelines if deemed necessary for public safety.

(g) The director may order corrective actions as are necessary to properly maintain and operate erosion prevention and sediment control measures, BMP's stormwater management facilities, buffer zones and/or water quality volume credit areas within the city for the purposes of stormwater pollution prevention, water quality treatment, channel erosion protection, adherence to local performance standards and/or public safety. If the owner fails to perform corrective actions, the director shall have the authority to order the city or others to take corrective actions. In such cases where a performance bond exists, the city shall utilize the bond to perform the corrective actions. In such cases where a performance bond does not exist, the owner shall reimburse the city for all of its direct and related expenses. If the owner fails to reimburse the city, the city is authorized to file a lien for said costs against the property and to enforce the lien by judicial foreclosure proceedings.

(h) This article does not authorize access to adjoining private property by the owner or site operator. Arrangements concerning removal of sediment or pollutants on adjoining property must be settled by the owner or operator with the adjoining land owner.

Secs. 38-255 - 38-280. Reserved.

DIVISION 8. PERMIT CONTROLS AND SYSTEM INTEGRITY

Sec. 38-281. General requirements.

(a) Any alteration, improvement, or disturbance to stormwater management facilities, buffer zones or water quality volume credit areas shown in as-built drawings shall be prohibited without written authorization from the director. This does not include alterations that must be made in order to maintain the intended performance of the stormwater management facilities or BMPs.

(b) Other state and/or federal permits that may be necessary for construction in and around streams and/or wetlands shall be approved through the appropriate lead regulatory agency prior to submittal of a stormwater management plan to the city.

Secs. 38-282 - 38-304. Reserved.

DIVISION 9. NONSTORMWATER DISCHARGES

Sec. 38-305. General requirements.

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

(b) For purposes of this article, the following are not illicit discharges unless identified as significant contributors of pollutants to the municipal separate storm sewer system:

- (1) Landscape irrigation or lawn watering with potable water;
- (2) Diverted stream flows permitted by the state;
- (3) Rising groundwater;
- (4) Groundwater infiltration (as defined at 40 CFR 35.2005(20)) to separate storm sewers;
- (5) Uncontaminated pumped groundwater;

- (6) Foundation or footing drains;
- (7) Water discharged from crawl space pumps;
- (8) Air conditioning condensate;
- (9) Springs;
- (10) Individual, residential washing of vehicles;
- (11) Flows from natural riparian habitat or wetlands;
- (12) Swimming pools (if dechlorinated, less than one part per million chlorine);
- (13) Street cleaning and deicing;
- (14) Discharges from firefighting activities;
- (15) Pursuant to a valid and effective NPDES permit issued by the state;
- (16) Discharges necessary to protect public health and safety, as specified in writing by the city;
- (17) Dye testing permitted by the city;
- (18) Water line flushing or other potable water sources;
- (19) Natural riparian habitat or wetland flows; and
- (20) Discharges authorized by the Construction General Permit (CGP).

Sec. 38-306. Prohibition of illicit connections.

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

Sec. 38-307. Elimination of discharges or connections.

- (a) Any owner of a property, which is, or may be, the source of an illicit discharge, may be required to implement, at such owner's expense, the BMPs necessary to prevent the further discharge of pollutants to the municipal separate storm sewer system.
- (b) Any owner of a property or premises where an illicit connection is located shall be required, at such owner's expense, to eliminate the connection to the municipal separate storm sewer system.
- (c) Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed in compliance with the provisions of this article.
- (d) No person shall dump or otherwise deposit outside an authorized landfill, convenience center or other authorized garbage or trash collection point, any trash or garbage of any kind or description on any private or public property, occupied or unoccupied, inside the city.

Sec. 38-308. Notification of spills.

- (a) Notwithstanding other requirement of law, when any owner or tenant, or agent thereof or any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of a pollutant which results in, or may result in, a discharge into stormwater and/or the municipal separate stormwater system, such person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.
- (b) When any owner or tenant, or agent thereof or any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of hazardous substance such person shall immediately notify emergency response agencies of the occurrence by emergency dispatch services, and shall notify the director no later than the next business day of the release of hazardous materials.
- (c) When any owner or tenant, or agent thereof or any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of nonhazardous substance such person shall notify the director no later than the next business day.
- (d) Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the director within three business days of the telephone notice.
- (e) If the discharge of a pollutant emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.
- (f) Documented illicit discharges shall be responded to no more than seven days from detection, and eliminated as soon as possible.

Sec. 38-309. Actions in violation of the city's NPDES permit.

Notwithstanding any other provision in this article, no person or entity shall allow any discharge into

the municipal separate storm sewer system that would be a violation of the city's NPDES general permit for discharges from small municipal separate storm sewer system or would cause the city to be in violation of its permit.

Secs. 38-310 - 38-330. Reserved.

DIVISION 10. ENFORCEMENT

Sec. 38-331. Remedies nonexclusive.

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

Sec. 38-332. Adoption of enforcement response plan.

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

Sec. 38-333. Show cause hearing.

An owner that has been issued an assessment of damages or civil penalty or order under this article may within ten days from such action submit a written request to appear before the director and show cause why the proposed enforcement action should not be taken. Upon receipt by the director of a timely request for a show cause hearing the director shall within a reasonable time notify the owner of the time and place for the hearing. In the written request for a show cause hearing the owner is responsible for providing the director an address, email address, fax number, or such for the receipt of the notice of the show cause hearing. A show cause hearing shall not be a bar against or prerequisite for the director taking any other action against the owner, but, except as otherwise provided by section 38-346, an offer of a show cause hearing by the director shall be made before taking further action on the administrative order or assessment of damages or civil penalties.

Sec. 38-334. Appeals process.

(a) Except in emergency suspensions pursuant to section 38-346, any owner against whom an assessment for damages or civil penalty or order has been made for a violation of this article, or a permit denied, revoked, suspended by the director, shall have 30 days after having been notified of the assessment or order, or after a permit has been denied, revoked or suspended, to appeal the action to the stormwater appeals board by filing with the city recorder a written petition for appeal setting forth the grounds and reasons for the appeal, and the owner shall serve a copy of the petition for appeal on the director. The failure to serve the city recorder within 30 days with the written petition for appeal is jurisdictional, and if an appeal is not taken within the 30 days the matter shall be final.

(b) Upon receipt of a written petition for appeal the city recorder shall give the owner 30 days written notice of the time and place of the hearing. The director and the owner may agree to a continuance of the hearing; a continuance will be granted when there are not at least three members of the appeals board present for the hearing; the chairman of the appeals board may grant a continuance of the hearing for good cause shown; or as may otherwise be governed by its rules of procedure.

(c) An appeal to the appeals board shall be a de novo review.

(d) The appeals board shall have the authority to establish written rules of procedure for the conduct of its hearings, provided hearings before the appeals board shall be conducted in accordance with the following:

(1) The presence of at least three members of the appeals board shall be necessary to conduct a hearing.

(2) A verbatim record of the proceedings shall be taken. The transcript so recorded shall be made available to any party upon prepayment of a charge adequate to cover the costs of preparation.

(3) In connection with the hearing, subpoenas shall be issued in response to any reasonable request by any party to the hearing requiring the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in the hearing. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under this section, the chancery court shall have jurisdiction, upon application of the appeals board or the director, to issue an order requiring such person to appear and testify or produce evidence as the case may require, and any failure to

obey such order of the court may be punished as contempt under law.

(4) Testimony before the appeals board shall be given under oath or affirmation, but the rules of evidence shall not apply.

(5) On the basis of the evidence produced at the hearing, the appeals board shall by majority vote of the members present make findings and enter such decisions and orders as in its opinion will best further the purposes of this article, which shall be done orally at the hearing or, if recessed, when the hearing is reconvened.

Such decisions and orders of the appeals board shall be reduced to writing, signed by one of the members present at the hearing and filed with the city recorder, as an official act of the appeals board, which writing shall be maintained in the permanent records of the city recorder and shall serve as entry of the decision. A copy shall be delivered to the director and the petitioner or mailed to them at their last known addresses.

(6) Any person to whom an emergency order is directed pursuant to section 38-346 shall comply therewith immediately, but on petition to the appeals board shall be afforded a hearing not later than three working days from the receipt of such petition.

Sec. 38-335. Civil penalties.

(a) Pursuant to T.C.A. § 68-221-1106(a), any owner in violation of the provisions of this article shall be subject to a civil penalty of not less than \$50.00 or more than \$5,000.00 per day for each day of violations. Each day of violation may constitute a separate violation. This penalty may be determined by application of the enforcement response plan as defined in section 38-341.

(b) The director may recover reasonable attorney's fees, court costs and other expenses associated with enforcement of this article and the cost of any actual damages incurred by the city.

(c) In determining the amount of the penalty to assess, the director shall consider the factors listed in section 38-345, the enforcement response plan and may consider all relevant circumstances, including but not limited to the extent of harm caused by the violation, the magnitude and duration of the violation, the compliance history of the owner and any other factor provided by law.

Sec. 38-336. Method of assessment for noncompliance.

Civil penalties shall be assessed in the following manner:

(1) The director may issue an assessment against any owner responsible for the violation;

(2) Any person against whom an assessment has been issued may secure a review of said assessment by filing with the director a written petition setting forth the grounds and reasons for their objections and asking for a hearing on the matter before the appeals board. If a petition for review of the assessment is not filed within 30 days after the date the assessment is served, the owner shall be deemed to have consented to the assessment and it shall become final;

(3) If any assessment becomes final because of an owner's failure to appeal the city's assessment, the director may apply to the appropriate court for a judgment and seek execution of said judgment, and the court in such proceedings shall treat a failure to appeal such assessment as a confession of judgment in the amount of the assessment. Upon final order, if payment is not made, the director may issue a cease and desist order;

(4) In assessing a civil penalty, the following factors may be considered:

a. The harm done to the public health or the environment;

b. Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity;

c. The economic benefit gained by the violator;

d. The amount of effort put forth by the violator to remedy this violation;

e. Any unusual or extraordinary enforcement costs incurred by the city;

f. The amount of penalty established by ordinance or resolution for specific categories of violations; and

g. Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment;

(5) Damages may also include any expenses incurred in investigating and enforcing the requirements of this article; removing, correcting and terminating any discharge or connection; and also compensation for any actual damages to the property or personnel of the city caused by the violation, and any reasonable expenses incurred in investigating and enforcing violations of this article.

(6) Where the director has issued progressive enforcement to achieve compliance with this article, and in the judgment of the director such has not been successful, the director may refer the violation to TDEC.

Sec. 38-337. Emergency suspensions.

(a) Under this article, if the director finds that an emergency exists imperatively requiring immediate

action to protect the public health, safety or welfare; the health of animals, fish or aquatic life, or a public water supply; the director may, without prior notice, issue an order reciting the existence of such an emergency and requiring that such action be taken as the director deems necessary to meet the emergency, including suspension of a permit issued under this article.

(b) Any owner notified of a suspension shall immediately eliminate the violation. If an owner fails to immediately comply voluntarily with the suspension order, the director may take such steps as deemed necessary to remedy the endangerment. The director may allow the owner to recommence when the owner has demonstrated to the satisfaction of the director that the period of endangerment has passed.

(c) An owner that is responsible, in whole or in part, for any discharge or connection presenting imminent danger to the public health, safety or welfare; the health of animals, fish or aquatic life, or a public water supply; shall submit a detailed written statement, describing the causes of the harmful discharge or connection and the measures taken to prevent any future occurrence, to the director prior to the date of any show cause hearing under section 38-342.

(d) Nothing in this article shall be interpreted as requiring a hearing prior to any emergency suspension under this section.

(e) Any owner whose permit or operation is suspended pursuant to this section, on petition to the appeals board, shall be afforded a hearing as soon as possible, but in no case shall such hearing be held later than three working days from the receipt of such a petition by the director.

Sec. 38-338. Financial assurance.

(a) A performance bond and/or certificate of occupancy which guarantees satisfactory completion of construction work related to stormwater management facilities, channel protection, buffer zones and any BMP's shall be required. Prior to release of the performance bond and/or certificate of occupancy, the owner shall provide the city with an accurate as-built of the property and an executed protective covenant for all BMPs, buffer zones and areas that a final operations and maintenance plan, which shall include an executed legal document entitled covenants for permanent maintenance of stormwater facilities and BMP's. The owner shall record these items in the office of the county register of deeds. The location of the stormwater management facilities, BMP's, vegetated buffers, water quality volume credit areas and the water quality easements associated with these facilities/areas shall be shown on a plat that is also recorded in the office of the county register of deeds.

(b) Performance bonds shall name the city as beneficiary and shall be guaranteed in the form of a surety bond, cashier's check or letter of credit from an approved financial institution or insurance carrier. The surety bond, cashier's check or letter of credit shall be provided in a form and in an amount to be determined by the director. The actual amount shall be based on submission of plans and estimated construction, installation or potential maintenance and/or remediation expenses.

(c) The city recorder may refuse brokers or financial institutions the right to provide a surety bond, cashier's check or letter of credit based on past performance, ratings of the financial institution or other appropriate sources of reference information.

(d) The director may decline to approve a plan or issue or reissue a permit to any owner who has failed to comply with any section of this article, a permit or order issued under this article unless such owner first files a satisfactory bond, payable to the city, in a sum not to exceed a value determined by the director to be necessary to achieve consistent compliance.

Sec. 38-339. Injunctive relief.

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

Sec. 38-340. Additional stay.

The appeals board may grant an additional continuance and stay beyond that set out in section 38-343 upon the request of an owner and upon the posting of an appeal bond payable to the city in a sum to be determined by the director as necessary to protect the interests of the city.


Sec. 38-341. Appeal and judicial review.

The alleged violator may appeal a decision of the appeals board pursuant to the provisions of T.C.A. § 27-8-101 et seq.

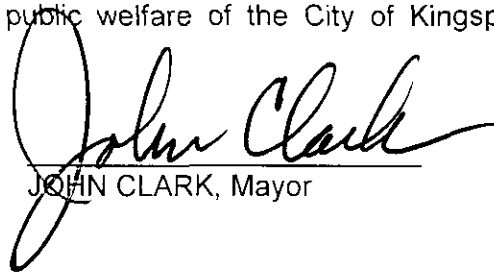
SECTION II. It is hereby declared that the sections, clauses, sentences and parts of this ordinance are severable, are not matters of mutual essential inducement, and any of them shall be excised if the ordinance would otherwise be unconstitutional or ineffective. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

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

ATTEST:


ANGELA MARSHALL
Deputy City Recorder




JOHN CLARK, Mayor

APPROVED AS TO FORM:


J. MICHAEL BILLINGSLEY, City Attorney

PASSED ON 1ST READING: December 6, 2016

PASSED ON 2ND READING: December 20, 2016