

ORDINANCE

City of Portland, Tennessee

No. 23 – 71

Second Reading

AN ORDINANCE TO RESCIND CHAPTERS 5 AND 6 OF TITLE 18 OF THE PORTLAND MUNICIPAL CODE IN THEIR ENTIRETY AND REPLACE WITH THE NEW TITLE, STORMWATER MANAGEMENT, TITLE 21.

WHEREAS, the City of Portland became covered under the State of Tennessee's National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges from Small Municipal Separate Storm Sewer Systems (MS4) as a Phase 2 MS4 Program effective March 23, 2014; and

WHEREAS, as part of the coverage of the NPDES General Permit, the City of Portland developed, implemented and enforced a Stormwater Management Program designed to reduce the discharge of Pollutants from the City to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act; and

WHEREAS, the Board of Mayor and Aldermen desires to amend the previously adopted Stormwater Management Title to comply with the NPDES General Permit for Discharges from Small MS4s and the Tennessee Water Quality Control Act of 1977; and

WHEREAS, for the purpose of promoting the public health, safety, comfort, convenience, and general welfare of the people of Portland, Tennessee, the Board of Mayor and Aldermen is authorized to prescribe regulations and standards that encourage and advance the quality of life within the City; and

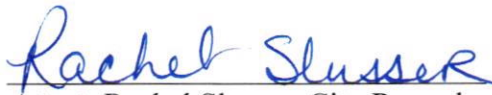
WHEREAS, in the legislative judgment of the Board of Mayor and Aldermen, the Board has found that ordinances and policies that regulate land use, guide the Maintenance of the City's infrastructure, and deliver essential services must be dynamic and modified from time to time to reflect changes in best practices, model codes, land and labor costs, and safety standards necessary to preserve and promote the private and public interest.

NOW, THEREFORE BE IT ORDAINED by the Board of Mayor and Aldermen of the City of Portland, Tennessee, that Title 18 of the Portland Municipal Code is hereby amended by removing Chapter 5, Stormwater Management and Chapter 6, Stormwater Utility, and replacing with new Title 21, Stormwater, and the Stormwater Plan shall be attached to this ordinance; and

BE IT FURTHER ORDAINED by the City Council of the City of Portland, Tennessee that this Ordinance shall take effect after its final passage, the public welfare requiring it.



Mike Callis, Mayor



Attest: Rachel Slusser, City Recorder

Passed First Reading: December 4, 2023
Passed Second Reading: January 8, 2024

TITLE 21

STORMWATER MANAGEMENT

Chapter 1. Stormwater Management

Appendix A: Inspection and Maintenance Agreement

Chapter 2. Stormwater Utility

Chapter 3. Stormwater User Fee Credit Manual

Appendix A: Impervious Surface Credit Application

Appendix B: Right-of-Entry Form

Appendix C: Detention/ Water Quality Application

Appendix D: Education Credit Application

Appendix E: NPDES Credit Application

CHAPTER 1

STORMWATER MANAGEMENT

SECTION

- 21-101. General provisions.
 - 21-102. Definitions.
 - 21-103. Land Disturbance Permit
 - 21-104. Stormwater System Design: Construction and Permanent Stormwater Management.
 - 21-105. Permanent Stormwater Management: Operation, Maintenance, and Inspection.
 - 21-106. Permanent Stormwater Management: Existing Locations and Ongoing Developments.
 - 21-107. Water Quality Riparian Buffer Zone Requirements.
 - 21-108. Illicit Discharges.
 - 21-109. Enforcement.
 - 21-110. Penalties.
 - 21-111. Appeals.
- Appendix A: Inspection and Maintenance Agreement

21-101. General provisions.

(1) Purpose. It is the purpose of this Title to:

- (a) Protect, maintain, and enhance the environment of the City of Portland and the public health, safety and the general welfare of the citizens of the City, by controlling discharges of pollutants to the City's stormwater system and to maintain and improve the quality of the receiving Waters into which the stormwater outfalls flow, including, without limitation, lakes, rivers, streams, ponds, wetlands, and groundwater of the City;
- (b) Enable the City to comply with the National Pollution Discharge Elimination System Permit (NPDES) and applicable regulations, 40 CFR 122 for stormwater discharges;
- (c) Allow the City to exercise the powers granted in Tennessee Code Annotated § 68-221-1105, which provides that, among other powers cities have with respect to stormwater facilities, is the power by ordinance or resolution to:
 - (i) Exercise general regulation over the planning, location, construction, and operation and maintenance of stormwater facilities in the City, whether or not owned and operated by the City;
 - (ii) Adopt any rules and regulations deemed necessary to accomplish the purposes of this statute, including the adoption of a system of fees for services and permits;
 - (iii) Establish standards to regulate the quantity of stormwater discharged and to regulate stormwater contaminants as may be necessary to protect water quality;
 - (iv) Review and approve plans and plats for stormwater management in proposed subdivisions or commercial developments;
 - (v) Issue permits for stormwater discharges, or for the construction, alteration, extension, or repair of stormwater facilities;
 - (vi) Suspend or revoke permits when it is determined that the permittee has violated any applicable ordinance, resolution, or condition of the permit;
 - (vii) Regulate and prohibit discharges into stormwater facilities of sanitary, industrial, or commercial sewage or waters that have otherwise been contaminated; and

- (viii) Expend funds to remediate or mitigate the detrimental effects of contaminated land or other sources of stormwater contamination, whether public or private.
- (2) Administering entity. The City Mayor, or their designee, shall administer the provisions of this Title.
- (3) Stormwater Management ordinance. The intended purpose of this ordinance is to safeguard property and public welfare by regulating stormwater drainage and requiring temporary and permanent provisions for its control. It should be used as a planning and engineering tool for permit compliance and to facilitate the necessary control of stormwater.
- (4) Jurisdiction. The Stormwater Management Ordinance (Title 21) shall govern all properties within the corporate limits of the City of Portland, Tennessee.
- (5) Right of Entry. Designated City staff shall have right-of-entry, at reasonable times, on or upon the property of any person subject to this chapter and access to any permit/document issued hereunder. City staff shall be provided with ready access to all parts of the premises for purposes of inspection, monitoring, sampling, inventory, records examination and copying, and performance of any other duties necessary to determine compliance with this chapter. The City has the right to determine and impose inspection schedules necessary to enforce the provisions of this chapter.

21-102. Definitions.

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

- (1) “100-Year Flood Event.” See Base Flood.
- (2) “Active Construction Sites” means any site that has a permit for grading or other activities (even if actual construction is not proceeding) and any site where construction is occurring regardless of permits required.
- (3) “Administrative or Civil Penalties” means under the authority provided in Tennessee Code Annotated § 68-221-1106, the City declares that any person violating the provisions of this Title may be assessed a civil penalty by the City of not less than fifty dollars (\$50.00) and not more than five thousand dollars (\$5,000.00) per day for each day of violation. Each day of violation shall constitute a separate violation.
- (4) “Appeal” means a request for a review of the Stormwater Administrator’s interpretation of any provision of these regulations.
- (5) “Aquatic Resource Alteration Permit (ARAP)” physical alterations to properties of the waters of the state require an ARAP or a §401 Water Quality Certification (§401 certification). ARAP means a permit issued pursuant to T.C.A. § 69-3-108 of the Act, which authorizes the alteration of properties of waters of the state that result from activities other than discharges of wastewater through a pipe, ditch, or other conveyance.
- (6) “As Built Plans” means record drawings depicting conditions as they were constructed.
- (7) “Base Flood” means the Flood having a one percent (1%) chance of being equaled or exceeded in any given year. While this statistical event may occur more frequently, it may also be known as the “100-Year Flood Event.”

- (8) “Best Management Practices” (“BMP’s”) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the Discharge of Pollutants to Waters of the State. BMP’s also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
- (9) “Borrow Pit” means an excavation from which erodible material (typically soil) is removed to be fill for another site. There is no processing or separation of erodible material conducted at the site. Given the nature of activity and pollutants present at such excavation, a Borrow Pit is considered a construction activity for the purpose of this permit.
- (10) “Buffer Management Plan” means a written integrated plan outlining the utilitarian, ecological and aesthetic objectives for a specific landscape, and the landscape management practices and products that will be employed.
- (11) “Buffer Zone” means a permanent strip of natural perennial vegetation, adjacent to a stream, river, wetland, pond, or lake that contains dense vegetation made up of grass, shrubs, and/or trees. The purpose of a water quality riparian buffer is to maintain existing water quality by minimizing risk of any potential sediments, nutrients or other pollutants reaching adjacent surface waters and to further prevent negative water quality impacts by providing canopy over adjacent waters.
- (12) “Channel” means a natural or artificial watercourse with a definite bed and banks that conducts flowing water continuously or periodically.
- (13) “City” means the City of Portland, Tennessee.
- (14) “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.
- (15) “Construction Waste” means any trash, debris or waste that may occur on a construction site and be a potential pollutant to the storm sewer system.
- (16) “Contaminant” means any physical, chemical, biological, or radiological substance or matter in water.
- (17) “Control Measure” refers to any Best Management Practice (BMP) or other method used to prevent or reduce the discharge of pollutants to waters of the State.
- (18) “Design Storm Event” means a hypothetical storm event, of a given frequency interval and duration, used in the analysis and design of a Stormwater Management Facility. The estimated design rainfall amounts, for any return period interval (i.e., 2-yr, 5-yr, 25-yr, etc.,) in terms of either 24-hour depths or intensities for any duration, can be found by accessing the following NOAA National Weather Service Atlas 14 data for Tennessee: http://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html?bkmrk=tn. Other data sources may be acceptable with prior written approval by TDEC Water Pollution Control. The Design Storm Events for the City of Portland are: 2-, 5-, 10-, 25- and 100-year, 24-hour, storm events.
- (19) “Detention” means the temporary delay of stormwater runoff prior to discharge into receiving waters.

- (20) "Developer" means any individual, firm, corporation, association, partnership, trust, or authorized agents involved in commencing proceedings to effect development of land for him/her or others.
- (21) "Development" means any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or permanent storage of materials (as defined as materials of like nature stored in whole or in part for more than six months).
- (22) "Discharge" means 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 MS4.
- (23) "Easement" means an acquired privilege or right of use or enjoyment that a person, party, firm, corporation, city or other legal entity has in the land of another.
- (24) "Engineer" or "Professional Engineer" means an engineer duly registered, licensed or otherwise authorized by the State of Tennessee to practice in the field of civil engineering.
- (25) "Erosion" means the removal of soil particles by the action of water, wind, ice or other geological agents, whether naturally occurring or acting in conjunction with or promoted by human activities or effects.
- (26) "Erosion Prevention and Sediment Control Plan (EPSCP)" means a written plan (including drawings or other graphic representations) that is designed to minimize the erosion and sediment runoff at a site during construction activities.
- (27) "Existing Construction" means any structure for which the "start of construction" commenced before the effective date of these regulations.
- (28) "Existing Grade" means the slope or elevation of existing ground surface prior to cutting or filling.
- (29) "Fill" means a portion of land surface or area to which soil, rock, or other materials have been or will be added; height above original ground surface after the material has been or will be added.
- (30) "Finished Grade" means the final slope or elevation of the ground surface, after cutting or filling.
- (31) "Flood or Flooding" means water from a river, stream, watercourse, lake, or other body of standing water that temporarily overflows and inundates adjacent lands, and which may affect other lands and activities through increased surface water levels and/or increased groundwater level.
- (32) "Floodplain" means the relatively flat or lowland area adjoining a river, stream, watercourse, lake, or other body of standing water, which has been or may be covered temporarily by floodwater. For purposes of the Title, the floodplain is defined as the 100-year floodplain having a one percent (1%) chance of being equaled or exceeded in any given year.
- (33) "Floodway" means that portion of the stream channel and adjacent floodplain required for the passage or conveyance of a 100-year flood discharge. The floodway boundaries are placed to limit encroachment in the floodplain so that a discharge can be conveyed through the floodplain without materially increasing (less than one (1) foot) the water surface elevation at any point and without producing hazardous velocities or conditions. This is the area of significant depths and velocities, and due consideration should be given to effects of fill, loss of cross-sectional flow area, and resulting increased water surface elevations.

- (34) "Floor" means the top surface of an enclosed area in a building (including basement), i.e., top of slab in concrete construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking vehicles.
- (35) "Grading" means any operation or occurrence by which the existing site elevations are changed; or where any ground cover, natural, or man-made, is removed; or any watercourse or body of water, either natural or man-made, is relocated on any site, thereby creating an unprotected area. This includes stripping, cutting, filling, stockpiling, or any combination thereof, and shall apply to the land in its cut or filled condition. Grading activities that disturb 10,000 square feet or more shall only be performed with a Land Disturbance Permit.
- (36) "Green Infrastructure" means the interconnected network of natural areas and other open spaces that conserves natural ecosystem values and functions, sustains clean air and water, and provides environmental and community benefits.
- (37) "Green Infrastructure Practices" means management measures that are designed, built and maintained to infiltrate, help produce evapotranspiration, harvest and/or use rainwater through the use of natural hydrologic features.
- (38) "Greenways" means linear undeveloped areas linking various types of development by such facilities as bicycle paths, footpaths, and bridle paths. Greenways are usually kept in their natural state except for the pathway and areas immediately adjacent to the pathway.
- (39) "Illicit Connections" means illegal and/or unauthorized connections to the MS4 whether such connections result in discharges into that system.
- (40) "Illicit Discharge" means any discharge to the MS4 that is not composed entirely of stormwater, except discharges authorized under an NPDES Permit (other than the NPDES Permit for Discharges from the MS4) and discharges resulting from firefighting activities; and not specifically exempted under §21-108(2).
- (41) "Impervious Surface" means a term applied to any ground or structural surface that water cannot penetrate or through which water penetrates with great difficulty.
- (42) "Improved Sinkhole" means a natural surface depression that has been altered to direct fluids into the hole opening. Improved sinkhole is a type of injection well regulated under TDEC's Underground Injection Control (UIC) program. Underground injection constitutes an intentional disposal of waste waters in natural depressions, open fractures, and crevices (such as those commonly associated with weathering of limestone).
- (43) "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. An inspector performs and documents the required inspections, paying particular attention to time-sensitive permit requirements such as stabilization and maintenance activities. An inspector may also have the following responsibilities:
- a. Oversee the requirements of other construction-related permits, such as Aquatic Resources Alteration Permit (ARAP) or Corps of Engineers permit for construction activities in or around Waters of the State;
 - b. Update field SWPPP's;
 - c. Conduct pre-construction inspection to verify that undisturbed areas have been properly marked and initial measures have been installed; and
 - d. Inform the permit holder of activities that may be necessary to gain or remain in compliance with the Construction General Permit (CGP) and other environmental permits.

- (44) "Land Disturbance Permit" means a permit issued by the Stormwater Administrator that allows for Land Disturbing Activities within the City of Portland in accordance with this Title. In some instances, additional local, state or federal permitting may also be required.
- (45) "Land Disturbing Activity" means any activity on property that results in a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land Disturbing Activities include, but are not limited to, development, redevelopment, demolition, construction, reconstruction, clearing, grading, filling, and excavation. Land Disturbing Activities that disturb 10,000 square feet or more shall only be performed with a Land Disturbance Permit.
- (46) "Landscape Architect" means a Landscape Architect duly registered, licensed or otherwise authorized by the State of Tennessee to practice in the field of landscape architecture.
- (47) "Maintenance" means any activity that is necessary to keep a Stormwater Management Facility in good working order to function as designed. Maintenance shall include complete reconstruction of a Stormwater Management Facility if reconstruction is needed to restore the facility to its original operational design parameters. Maintenance shall also include the correction of any problem on the site property that may directly impair the functions of the Stormwater Management Facility.
- (48) "Maintenance Agreement" or "Long Term Maintenance Agreement" means a document recorded in the land records that acts as a property deed restriction, and which provides for long-term Maintenance of Stormwater Management practices.
- (49) "Municipal Separate Storm Sewer System (MS4)" includes the conveyances owned or operated by the City for the collection and transportation of Stormwater, including the roads and streets and their drainage systems, catch basins, curbs, gutters, ditches, man-made channels, and storm drains, and where the context indicates, it means the municipality that owns the separate storm sewer system.
- (50) "National Pollutant Discharge Elimination System Permit" or a "NPDES Permit" means a permit issued pursuant to 33 U.S.C. 1342.
- (51) "New Construction" means structures for which the "start of construction" commenced on or after the effective date of these regulations. The term also includes any subsequent improvements to such Structures.
- (52) "Off-site Facility" means a Structural BMP located outside the subject property boundary described in the permit application for land Development activity.
- (53) "On-site Facility" means a Structural BMP located within the subject property boundary described in the permit application for land development activity.
- (54) "Passive Recreation" means recreational activities that require limited physical exertion on behalf of the participant. Examples of passive recreation activities include bird watching, walking or photography.
- (55) "Peak Flow" means the maximum instantaneous rate of flow of water at a particular point resulting from a storm event.
- (56) "Person" means all persons, natural or artificial, including any individual, firm or association and any municipal or private corporation organized or existing under the laws of this or any other state or country.
- (57) "Permittee" means any person, firm, or any other legal entity to which a grading, building or other related permit is issued in accordance with City of Portland regulations.
- (58) "Pollutant" means anything which causes or contributes to pollution. Pollutants may include, but are not limited to, paints, varnishes, and solvents; oil and other automotive

fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded and abandoned objects, and accumulations, so that same may cause or contribute to pollution; any harmful floatable, pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, animal waste, fecal coliform and pathogens; dissolved and particulate metals; sediment; and noxious or offensive matter of any kind.

- (59) "Priority Area" means an area where land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in stormwater. The following land uses and activities are deemed stormwater hotspots, but that term is not limited to only these land uses:
- a. Vehicle salvage yards and recycling facilities
 - b. Vehicle service and maintenance facilities
 - c. Vehicle and equipment cleaning facilities
 - d. Fleet storage areas (bus, truck, etc.)
 - e. Industrial sites (included on Standard Industrial Classification code list)
 - f. Marinas (service and maintenance)
 - g. Public works storage areas
 - h. Facilities that generate or store hazardous waste materials
 - i. Commercial container nursery
 - j. Restaurants and food service facilities
 - k. Other land uses and activities as designated by an appropriate review authority.
- (60) "Qualified Hydrologic Professional" or "QHP" means a Person who is duly registered, licensed or otherwise authorized by the State of Tennessee to perform hydrologic determinations and is certified as a Tennessee Qualified Hydrologic Professional.
- (61) "Redevelopment" means the alteration of developed land that disturbs and increases the site or building impervious footprint or offers a new opportunity for stormwater controls. Demolition and reconstruction are considered development and not redevelopment. Note: redevelopment is not intended to include such activities as exterior remodeling, which would not be expected to cause adverse stormwater quality impacts.
- (62) "Retention" means the prevention of storm runoff from direct discharge into receiving waters. Examples include systems which discharge through percolation, exfiltration, filtered bleed-down and evaporation processes.
- (63) "Riparian Buffer". See Buffer Zone.
- (64) "Runoff" means that portion of the precipitation on a drainage area that is discharged from the area into the MS4.
- (65) "Sediment" means solid material, both inorganic and organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water, gravity, or ice and has come to rest on the earth's surface either above or below sea level.
- (66) "Sedimentation" means soil particles suspended in stormwater that can settle in stream beds.
- (67) "Site" means all contiguous land and bodies of water in one ownership, graded, proposed for grading or development as a unit, although not necessarily at one time.
- (68) "Slope" means degree of deviation of a surface from the horizontal, usually expressed in percentage or ratio.
- (69) "Soil" means all unconsolidated mineral and organic material of any origin that overlies bedrock and that can be readily excavated.

- (70) "Soils Report" means a study of soils on a subject property with the primary purpose of characterizing and describing the soils. The soils report shall be prepared by a qualified soils engineer, who shall be directly involved in the soil characterization either by performing the investigation or by directly supervising employees conducting the investigation.
- (71) "Stabilization" means providing adequate measures, vegetative and/or structural, that will prevent erosion from occurring.
- (72) "Stop Work Order" means an order directing the developer and/or permittee responsible for the development to cease and desist all or any portion of the work which violates the provisions of this Title.
- (73) "Stormwater" means stormwater runoff, snow melt runoff, surface runoff, street wash waters related to street cleaning or maintenance, infiltration and drainage.
- (74) "Stormwater Administrator" or "Administrator" refers to the person(s) designated by the City Mayor to enforce the stormwater management ordinance.
- (75) "Stormwater Control Measure (SCM)" means permanent practices and measures designed to reduce the discharge of pollutants from new development projects or redevelopment projects.
- (76) "Stormwater Management" means the programs to maintain quality and quantity of Stormwater Runoff to pre-Development levels.
- (77) "Stormwater Management Facilities" means the drainage structures, conduits, ponds, ditches, combined sewers, sewers, and all device appurtenances by means of which stormwater is collected, transported, pumped, treated or disposed of.
- (78) "Stormwater Management Plan" means the set of drawings and other documents that comprise all the information and specifications for the programs, drainage systems, structures, BMP's, concepts and techniques intended to maintain or restore quality and quantity of Stormwater Runoff to pre-Development levels.
- (79) "Stormwater Pollution Prevention Plan (SWPPP)" means a written plan that includes site map(s), an identification of construction/contractor activities that could cause Pollutants in the Stormwater, and a description of measures or practices to control these Pollutants. It must be prepared and approved before construction begins. In order to effectively reduce Erosion and Sedimentation impacts, Best Management Practices (BMP's) must be designed, installed, and maintained during Land Disturbing Activities. The SWPPP should be prepared in accordance with the current Tennessee Erosion and Sediment Control Handbook. The handbook is intended for use during the design and construction of projects that require Erosion and Sediment controls to protect Waters of the State. It also aids in the Development of SWPPPs and other reports, plans, or specifications required when participating in Tennessee's water quality regulations. All SWPPP's shall be prepared and updated in accordance with Section 3 of the General NPDES Permit for Discharges of Stormwater Associated with Construction Activities.
- (80) "Stormwater Runoff" means flow on the surface of the ground, resulting from precipitation.
- (81) "Stream" means a surface water that is not a wet weather conveyance (Rules and Regulations of the State of Tennessee, Chapter 0400-40-03). Stream includes lakes, wetlands and other non-linear surface waters. See also "waters of the state."
- (82) "Structural BMP's" means facilities that are constructed to provide control of stormwater runoff.

- (83) "Structure" means anything constructed or erected, the use of which requires a permanent location on or in the ground. Such construction includes but is not limited to objects such as buildings, towers, smokestacks, carports, and walls.
- (84) "Surface Water" includes waters upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other water courses, lakes and reservoirs.
- (85) "Top of Bank" means the ordinary high-water level and break in slope for a water resource.
- (86) "View Corridors" means areas associated with formal trail systems closer than the required buffer width with an approved Buffer Management Plan.
- (87) "Waste Site" means an area where waste material from a construction site is deposited. When the material is erodible, such as soil, the site must be treated as a construction site.
- (88) "Water Quality Riparian Buffer Zone". See Buffer Zone.
- (89) "Water Quality Treatment Volume (WQTV)" means a portion of the runoff generated from impervious surfaces at a new development or redevelopment project by the design storm.
- (90) "Water Resources" means streams, seeps, springs, wetlands, sinkholes, lakes or channels, as determined by the Stormwater Administrator. It may be necessary to use methodology from Standard Operating Procedures for Hydrologic Determinations (see rules to implement a certification program for Qualified Hydrologic Professionals, TN Rules Chapter 0400-40-17) to identify a community water.
- (91) "Watercourse" means a permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.
- (92) "Watershed" means all the land area that contributes runoff to a particular point along a waterway.
- (93) "Waters" or "Waters of the State" means any or all water, public or private, on or beneath the surface of the ground, which are contained within, flow through, or border upon Tennessee or any portion thereof except those bodies of water confined to and retained within the limits of private property in single ownership which do not combine or effect a junction with natural surface or underground waters.
- (94) "Waters with Unavailable Parameters" means any segment of Surface Waters that has been identified by the Tennessee Department of Environment and Conservation (TDEC) as failing to support classified uses. Unavailable parameters exist where water quality is at, or fails to meet, the levels specified in water quality criteria in Rule 0400-40-03-.03, even if caused by natural conditions. In the case of a criterion that is a single response variable or is derived from measurement of multiple response variables, the unavailable parameters shall be the agents causing water quality to be at or failing to meet the levels specified in criteria. Resources to be used in making this determination include biennial compilations of impaired waters, databases of assessment information, updated GIS coverages (<https://tdeconline.tn.gov/dwr/>), and the results of recent field surveys. GIS coverages of the streams and lakes not meeting water quality standards, plus the biennial list of waters with unavailable parameters, can be found at <https://www.tn.gov/environment/program-areas/wr-water-resources/water-quality/water-quality-reports---publications.html>. Additionally, TDEC periodically compiles a list of such Waters known as the "303(d) List".
- (95) "Wetland(s)" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically

adapted to life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs, and similar areas.

- (96) “Wet Weather Conveyances” are man-made or natural watercourses, including natural watercourses that have been modified by channelization, that flow only in direct response to precipitation runoff in their immediate locality and whose channels are above the groundwater table and are not suitable for drinking water supplies; and in which hydrological and biological analyses indicate that, under normal weather conditions, due to naturally occurring ephemeral or low flow, there is not sufficient water to support fish or multiple populations of obligate lotic aquatic organisms whose life cycle includes an aquatic phase of at least two months. (Rules and Regulations of the State of Tennessee, Chapter 0400-40-3-.04(3)).

21-103. Land Disturbance Permit.

(1) General

The Land Disturbance Permit is designed to track all applicable land disturbance activities and ensure they are monitored for compliant erosion prevention and sediment controls, the absence of illicit discharges leaving the site, and compliance with the City’s TDEC NPDES MS4 General Permit along with any applicable TDEC Construction General Permits, TDEC Aquatic Resources Alteration Permits (ARAP), and any other relevant permits. Tracking of these activities allows inspection, and in cases of non-compliance, enforcement actions to be taken.

(2) Applicability

This section shall be applicable to all land development, including, but not limited to, site plan applications, subdivision applications, land disturbance applications and grading applications. A Land Disturbance Permit shall be required for any land disturbing activity meeting any of the following requirements:

- (a) Land Disturbance of 10,000 square feet or greater, or less than 10,000 square feet if part of a larger plan of common development or sale.
- (b) Change in elevation of property.
- (c) Any land disturbance that requires coverage under a TDEC Construction General Permit.
- (d) Any land disturbance that requires coverage under a TDEC Aquatic Resources Alteration Permit.
- (e) Any land disturbance requiring a TDEC Underground Injection Well Permit.
- (f) Any new Development or Redevelopment, regardless of size, that is defined by the Stormwater Administrator to be a priority area land use.
- (g) Any land disturbance that the Stormwater Department determines that the discharge of a site is causing, contributing to or likely to contribute to a violation of a state water quality standard.

(3) Exemptions

The following land disturbance activities are exempt from the requirements of obtaining a Land Disturbance Permit:

- (a) Surface mining as is defined in Tennessee Code Annotated Section 59-8-202.
- (b) Such minor land disturbing activities as home gardens and individual home landscaping, home repairs, home additions or modifications, home maintenance work, and other related activities that result in no soil erosion leaving the site. (Erosion Prevention

and Sediment Control (ESPC) practices may be enforced through individual building permits.)

(c) Agriculture practices involving the establishment, cultivation or harvesting of products in the field or orchard, preparing and planting of pastureland, farm ponds, dairy operations, livestock and poultry management practices.

(d) Any project carried out under the technical supervision of NCRS, TDOT, TDEC, or USACE that is covered under applicable State or Federal construction permits.

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

These activities may be undertaken without a Land Disturbance Permit; however, the person conducting these excluded activities shall remain responsible for conducting these activities within accordance with provisions of this Ordinance and other applicable regulations including responsibility for controlling sediment, illicit discharges, and runoff.

(4) Application

Application for the Land Disturbance Permit shall be made to the Administrator by the primary permittee and co-permittee (if applicable). Applications are available from the Stormwater Department on the City's webpage or at City Hall. No land disturbing activities shall take place prior to approval of the Land Disturbance Permit application. Land disturbance permit fees must be paid, and initial erosion and sediment control practices must be in place prior to issuance of the Land Disturbance Permit.

(6) Permit Requirements

The following are conditions of Land Disturbance Permit coverage. Any violation of these conditions will make the permit holder(s) subject to all enforcement actions and penalties outlined in sections 21-109 and 21-110 of this Ordinance.

(a) Submittal and approval by Stormwater staff of the erosion Prevention and Sediment Control plans.

(b) Compliance with the site's TDEC Construction General Permit, TDEC ARAP, TDEC Underground Injection Well Permit, FEMA Floodplain Development Permit, and other Federal or State permits where applicable.

(c) Compliance with approved erosion prevention and sediment control plan and EPSC performance standards.

(d) Implementation and maintenance of appropriate erosion prevention and sediment control best management practices.

(e) Construction site operators must control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site to avoid adverse impacts to water quality.

(7) Permit Duration

Each Land Disturbance Permit shall expire and become null and void if one of the following has occurred:

(a) Six (6) months of no activity on the site.

(b) Final stabilization of the site per the approved plans.

(c) Issuance of a TDEC Notice of Termination (NOT). A copy must be provided to the City in order to close out the Land Disturbance Permit.

(d) Three (3) years from issuance of Permit or if new federal or state regulations exist changing the scope of coverage where a new land disturbance permit is required.

(e) In the case of public infrastructure, acceptance by the City of Portland Public Works Department.

In cases of expiration of the Land Disturbance Permit, a permit may be re-issued with no additional fee, if the plan and scope of the project submitted on the original Land Disturbance Permit does not change significantly.

(8) Land Disturbance Permit Fee

The Land Disturbance Permit fee shall be paid before permits are issued.

21-104. Stormwater System Design: Construction and Permanent Stormwater Management Performance Standards.

(1) MS4 Stormwater design or BMP manuals.

- (a) Adoption. The city adopts as its MS4 Stormwater design and Best Management Practices (BMP) manuals for stormwater management, construction and permanent, the following publications, which are incorporated by reference in this ordinance as if fully set out herein:
 - (i) TDEC Erosion Prevention and Sediment Control Handbook; most current edition.
 - (ii) Tennessee Permanent Stormwater Management and Design Guidance Manual; most current edition.
 - (iii) A collection of MS4 approved BMP's developed or collected by the MS4 that comply with the goals of the MS4 Permit and/or the CGP, such as the Nashville-Davidson County Metro Stormwater Management Manual (BEST MANAGEMENT PRACTICES (BMP) MANUAL - Volume 4); most current edition.
 - (iv) Requirements for design storm for all waters as well as special conditions for water with unavailable parameters or exceptional Tennessee waters must be consistent with those of the current Tennessee Construction General Permit (TNR100000).
 - (v) The City's adopted manual(s) may be updated and expanded from time to time, at the discretion of the governing body of the City, upon the recommendation of the Stormwater Administrator, based on improvements in engineering, science, monitoring and local maintenance experience, or changes in federal or state law or regulation. Stormwater facilities that are designed, constructed and maintained in accordance with these BMP criteria will be presumed to meet the minimum water quality performance standards.
- (b) The City has adopted, for use in designing Stormwater Control Measures, construction design storm events. The construction design storm events adopted by the City are as follows: 2-, 5-, 10-, 25- and 100-year, 24-hour, storm events.
- (c) The City has adopted, for use in designing EPSC measures, the design storm requirements from the current Tennessee Construction General Permit for all waters as well as special conditions for waters with unavailable parameters or Exceptional Tennessee Waters.

(2) Submittal of a copy of the NOC, SWPPP and NOT to the local MS4

Permittees who discharge Stormwater through an NPDES-permitted Municipal Separate Storm Sewer System (MS4) who are not exempted in section 1.4.5 (Permit Coverage through Qualifying Local Program) of the Construction General Permit (CGP) must provide proof of coverage under the Construction General Permit (CGP); submit a copy of the Stormwater Pollution Prevention Plan (SWPPP); and at project completion, a copy of the signed notice of termination (NOT) to the Stormwater Administrator.

Copies of additional applicable local, state or federal permits (i.e.: ARAP, etc.) must also be provided upon request. If requested, these permits must be provided before the issuance of any Land Disturbance Permit.

(3) Stormwater Pollution Prevention Plan (SWPPP) for Construction Stormwater Management:

The applicant must prepare a Stormwater Pollution Prevention Plan for all construction

activities that complies with subsection (5) below. The purpose of this plan is to identify construction/contractor activities that could cause pollutants in the stormwater, and to describe measures or practices to control these pollutants during project construction.

- (4) Stormwater Pollution Prevention Plan requirements. The Erosion Prevention and Sediment Control Plan component of the SWPPP shall accurately describe the potential for soil erosion and sedimentation problems resulting from land disturbing activity and shall explain and illustrate the measures that are to be taken to control these problems. The length and complexity of the plan is to be commensurate with the size of the project, severity of the site condition, and potential for off-site damage. If necessary, the plan shall be phased so that changes to the site during construction that alter drainage patterns or characteristics will be addressed by an appropriate phase of the plan. The plan shall be sealed by a registered professional engineer or landscape architect licensed in the state of Tennessee. The plan shall also conform to the requirements found in the TDEC Construction General Permit manual, and shall include at least the following:
- (a) Project description - Briefly describe the intended project and proposed land disturbing activity including number of units and structures to be constructed and infrastructure required.
 - (b) A topographic map with contour intervals of two (2) feet or less showing present conditions and proposed contours resulting from land disturbing activity.
 - (c) All existing drainage ways, including intermittent and Wet Weather Conveyances and any designated Floodways or Floodplains.
 - (d) A general description of existing land cover. Individual trees and shrubs do not need to be identified.
 - (e) Stands of existing trees as they are to be preserved upon project completion, specifying their general location on the property. Differentiation shall be made between existing trees to be preserved, trees to be removed and proposed planted trees. Tree protection measures must be identified, and the diameter of the area involved must also be identified on the plan and shown to scale. Information shall be supplied concerning the proposed destruction of exceptional and historic trees in setbacks and buffer strips, where they exist. Complete landscape plans may be submitted separately. The plan must include the sequence of implementation for tree protection measures.
 - (f) Approximate limits of proposed clearing, grading, and filling.
 - (g) Approximate flows of existing stormwater leaving any portion of the site.
 - (h) A general description of existing soil types and characteristics and any anticipated soil erosion and sedimentation problems resulting from existing characteristics.
 - (i) Location, size and layout of proposed stormwater and sedimentation control improvements.
 - (j) Existing and proposed drainage network.
 - (k) Proposed drain tile or waterway sizes.
 - (l) Approximate flows leaving the Site after construction and incorporating water runoff mitigation measures. The evaluation must include projected effects on property adjoining the site and on existing drainage facilities and systems. The plan must address the adequacy of outfalls from the development: when water is concentrated, what is the capacity of waterways, if any, accepting stormwater off-site; and what measures, including infiltration, sheeting into buffers, etc., are going to be used to prevent the scouring of waterways and drainage areas off-site, etc.

- (m) The projected sequence of work represented by the grading, drainage and sedimentation and erosion control plans as related to other major items of construction, beginning with the initiation of excavation, and including the construction of any sediment basins or retention/detention facilities or any other Structural BMP's.
- (n) Specific remediation measures to prevent erosion and sedimentation runoff. Plans shall include detailed drawings of all control measures used; stabilization measures including vegetation and non-vegetation measures, both temporary and permanent, will be detailed. Detailed construction notes and a maintenance schedule shall be included for all control measures in the plan.
- (o) Specific details for: the construction of stabilized construction entrance/exits, concrete washouts, and sediment basins for controlling erosion; road access points; eliminating or keeping soil, sediment, and debris on streets and public ways at a level acceptable to the City. Soil, sediment, and debris brought onto streets and public ways must be removed by the end of the workday to the satisfaction of the City.
- (p) Proposed structures: location and identification of any proposed additional buildings, structures, or development on the site.
- (q) A description of on-site measures to be taken to recharge surface water into the ground water system through runoff reduction practices.
- (r) Specific details for construction waste management. Construction site operators shall control waste such as discarded building materials, concrete truck washout, petroleum products and petroleum related products, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality. When the material is erodible, such as soil, the site must be treated as a construction site.
- (5) General design performance criteria for permanent Stormwater Management: the following performance criteria shall be addressed for permanent stormwater management at all development sites that require a land disturbance permit.
 - (a) To comply with the permanent stormwater standards for new development and redevelopment projects, design and install SCMs as established by Tennessee Rule 0400-40-10-.04 and comply with other requirements of Tennessee Rule 0400-40-10-.04. Note that for design purposes, total suspended solids (TSS) may be used as the indicator for the reduction of pollutants.
 - (b) Site design standards for all new and redevelopment require, in combination or alone, management measures that are designed to provide full treatment capacity within 72 hours following the end of the preceding rain event for the life of the new development and redevelopment project.
 - (i) The runoff quantity of the designed control measure can be found in the TDEC Small MS4 General Permit section 4.2.5.2.
 - (ii) Pre-Development infiltrative capacity of soils at the site must be considered in selection of runoff reduction management measures.
 - (iii) Incentive standards. The following types of development or redevelopment shall receive a twenty percent (20%) reduction in the water quality treatment volume for any of the following conditions:
 - (1) Redevelopment (including, but not limited to, brownfield redevelopment);
 - (2) Vertical Density, (Floor to Area Ratio (FAR) of 2 or >18 units per acre); and
 - (3) Incentives submitted to and approved by TDEC.
 - (c) Designs shall be based on the 24-hour design storms adopted by the City.

- (d) To protect stream channels from degradation, specific channel protection criteria shall be provided as prescribed in the adopted MS4 BMP manual.
 - (e) Stormwater discharges to critical areas with sensitive resources (i.e., cold water fisheries, shellfish beds, swimming beaches, recharge areas, water supply reservoirs) may be subject to additional performance criteria or may need to utilize or restrict certain Stormwater Management practices.
 - (f) Stormwater discharges from hotspots may require the application of specific Structural BMP's and pollution prevention practices. In addition, stormwater from a hotspot land use may not be infiltrated.
 - (g) Prior to or during the site design process, applicants for Land Disturbance Permits shall consult with the Stormwater Administrator to determine if they are subject to additional stormwater design requirements.
- (6) Permanent Stormwater Management Plan requirements. The Stormwater Management Plan shall include sufficient information to allow the Stormwater Administrator to evaluate the environmental characteristics of the project site, the potential impacts of all proposed development of the site, both present and future, on the Water Resources, and the effectiveness and acceptability of the measures proposed for managing stormwater generated at the project site. To accomplish this goal the Stormwater Management Plan shall include the following:
- (a) Topographic base map: Topographic base map of the site which extends a minimum of 100 feet beyond the limits of the proposed development and indicates:
 - (i) Existing surface water drainage including streams, ponds, culverts, ditches, sink holes, wetlands; and the type, size, elevation, etc., of nearest upstream and downstream drainage structures;
 - (ii) Current land use including all existing structures, locations of utilities, roads, and easements;
 - (iii) All other existing significant natural and artificial features;
 - (iv) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses; drainage patterns; locations of utilities, roads and easements; the limits of clearing and grading.
 - (b) Proposed structural and non-structural BMP's;
 - (c) A written description of the site plan and justification of proposed changes in natural conditions may also be required;
 - (d) Calculations: Hydrologic and hydraulic design calculations for the pre-development and post-development conditions for the design storm event specified in the MS4 BMP manual. These calculations must show that the proposed Stormwater Management measures are capable of controlling runoff from the site in compliance with this Title and the guidelines of the MS4 BMP manual. Such calculations shall include:
 - (i) A description of the Design Storm Event frequency, duration, and intensity where applicable;
 - (ii) Time of concentration;
 - (iii) Soil curve numbers or runoff coefficients including assumed soil moisture conditions;
 - (iv) Peak runoff rates and total runoff volumes for each watershed area;
 - (v) Infiltration rates, where applicable;
 - (vi) Culvert, stormwater sewer, ditch and/or other stormwater conveyance capacities;
 - (vii) Flow velocities;

- (viii) Data on the increase in rate and volume of runoff for the Design Storm Event referenced in the MS4 BMP manual; and
- (ix) Documentation of sources for all computation methods and field test results.
- (e) Soils information: If a Stormwater Management control measure depends on the hydrologic properties of soils (e.g., infiltration basins), then a Soils Report shall be submitted. The Soils Report shall be based on On-site boring logs or soil pit profiles and soil survey reports. The number and location of required soil borings or soil pits shall be determined based on what is needed to determine the suitability and distribution of soil types present at the location of the control measure.
- (7) Maintenance and repair plan: *See Appendix A*. The design and planning of all permanent Stormwater Management Facilities shall include detailed maintenance and repair procedures to ensure their continued performance. These plans will identify the parts or components of a Stormwater Management Facility that need to be maintained and the equipment and skills or training necessary. Provisions for the periodic review and evaluation of the effectiveness of the maintenance program and the need for revisions or additional maintenance procedures shall be included in the plan.
- (8) Buffers and Buffer Zones: Buffer and Buffer Zones shall be those buffers and Buffer Zones as described in section 21-108 and shall meet the requirements contained in those provisions.

21-105. Permanent Stormwater Management: Operation, Maintenance, and Inspection.

- (1) As Built Plans. All applicants are required to submit As Built Plans for any stormwater structures located on-site within ninety (90) days after final construction is completed. The plan must show the final design specifications for all Stormwater Management Facilities and must be sealed by a registered Professional Engineer and/or Land Surveyor licensed to practice in Tennessee. A sealed certification by the design engineer that all SCMs will function within the design parameters as constructed shall accompany the as-built plans. A final inspection by the City is required before any performance surety is released. The City shall have the discretion to adopt provisions for a partial pro-rata release of the performance surety on the completion of various stages of development. In addition, occupation permits shall not be granted until corrections to all BMP's have been made and accepted by the City.
- (2) Landscaping and Stabilization requirements.
 - (a) Any area of land from which the natural vegetative cover has been either partially or wholly cleared by development activities shall be stabilized. Stabilization measures shall be initiated as soon as possible in portions of the site where construction activities have temporarily or permanently ceased. Temporary or permanent soil stabilization at the construction site (or a phase of the project) must be completed not later than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased. In the following situations, temporary stabilization measures are not required:
 - (i) where the initiation of stabilization measures is precluded by snow cover or frozen ground conditions or adverse soggy ground conditions, stabilization measures shall be initiated as soon as practicable; or
 - (ii) where construction activity on a portion of the site has temporarily ceased, and Land Disturbing Activities will be resumed within 14 days.
 - (b) Permanent stabilization with perennial vegetation (using native herbaceous and woody plants where practicable) or other permanently stable, non-eroding surface shall

replace any temporary measures as soon as practicable. Unpacked gravel containing fines (silt and clay sized particles) or crusher runs will not be considered a non-eroding surface.

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

- (i) Reseeding must be done with an annual or perennial cover crop accompanied by placement of straw mulch or its equivalent of sufficient coverage to control erosion until such time as the cover crop is established over ninety percent (90%) of the seeded area.
 - (ii) Replanting with native woody and herbaceous vegetation must be accompanied by placement of straw mulch or its equivalent of sufficient coverage to control erosion until the plantings are established and are capable of controlling erosion.
 - (iii) Any area of revegetation must exhibit survival of a minimum of seventy-five percent (75%) of the cover crop throughout the year immediately following revegetation. Revegetation must be repeated in successive years until the minimum seventy-five percent (75%) survival for one (1) year is achieved.
 - (iv) In addition to the above requirements, a landscaping plan must be submitted with the final design describing the vegetative stabilization and management techniques to be used at a site after construction is completed. This plan will explain not only how the site will be stabilized after construction, but who will be responsible for the maintenance of vegetation at the site and what practices will be employed to ensure that adequate vegetative cover is preserved.
- (3) Inspection of Stormwater Management Facilities. Periodic inspections of facilities shall be performed, documented, and reported in accordance with this Title, as detailed in Appendix A.
- (4) Records of installation and Maintenance activities. Parties responsible for the operation and maintenance of a Stormwater Management Facility shall make records of the installation of the Stormwater Management Facility, and of all maintenance and repairs to the facility, and shall retain the records for at least three (3) years. These records shall be made available to the City during inspection of the facility and at other reasonable times upon request.
- (5) Failure to meet or maintain design or Maintenance standards. If a responsible party fails or refuses to meet the design or Maintenance standards required for Stormwater Facilities under this Title, the City, after reasonable notice, may correct a violation of the design standards or maintenance needs by performing all necessary work to place the facility in proper working condition. If the Stormwater Management Facility becomes a danger to public safety or public health, the City shall notify in writing the party responsible for maintenance of the Stormwater Management Facility. Upon receipt of that notice, the responsible person shall have thirty (30) days to effect maintenance and repair of the facility in an approved manner. In the event that corrective action is not undertaken within that time, the City may take necessary corrective action. The cost of any action by the City under this section shall be charged to the responsible party.

21-106. Permanent Stormwater Management: Existing Locations and Ongoing Developments.

(1) On-site Stormwater Management Facilities Maintenance Agreement:

- (a) Where the Stormwater Management Facility is located on property that is subject to a development agreement, and the development agreement provides for a permanent Stormwater Maintenance Agreement that runs with the land, the owners of property must execute an inspection and maintenance agreement that shall operate as a deed restriction

binding on the current property owners and all subsequent property owners and their lessees and assigns, including but not limited to, homeowner associations or other groups or entities.

(b) The Maintenance Agreement shall:

- (i) Assign responsibility for the maintenance and repair of the Stormwater Management Facility to the owners of the property upon which the facility is located and be recorded as such on the plat for the property by appropriate notation.
- (ii) Provide for a periodic inspection by the property owners for the purpose of documenting maintenance and repair needs and to ensure compliance with the requirements of this ordinance. It shall also grant permission to the City to enter the property at reasonable times and to inspect the stormwater facility to ensure that it is being properly maintained.
- (iii) Provide that the minimum maintenance and repair needs include but are not limited to the removal of silt, litter and other debris, the cutting of grass, cutting and vegetation removal, and the replacement of landscape vegetation, in detention and retention basins, and inlets and drainage pipes and any other Stormwater Facilities. It shall also provide that the property owners shall be responsible for additional maintenance and repair needed to meet the intended design specification of the stormwater facility.
- (iv) Provide that maintenance needs must be addressed in a timely manner, on a schedule to be determined by the Stormwater Administrator.
- (v) Provide that if the property is not maintained or repaired within the prescribed schedule, the City shall perform the maintenance and repair at its expense and bill the same to the property owner. The Maintenance Agreement shall also provide that the City's cost of performing the maintenance shall be a lien against the property.

(2) Existing problem locations – no Maintenance Agreement.

- (a) The Stormwater Administrator shall in writing notify the owners of existing locations and developments of specific drainage, erosion or sediment problems affecting or caused by such locations and developments, and the specific actions required to correct those problems. The notice shall also specify a reasonable time for compliance. Discharges from existing SCM's that have not been maintained and/or inspected in accordance with this ordinance shall be regarded as illicit discharges.
- (b) Inspection of existing Stormwater Management Facilities. The City may, to the extent authorized by state and federal law, enter and inspect private property for the purpose of determining if there are non-stormwater illicit discharges, and to establish inspection programs to verify that all Stormwater Management Facilities are functioning within design limits. These inspection programs may be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of the City's NPDES Stormwater Permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other SCM's.

- (3) Owner/Operator Inspections. The owners and/or operators of the SCMs shall:
- (a) Perform routine inspections to ensure that all SCM's are functioning properly. These inspections shall be conducted on an annual basis, at a minimum. These inspections shall be conducted by a person approved by the Stormwater Administrator that is familiar with control measures implemented at the site. Owners or operators shall maintain documentation of these inspections. Submittal of this documentation is required in an annual report due by July 1st of each year.
 - (b) Perform comprehensive inspection of all stormwater management facilities and practices. These inspections shall be conducted once every five years, at a minimum. Such inspections must be conducted by a licensed professional engineer, a licensed landscape architect, or other qualified professional familiar with applicable SCM design and maintenance requirements. Comprehensive inspection reports must be submitted to the City on July 1st every five years. Complete inspection reports for these five-year inspections shall include:
 - (i) Facility type.
 - (ii) Inspection date.
 - (iii) Latitude and longitude and nearest street address.
 - (iv) SCM owner information (e.g., name, address, phone number, and email).
 - (v) A description of SCM condition including vegetation and soils, inlet and outlet channels and structures, embankments, slopes, safety benches, spillways, weirs, and other control structures, and any sediment and debris accumulation
 - (vi) Photographic documentation of SCMs.
 - (vii) Specific maintenance items or violations that need to be corrected by the SCM owner along with deadlines and reinspection dates.
- (4) Requirements for all existing locations and ongoing Developments. The following requirements shall apply to all locations and development at which land disturbing activities have occurred before the enactment of this ordinance:
- (a) Denuded areas must be vegetated or covered under the standards and guidelines specified in the adopted BMP Manual and on a schedule acceptable to the City.
 - (b) Cuts and Slopes must be properly covered with appropriate vegetation and/or retaining walls constructed.
 - (c) Drainage ways shall be properly stabilized.
 - (d) Trash, junk, rubbish, etc. shall be cleared from drainage ways.
 - (e) Stormwater runoff shall, at the discretion of the Stormwater Administrator, be controlled to the maximum extent practicable to prevent its pollution. Such control measures may include, but are not limited to, the following:
 - (i) Ponds
 - (1) Detention pond
 - (2) Extended detention pond
 - (3) Wet pond
 - (4) Alternative storage measures
 - (ii) Constructed Wetlands
 - (iii) Infiltration systems
 - (1) Infiltration/percolation trench
 - (2) Infiltration basin
 - (3) Drainage (recharge) well
 - (4) Porous pavement

- (iv) Filtering systems
 - (1) Catch basin inserts/media filter
 - (2) Sand filter
 - (3) Filter/absorption bed
 - (4) Filter and buffer strips
 - (v) Open Channel
 - (1) Swale
- (5) Corrections of problems subject to appeal. Corrective measures imposed by the Stormwater Administrator under this section are subject to appeal under section 21-111 of this Title.

21-107. Water Quality Riparian Buffer Zone Requirements

- (1) A riparian buffer shall be applied to all water resources located in, or adjacent to, new construction, development, or redevelopment that require a land disturbance permit. The goal of the Water Quality Riparian Buffer is to preserve undisturbed vegetation that is native to the streamside habitat around the project. The water quality riparian buffer zone is required to protect waters of the state located within or immediately adjacent to the boundaries of the project, as identified using methodology from standard operating procedures for hydrologic determinations (see rules to implement a certification program for qualified hydrologic professionals, Tennessee Rules chapter 0400-40-17). Buffer zones are not primary sediment control measures and should not be relied on as such. Rehabilitation and enhancement of a natural buffer zone is allowed, if necessary, for improvement of its effectiveness of protection of the waters of the state. Vegetated, preferably native, Water Quality Buffers protect water bodies by providing structural integrity and canopy cover, as well as Stormwater infiltration, filtration and evapotranspiration.
- (2) Stormwater discharges should enter water quality riparian buffers as sheet flow, not concentrated flow, as site conditions allow.
- (3) A determination that Water Quality Buffer widths cannot be met on-site may not be based solely on the difficulty or cost of implementing measures, but must include multiple criteria, such as: type of project, existing land use and physical conditions that preclude use of these practices. Every attempt should be made for development and redevelopment activities not to take place within the buffer zone.
 - (a) "Construction" or "temporary" applies to all streams adjacent to construction sites that require a land disturbance permit. The riparian buffer zone should be preserved between the top of stream bank and the disturbed construction area. Buffers shall be clearly marked on site development plans, grading permit applications, and/or concept plans. Refer to the table below for construction buffer zone requirements.

Construction Water Quality Buffer Requirements			
Receiving Feature	Average buffer width (feet)	Minimum buffer width (feet)	Notes*
Waters with available parameters for siltation or unassessed waters	30	15	The criteria for the width of the buffer zone can be established on an average width basis at a project, as long as the minimum width of buffer zone is more than the required minimum width at any measured location. If the new

Exceptional Tennessee Waters or waters with unavailable parameters for siltation	60	30	development or redevelopment site encompasses both sides of a stream, buffer averaging can be applied to both sides, but must be applied independently.
*The Administrator may approve variances from the water quality buffer requirements set forth in this chapter.			

- (b) “Permanent” new development and significant redevelopment sites are required to preserve Water Quality Buffers along waters within the MS4. Buffers shall be clearly marked on site development plans, land disturbance permit applications, and/or concept plans. Refer to the table below for permanent buffer zone requirements.

Permanent Water Quality Buffer Requirements			
Receiving Feature	Average buffer width (feet)	Minimum buffer width (feet)	Notes*
Waters with available parameters for siltation or habitat alteration or unassessed waters	30	15	The criteria for the width of the buffer zone can be established on an average width basis at a project, as long as the minimum width of buffer zone is more than the required minimum width at any measured location. If the new development or redevelopment site encompasses both sides of a stream, buffer averaging can be applied to both sides, but must be applied independently.
Exceptional Tennessee Waters or waters with unavailable parameters for siltation or habitat alteration	60	30	

*The Administrator may approve variances from the water quality buffer requirements set forth in this chapter.

- (4) Water quality riparian buffer widths are measured from the top of bank, also referred to as the “ordinary high-water mark.”
- (5) The following list includes the allowable uses within the Buffer Zone. The Stormwater Administrator shall approve the specific requirements of a plan proposing the installation of

any feature or construction within the Buffer Zone. For any such work, a Buffer Management Plan shall be submitted to the Stormwater Administrator prior to the issuance of a land disturbance permit.

- (a) Utility crossings
 - (b) Passive recreation, pervious footpaths, and boardwalks to approach the Water Resource as approved by the Stormwater Administrator.
 - (c) Biking or hiking paths and greenways, but no closer than 30 feet at any measured location. View corridors shall be allowed along greenways as approved by the Stormwater Administrator. Paths and greenways shall be designed to prevent the channelization of stormwater runoff and should be constructed of pervious and/or permeable materials. There shall be no other permanent structures except for paths.
 - (d) Stabilization practices to prevent channelization and erosion in the Buffer Zone from stormwater runoff adjacent to the water resource.
 - (e) Landscaping allows for climax successional vegetation through the removal of invasive exotic plants and the establishment of native vegetation, and/or other practices that restore the ecological integrity of the Riparian Buffer.
 - (f) Removal of individual trees within the Buffer Zone which are in danger of falling, causing damage to dwellings or other structures, or causing blockage of the water resource.
 - (g) Cut and fill for floodplain compensations as approved by the City Floodplain Administrator.
- (6) Requests to reduce the Riparian Buffer width, perform clearing activities or install crossings within the Riparian Buffer shall be approved by the Stormwater Administrator.
- (a) The Riparian Buffer width may be reduced in conjunction with targeted restoration plans that make comparable improvements to both the ecological integrity within the Buffer Zone and water quality of the water resource. Reduction of the Riparian Buffer width shall be approved on a case-by-case basis. Restoration plans must be submitted along with a Buffer Management Plan to the Stormwater Administrator for approval.
 - (b) Riparian Buffer crossings should be limited as much as possible. Utilities shall be located under pavement where possible to limit the width of the crossing. Riparian Buffer crossings shall be submitted along with a Buffer Management Plan to the Stormwater Administrator for approval.
 - (i) Utilities may be allowed in the Riparian Buffer, but not closer than 30 feet to the top of bank except for crossings.
 - (ii) The Stormwater Administrator may approve new driveways or road crossings through or across Riparian Buffer Zones on a case-by-case basis. It shall be demonstrated that access across the buffer is necessary and that the buffer will not be impacted excessively. In these cases, the driveway or road crossing shall be constructed perpendicular, or as close to perpendicular as possible to the Water Resource and/or Riparian Buffer with careful detail to protecting trees and vegetation and minimizing site grades. Other federal, state and/or local permits may still be required.
- (7) For any proposed development and/or construction activity within or adjacent to a Riparian Buffer, the following shall be required.
- (a) The parameters of the Riparian Buffer shall be delineated by the applicant and boundaries shall be clearly indicated and labeled on all plats, plans, permits and official maps.

- (b) Include a note on plans to reference protective covenants governing all Riparian Buffer areas, labeled as: "Any Riparian Buffer is subject to protective covenants recorded in the Register of Deeds (Sumner or Robertson County). Disturbance and use of these areas is restricted; severe penalties apply."
 - (c) Riparian Buffers shall be protected during construction activities by a combination of fencing and flagging to prevent entry of construction equipment, storage and stockpiling. Buffer boundaries shall be marked with signs that persist before, during and after construction activities.
 - (d) Permanent boundary markers shall be installed prior to the completion of the development activities. Signage shall be posted at the edge of the Riparian Buffer on each lot line, and at a maximum spacing of 200 feet. Properties with a large amount of Riparian Buffer frontage may request a reduction in spacing requirements, subject to approval by the Stormwater Administrator. The size of the sign shall be six inches by four inches or greater and shall contain the message, "Water Resource protected. Violators subject to severe penalties" or other language as approved by the Stormwater Administrator.
 - (e) All Riparian Buffers shall be placed in open space lots to be maintained according to Section 21-106.
- (8) Riparian Buffers shall be actively managed with periodic buffer surveys. Violators shall be served with Civil Penalties according to section 21-110(2) of this Title and shall be required, at their own expense, to revegetate, according to an approved Buffer Management Plan, and maintain the section of the Riparian Buffer encroached upon, using only native vegetation. Equivalent native plants and trees that were removed shall be replaced on a tree per tree basis or as approved by the Stormwater Administrator. Specimen trees shall be replaced as required by the City's Zoning Ordinance.

21-108. Illicit Discharges.

- (1) Scope. This section shall apply to all water generated on developed or undeveloped land entering the City's separate storm sewer system.
- (2) Prohibition of Illicit Discharges. No person shall introduce or cause to be introduced into the MS4 any discharge that is not composed entirely of stormwater or any discharge that flows from a Stormwater Management Facility that is not inspected in accordance with this Title shall be an illicit discharge. Non-stormwater discharges shall include, but shall not be limited to, sanitary wastewater, car wash wastewater, radiator flushing disposal, spills from roadway accidents, carpet cleaning wastewater, effluent from septic tanks, improper oil disposal, laundry wastewater/gray water, improper disposal of auto and household toxics. The commencement, conduct or continuance of any non-stormwater discharge to the MS4 is prohibited except as described as follows:
 - (a) Uncontaminated discharges from the following sources:
 - (i) Water line flushing or other potable water sources;
 - (ii) Landscape irrigation or lawn watering with potable water;
 - (iii) Diverted stream flows;
 - (iv) Rising ground water;
 - (v) Groundwater infiltration to storm drains;
 - (vi) Pumped groundwater;
 - (vii) Foundation drains;
 - (viii) Crawl space pumps;

- (ix) Air conditioning condensation;
 - (x) Springs;
 - (xi) Natural riparian habitat or Wetland flows;
 - (xii) Swimming pools (if dechlorinated - typically less than one PPM chlorine or desalinated for salt water pools);
 - (xiii) Firefighting activities;
 - (xiv) Individual residential car washing;
 - (xv) Discharges within the constraints of an NPDES permit from the Tennessee Department of Environment and Conservation (TDEC).
- (b) Discharges specified in writing by the City as being necessary to protect public health and safety.
- (c) Dye testing is an allowable discharge if the City has so specified in writing.
- (d) Discharges that comply with section 1.2.3 of the Tennessee Construction General Permit (CGP).
- (3) Prohibition of Illicit Connections. The construction, use, maintenance, or continued existence of illicit connections to the MS4 is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. This prohibition expressly includes SCM's connected to the system not properly inspected and maintained in accordance with this ordinance.
- (4) Reduction of Stormwater Pollutants by the use of Best Management Practices. Any person responsible for a property or premises, which is, or may be, the source of an illicit discharge, may be required to implement, at the person's expense, the BMP's necessary to prevent the further discharge of pollutants to the MS4. 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 section. Discharges from existing SCMs that have not been maintained and/or inspected in accordance with this ordinance shall be prohibited.
- (5) Notification of spills. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting in, or may result in, illicit discharges or pollutants discharging into the MS4, the person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials the person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, the person shall notify the City in person or by telephone or email, no later than the next business day. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the City within three (3) business days of the telephone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years.
- (6) No illegal dumping allowed. No Person shall dump or otherwise deposit outside an authorized landfill, convenience center or other authorized garbage or trash collection point, any trash or garbage of any kind or description on any private or public property, occupied or unoccupied, inside the City.

21-109. Enforcement.

(1) Enforcement authority. The Stormwater Administrator shall have the authority to issue notices of violation and citations, and to impose civil penalties to anyone that violates this chapter, who violates the provisions of any permit issued pursuant to this chapter, or who fails or refuses to comply with any lawful communication or notice to abate or take corrective action by the City. As set forth in the Enforcement Response Plan (ERP), the City enforcement authority includes:

- a. Verbal Warnings. At minimum, verbal warnings must specify the nature of the violation and required corrective action.
- b. Written Notices. Written notices must stipulate the nature of the violation and the required corrective action, with deadlines for taking such action.
- c. Citations with Administrative Penalties. The City has the authority to assess monetary penalties, which may include civil and administrative penalties.
- d. Stop Work Orders. Stop work orders that require construction activities to be halted, except for those activities directed at cleaning up, abating discharge, and installing appropriate control measures.
- e. Withholding of Plan Approvals or Other Authorizations. Where a facility is in noncompliance, the City's own approval process affecting the facility's ability to discharge to the MS4 can be used to abate the violation.
- f. Additional Measures. The City may also use other escalated measures provided under local legal authorities. The City may perform work necessary to improve erosion control measures and collect the funds from the responsible party in an appropriate manner, such as collecting against the project's bond or directly billing the responsible party to pay for work and materials.

(2) Notification of violation.

- (a) Verbal warning. Verbal warnings may be given when it appears the condition can be corrected by the violator within a reasonable time. Verbal warnings are documented by the City.
- (b) Written notice. Whenever the Stormwater Administrator finds that any permittee or any other person discharging stormwater has violated or is violating this ordinance or a permit or order issued hereunder, the Stormwater Administrator may serve upon such person written notice of the violation. All written notices will be documented and delivered by electronic mail, personal service or certified mail to the person that has violated or is violating this Title. Within ten (10) days of this notice or shorter period as may be prescribed in the notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted to the Stormwater Administrator. Submission of this plan in no way relieves the discharger of liability for any violations occurring before or after receipt of the notice of violation.
- (c) Cease and desist and Stop Work Orders. When the Stormwater Administrator finds that any Person has violated or continues to violate this Title or any Permit or order issued hereunder, the Stormwater Administrator may issue a Stop Work Order or an order to cease and desist all such violations and direct those persons in noncompliance to:
 - (i) Comply forthwith; or
 - (ii) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation; including

halting operations except for terminating the discharge and installing appropriate control measures.

- (d) Suspension, revocation or modification of permit. The Stormwater Administrator may suspend, revoke or modify the permit authorizing the land development project or any other project of the applicant or other responsible person within the City. A suspended, revoked or modified permit may be reinstated after the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein, provided such permit may be reinstated upon such conditions as the Stormwater Administrator may deem necessary to enable the applicant or other responsible person to take the necessary remedial measures to cure such violations.
- (e) Consent orders. The Stormwater Administrator is empowered to enter consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person responsible for the noncompliance. Such orders will include specific action to be taken by the person to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as administrative orders issued pursuant to paragraphs (d) and (e) below.
- (f) Show cause hearing. The Stormwater Administrator may order any person who violates this Title or Permit, or order issued hereunder, to show cause why a proposed enforcement action should not be taken. Notice shall be served to the person specifying the time and place for the meeting, the proposed enforcement action and the reasons for such action, and a request that the violator show cause why this proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing.
- (g) Compliance order. When the Stormwater Administrator finds that any person has violated or continues to violate this Title or a Permit or order issued thereunder, he may issue an order to the violator directing that, following a specific time period, adequate stormwater structures or devices be installed and/or procedures implemented and properly operated. Orders may also contain such other requirements as might be reasonably necessary and appropriate to address the noncompliance, including the construction of appropriate stormwater structures, installation of devices, self-monitoring, and management practices.

Whenever there is a conflict between any standard contained in this Title and in the BMP manual adopted by the City under this ordinance, the strictest standard shall prevail.

21-110. Penalties.

- (1) Violations. Any Person who shall commit any act declared unlawful under this Title, who violates any provision of this Title, who violates the provisions of any permit issued pursuant to this Title, or who fails or refuses to comply with any lawful communication or notice to abate or take corrective action by the Stormwater Administrator, shall be guilty of a civil offense.
- (2) Penalties. Under the authority provided in Tennessee Code Annotated § 68-221-1106, the City declares that any person violating the provisions of this Title may be assessed as a civil penalty by the Stormwater Administrator of not less than fifty dollars (\$50.00) and not more than five

thousand dollars (\$5,000.00) per day for each day of violation. Each day of violation shall constitute a separate violation.

- (3) Measuring Civil Penalties. In assessing a civil penalty, the Stormwater Administrator may consider:
- (a) The harm done to the public health or the environment;
 - (b) The duration and gravity of the violation;
 - (c) Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity;
 - (d) The economic benefit gained by the violator;
 - (e) The amount of effort put forth by the violator to remedy this violation;
 - (f) Whether the violation was committed intentionally;
 - (g) The prior record of the violator in complying or failing to comply with the Stormwater Management Program;
 - (h) Any unusual or extraordinary enforcement costs incurred by the City;
 - (i) The amount of penalty established by ordinance or resolution for specific categories of violations; and
 - (j) Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.
- (4) Recovery of damages and costs. In addition to the civil penalty in subsection (2) above, the City may recover:
- (a) All damages proximately caused by the violator to the City, which may include any reasonable expenses incurred in investigating violations of, and enforcing compliance with, this Title, or any other actual damages caused by the violation.
 - (b) The costs of the City's maintenance of stormwater facilities when the user of such facilities fails to maintain them as required by this Title.
- (5) Referral to TDEC. In accordance with the City's Enforcement Response Plan and the NPDES Permit requirements, the City may also notify TDEC of violations.
- (6) Other remedies. The City may bring legal action to enjoin the continuing violation of this Title, and the existence of any other remedy, at law or equity, shall be no defense to any such actions.
- (7) Remedies cumulative. The remedies set forth in this section shall be cumulative, not exclusive, and it shall not be a defense to any action, civil or criminal, that one (1) or more of the remedies set forth herein has been sought or granted.

21-111. Appeals.

Pursuant to Tennessee Code Annotated § 68-221-1106(d), any person aggrieved by the imposition of a civil penalty or damage assessment as provided by this Title may appeal said penalty or damage assessment to the City's Board of Mayor and Aldermen.

- (1) Appeals to be in writing. The appeal shall be in writing and filed with the municipal recorder or clerk within fifteen (15) days after the civil penalty and/or damage assessment is served in any manner authorized by law.
- (2) Appeal Fee. Any Person who chooses to file an appeal will be required to pay a nonrefundable \$100 appeal fee, which is due upon submittal of the appeal.
- (3) Public hearing. Upon receipt of an Appeal, the City's governing body shall hold a public hearing within forty-five (45) days. Ten (10) days prior notice of the time, date, and location

of said hearing shall be published in a daily newspaper of general circulation and on the City's website. Ten (10) days' notice by registered mail shall also be provided to the aggrieved party, such notice to be sent to the address provided by the aggrieved party at the time of appeal. The decision of the governing body of the City shall be final.

- (4) Appealing decisions of the City's governing body. Any alleged violator may appeal a decision of the City's governing body pursuant to the provisions of Tennessee Code Annotated, title 27, chapter 8.

APPENDIX A

INSPECTION AND MAINTENANCE AGREEMENT OF PRIVATE STORMWATER MANAGEMENT FACILITIES

Prepared by: City of Portland Stormwater Department * 100 South Russell St. * Portland, TN 37148

THIS AGREEMENT, made this ____ day of _____, 20____ by and between _____, hereafter referred to as the "OWNER(S)" of the following property: _____, Map _____ Parcel _____, Portland, TN 37148, and the City of Portland, Tennessee hereafter referred to as the "City". Land disturbance permit number: _____.

WHEREAS the City is required by Federal and State surface water quality regulations and its National Pollutant Discharge Elimination System (NPDES) permit to prevent surface water quality degradation from development or redevelopment activities within its jurisdiction, and the City has adopted surface water quality regulations as required and such regulations are contained in the Stormwater Management chapter of the City's Stormwater ordinance; and

WHEREAS the Owner owns the Property identified above and has or will construct certain Stormwater management facilities on the Property and has developed a Stormwater Maintenance Plan (SWMP), as may be amended from time-to-time (the "Plan") for the maintenance of those facilities, which the City has reviewed and approved, and a copy of which will be maintained by the Owner. A drawing showing the general area of the facilities covered by the Plan is attached to this Agreement for ease of identification.

THEREFORE, in consideration of the benefits received by the Owner as a result of the approval by the City of the Plan, the Owner does hereby covenant and agree with the City as follows:

WITNESSETH:

I/WE, the OWNER(S) with full authority to execute deeds, mortgages, other covenants, all rights, titles and interests in the property described above:

1. The OWNER(S) covenant and agree with the City that they shall provide for adequate long-term maintenance and continuation of Stormwater control measures to ensure that all the Stormwater facilities are and remain in proper working condition in accordance with approved design standards, rules and regulations, and applicable laws. The OWNER(S) shall perform preventive maintenance activities at intervals described in the **Post Construction Long-Term Water Quality Maintenance Plan** attached hereto along with necessary landscaping (grass cutting, etc.) and trash removal as part of regular maintenance.
2. The OWNER(S) shall submit to the City an annual report by July 1st of each year. The report will include the Long-Term Maintenance Plan that documents inspection schedules, times of inspections, remedial actions taken to repair, modify or reconstruct the system and the state of control measures.
3. The OWNER(S) shall grant to the City or its agent or contractor the right of entry at a reasonable time and in a reasonable manner for the purpose of inspecting, operating, installing, constructing, reconstructing, maintaining, or repairing the facility.

4. The OWNER(S) shall grant to the City the necessary easements and rights-of-way and maintain perpetual access from the public rights-of-way to the facility for the City or its agent and/or contractor in accordance with the Stormwater Management Ordinance. The OWNER(S) agree that should maintenance not be properly performed, after due notice, the City may order the work performed. The OWNER(S) shall reimburse the City, upon immediate demand, the costs incurred, and any enforcement action costs according to the Stormwater Management Ordinance. Provided, however, that the City shall in no event be deemed obligated to maintain or repair the Stormwater management facilities and nothing in this Agreement shall ever be construed to impose or create any such obligation to the City.
5. The OWNER(S) shall indemnify and hold the City harmless from all claims for damages to persons or property arising from the construction, maintenance, and use of the facility.
6. This AGREEMENT and covenants contained herein shall apply to and bind the OWNER(S) and the OWNERS(S) heirs, executors, successors, and assigns and shall bind all present and subsequent owners of the property served by the facility.
7. The OWNER(S) shall not be able to transfer, assign or modify its responsibilities with respect to this agreement without the City's written prior consent. Nothing herein shall be construed to prohibit a transfer by OWNER(S) to subsequent owners and assigns.
8. No waiver of any provision of this Agreement shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
9. If it is later determined that the City's NPDES permit clearly directs Owners or the City to manage stormwater treatment systems differently than specified in the Plan, the direction of the NPDES permit shall override the provisions of the Plan.
10. The Owner shall have a Tennessee-licensed engineer, surveyor, or landscape architect to inspect the facilities and certify to the City via a written report that the constructed facilities conform and purport substantially to the approved Plan. If the constructed condition of the facility or its performance varies significantly from the approved Plan, appropriately revised calculations shall be provided to the City and the Plan shall be amended accordingly. This report shall be completed, at a minimum, once within a five-year period, or as required by the City, or TDEC, and submitted to the City's Stormwater department.
11. **The OWNER(S) shall record this AGREEMENT in the office of the Register of Deeds in the county of _____, Tennessee.**

FOR THE OWNER(S):

Company Name

Signature

Title

Printed Name

Phone Number

STATE OF TENNESSEE

COUNTY OF _____

Before me, the undersigned Notary Public of the State and county mentioned, personally appeared _____, with whom I am personally acquainted (or provided to me on the basis of satisfactory evidence), and who, upon oath, acknowledges themselves to be the officer authorized to execute this Agreement (Inspection and Maintenance Agreement for Private Stormwater Management Facilities) heretofore named and executed the foregoing instrument for the purposes therein contained.

Witness my hand and official seal at office in, this _____ day of _____, 20____.

Notary Public

My Commission Expires

CITY OF PORTLAND STORMWATER DEPARTMENT
100 SOUTH RUSSELL STREET
PORTLAND, TN 37148

REVIEWED BY:

Signature

Title

Printed Name

Phone Number

STATE OF TENNESSEE
COUNTY OF _____

Before me, the undersigned Notary Public of the State and county mentioned, personally appeared with _____, whom I am personally acquainted (or provided to me on the basis of satisfactory evidence), and who, upon oath, acknowledges themselves to be a Stormwater Management Coordinator for the City of Portland, Tennessee and that as such Stormwater Management Coordinator, being authorized to do so, executed this Agreement (Inspection and Maintenance Agreement for Private Stormwater Management Facilities) for the purposes therein contained.

Witness my hand and official seal at office in, this _____ day of _____, 20_____.

Notary Public

My Commission Expires

CHAPTER 2

STORMWATER UTILITY

SECTION

- 21-201. General Provisions.
- 21-202. Definitions.
- 21-203. Funding of Storm Water Utility.
- 21-204. Storm Water Utility Management Fund.
- 21-205. Operating Budget.
- 21-206. Storm Water User Fee
- 21-207. Equivalent Residential Unit (ERU).
- 21-208. Property Classification for Storm Water User Fees.
- 21-209. Base Rate.
- 21-210. Property Owners to Pay Charges.
- 21-211. Billing Procedures and Penalties for Late Payment.
- 21-212. Appeal of Fees.
- 21-213. Storm Water User Fee Credit Policy.

21-201. General Provisions.

(1) Introduction.

(d) This Title is to:

- i. Be known as the “Stormwater User Fee” for the City of Portland, Tennessee;
- ii. Enable the City to comply with the National Pollution Discharge Elimination System Permit (NPDES) and applicable regulations, 40 CFR 122.26 for Stormwater Discharges;

(e) The City of Portland finds, determines, and declares that the stormwater system, which provides for the collection, treatment, storage and disposal of stormwater, provides benefits and services to all property within the incorporated City of Portland limits. Such benefits include, but are not limited to: the provision of adequate systems of collection, conveyance, detention, retention, treatment and release of storm water, the reductions of hazards to property and life resulting from storm water runoff, improvements in general health and welfare through reduction of undesirable storm water conditions, and improvements to water quality in the stormwater and surface water system and its receiving waters of the state all of which are managed by the Stormwater Administrator as part of the Municipal Separate Storm Sewer System (MS4) Program.

(f) The objective of this ordinance is to promote the public health, safety and general welfare of the City of Portland, Tennessee (“City”) and its citizens in compliance with the Federal Clean Water Act, 33 U.S.C. 1251 et seq., and Tennessee Code Annotated, § 68-221-1101 et seq. which require municipalities to implement stormwater management programs, within prescribed time frames, to regulate stormwater discharges to protect water quality; establish adequate systems of collection, conveyance, detention, treatment and release of stormwater; reduce hazards of property and life resulting from stormwater runoff; and enable

municipalities to fix and require payment of fees for the privilege of discharging stormwater. The City finds that a stormwater management system which provides for the treatment of stormwater is of benefit and provides services to all property within the city.

- (g) It is further determined and declared that charges shall be established for each developed parcel of developed property located within the municipal limits of the City as provided hereinafter to provide for dedicated funding sources for the administration of stormwater management programs and/or stormwater systems of the city. The proceeds of charges so derived shall be used for the purposes of planning, operation, maintenance, repair, replacement and debt service of the city's stormwater management programs and system necessary to protect the health, safety, and welfare of the public.
- (2) Purpose. The Stormwater Utility's purpose is to:
 - a. Administer and enforce the City of Portland's Stormwater Management Ordinance;
 - b. Administer, plan, and implement stormwater projects to protect, maintain, and enhance the environment of the City of Portland;
 - c. Implement activities necessary to maintain compliance with the City's MS4 National Pollutant Discharge Elimination System (NPDES) Permit and applicable regulations, 40 CFR Section 122.26 for storm water discharges;
 - d. Annually analyze the cost of services and benefits provided, and the system and structure of fees, charges, civil penalties, and other revenues of the utility; and,
 - e. Advise the Board of Mayor and Alderman and other City of Portland departments on matters relating to the utility.
- (3) Administering entity. The Storm Water Utility shall be a part of the City of Portland Public Works Department. The Stormwater Utility, under the immediate direction and supervision of the City Mayor, or their designee, shall administer the provisions of this Stormwater Utility Ordinance.
- (4) Jurisdiction. The Stormwater Utility Ordinance shall govern all properties within the incorporated limits of the City of Portland, Tennessee.

21-202. Definitions.

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

- (1) "Agricultural property" means property which is zoned agricultural and/or property which yields an annual minimum, or in which the annual minimum has been met in two of the last five years, of \$1,000.00 of agricultural products produced and/or sold from the operation of the property. Agricultural production shall include agricultural, forest, and/or livestock production as defined by the United States Department of Agriculture, Natural Resources Conservation Service, and Environmental Quality Incentive Program. Proof of agricultural producer status may include IRS from 1040 Schedule F or other accounting records certified by a tax preparer.
- (2) "Appeal" means a request for a review of the Stormwater Administrator's interpretation of any provision of these regulations.

- (3) "Base rate" means the storm water user fee for a detached single family residential property in the City of Portland.
- (4) "Best Management Practices" or "BMPs" means the physical, structural, and/or managerial practices that, when used singly or in combination, prevent or reduce pollution of water, that have been approved by the City of Portland, and that have been incorporated by reference into the Storm Water Management Ordinance as if fully set out therein.
- (5) "Board of Mayor and Alderman" means the Governing Body for the City of Portland.
- (6) "CII" refers to developed commercial, industrial, and institutional properties within the incorporated limits of the City of Portland, TN.
- (7) "City" means the City of Portland, Tennessee.
- (8) "Construction" Means the erection, building, acquisition, alteration, reconstruction, improvement, or extension of storm water facilities; preliminary planning to determine the economic and engineering feasibility of storm water facilities; the engineering, architectural, legal, fiscal, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary in the construction of storm water facilities; and the inspection and supervision of the construction of storm water facilities.
- (9) "Deficient property" means developed property that does not have adequate stormwater facilities as required in the latest edition of the City of Portland minimum drainage requirements for development.
- (10) "Developed Property" means developed property which has been altered from its natural state by the creation or addition of buildings, structures, pavement or other impervious surfaces, or by the alteration of the property that results in a meaningful change in the hydrology of the property.
- (11) "Equivalent Residential Unit (ERU)" shall be used as the basis for determining stormwater service charges to all properties within the City. An ERU is the standard value for which non-residential properties are compared to the average residential property. One ERU is based upon the average residential property area.
- (12) "Exempt property" means all public rights-of-way, public streets and public roads, public alleys, public sidewalks and public greenways, public drainage facilities, privately owned residential streets, property that does not discharge stormwater runoff to the stormwater or flood control facilities and railroad right-of-way properties within the City of Portland. For purposes of this definition, "public" shall mean that which is maintained by or is or is to be dedicated to the City of Portland and/or the State of Tennessee or the government of the United States.
- (13) "Fee or Stormwater User Fee" means the charge established by ordinance and levied on owners or users of parcels or pieces of developed property to fund the cost of Stormwater Management and of operating, maintaining, and improving the Stormwater system in the City.
- (14) "Fiscal year". July 1 of a calendar year to June 30 of the next calendar year, both inclusive.
- (15) "Impervious surface" means a surface which is compacted or covered with material that is resistant to infiltration by water, including, but not limited to, most conventionally surfaced streets, roofs, sidewalks, patios, driveways, parking lots, and any other oiled, graveled, graded, compacted, or any other surface which impedes the natural infiltration of surface water.
- (16) "Impervious surface area" means the number of square feet of horizontal surface covered by buildings, and other impervious surfaces. All building measurements shall be

made between exterior limits of the structure, foundations, columns or other means of support or enclosure.

- (17) "Multi-family Residential Property" means a building containing three (3) or more dwelling units. The term includes cooperative apartments, condominiums, and the like.
- (18) "Other Developed Property" means all Developed Property located within the municipal limits of the city other than (i) Residential Property; (ii) Exempt Property; (iii) Vacant Property and (iv) Park Lands/Cemetery. Other Developed Property shall include commercial properties, industrial properties, apartments, parking lots, hospitals, schools, recreational and cultural facilities, industrial properties, hotels, offices, churches, federal, state and local government properties and multi-use properties. Such property shall also include single family dwellings which are attached to or otherwise a part of a building housing a commercial enterprise. Any single-family residential structure which contains more than two attached dwelling units is specifically included in this definition.
- (19) "Park Land"/ "Cemetery" means all developed property owned by federal, state and/or local governments that has been designated by such governmental entity for use as a public park or cemetery.
- (20) "Person" means any and all persons, natural or artificial, including any individual, firm or association, and any municipal or private corporation organized or existing under the laws of this or any other state or country.
- (21) "Property owner" means the property owner of record as listed in the City's and/or county's tax assessment roll. A property owner includes any individual, corporation, firm, partnership, or group of individuals acting as a unit, and any trustee, receiver, or personal representative.
- (22) "Runoff Coefficient" is a term used to describe the percentage of precipitation that leaves a particular site as runoff. Runoff is precipitation that does not soak or absorb into the soil surface and is greatly impacted by the amount of impervious surface that exists on a particular site. The Runoff Coefficient relates the amount of impervious surface to the intensity of development.
- (23) "Single family residential property" refers to a building containing only one dwelling unit located upon one zone lot, the term is general, including such specialized forms as one-family detached, one-family semi-detached, and one-family attached. For regulatory purposes, the term is not to be construed to include travel trailers, self-propelled motor homes, tents, or other forms of portable or temporary housing.
- (24) "Stormwater" or "Storm Water" refers to Stormwater runoff, snow melt runoff, surface runoff, infiltration, and drainage.
- (25) "Stormwater Administrator" refers to the person(s) designated by the City Mayor to enforce the stormwater management ordinance.
- (26) "Stormwater Appeal Board" means the City of Portland' Board of Mayor and Aldermen.
- (27) "Stormwater management" means the planning, design, construction, regulation, improvement, repair, maintenance, and operation of facilities and programs relating to water, flood plains, flood control, grading, erosion, tree conservation, and sediment control.
- (28) "Stormwater Management Fund" or "Fund" means the fund created by this ordinance to operate, maintain, and improve the City's stormwater management system.
- (29) "Stormwater system" or "System" means all stormwater facilities, stormwater drainage systems and flood protection systems of the city and all improvements thereto which operate to, among other things, control discharges and flows necessitated by rainfall events; and incorporate methods to collect, convey, store, absorb, inhibit, treat, prevent or

reduce flooding, over drainage, environmental degradation and water pollution or otherwise affect the quality and quantity of discharge from such system.

- (30) "Stormwater user fee" or "Fee" refers to the utility service fee established under this ordinance and levied on owners or users of parcels or pieces of developed property to fund the costs of storm water management and of operating, maintaining, and improving the storm water system in the City of Portland. The storm water user fee is in addition to other fees that the City of Portland has the right to charge under any other rule or regulation of the City of Portland.
- (31) "Stormwater Utility" means a management structure that is responsible solely and specifically for the stormwater management program and system.
- (32) "Surface water" means water upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other watercourses, lakes, ponds, wetlands, marshes and sinkholes.
- (33) "Undeveloped Property" shall mean property that is in its natural state and has not been developed; does not have impervious surfaces on it.
- (34) "User" refers to the owner or customer of record of property subject to the storm water user fee imposed by this ordinance.
- (35) "Vacant/undeveloped property" means property on which there is no structure for which a certificate of occupancy has been issued.

21-203. Funding of Stormwater Utility.

(1) Funding for the stormwater utility's activities may include, but not be limited to, the following:

- (a) Stormwater user's fees.
- (b) Civil penalties and damage assessments imposed for or arising from the violation of the city's stormwater management ordinance.
- (c) Stormwater permit and inspection fees.
- (d) Other funds or income obtained from federal, state, local, and private grants, or revolving funds, and from the Local Government Public Obligations Act of 1986 (Tennessee Code Annotated, title 9, chapter 21).

(2) To the extent that the stormwater drainage fees collected are insufficient to construct needed stormwater drainage facilities, the cost of the same may be paid from such city funds as may be determined by the Board of Mayor and Alderman.

21-204. Stormwater Utility Management Fund.

- (1) All revenues generated by or on behalf of the Stormwater Utility shall be deposited in a Stormwater Utility Management Fund and used exclusively to fulfill the purposes of the Stormwater Utility.

21-205. Operating Budget.

- (1) The Board of Mayor and Alderman shall adopt, based on a recommendation from the Stormwater Administrator, Public Works Director and Finance Director, an operating budget for the Stormwater Utility Management Fund each fiscal year. The operating budget shall set forth for such fiscal year the estimated revenues and the estimated costs for operations and maintenance, extension and replacement and debt service.

21-206. Stormwater User Fee

- (1) There shall be imposed on each developed property in the City of Portland, a stormwater user fee which will be charged monthly, which shall be set from time to time by ordinance in the fee schedule as adopted by the City of Portland, except exempt properties, and in the manner and amount prescribed by the ordinance.

21-207. Equivalent Residential Unit (ERU).

- (1) Establishment. The ERU was established for the purpose of calculating the stormwater user fee.
- (2) Setting the ERU. The ERU shall be set by the Board of Mayor and Alderman via ordinance.
- (3) Source of ERU. The Board of Mayor and Alderman shall have the discretion to determine the source of the data from which the ERU is established, taking into consideration the general acceptance and use of such source on the part of other stormwater systems, and the reliability and general accuracy of the source including but not limited to property tax assessor's rolls, site examination, mapping information, aerial photographs, and other reliable information.
- (4) Evaluation of ERU. The ERU shall be evaluated by the Stormwater Utility as necessary.

21-208. Property Classification for Stormwater User Fees.

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

- a) Single Family Dwelling Residential property;
- b) Developed/Commercial/Industrial/Institutional (CII) properties; or
- c) Exempt property.

1.) Single Family Dwelling Residential Fee. The Board of Mayor and Alderman finds that the intensity of development of most parcels of developed property in the City of Portland classified as single family residential is similar and that it would be excessively and unnecessarily expensive to precisely determine the square footage of the impervious surface on each such parcel. Therefore, all single-family residential properties in the City of Portland shall be charged the same residential rate regardless of the size of the parcel or the impervious surface area of the improvements, except as provided herein.

2.) Developed property, Commercial, Industrial, Institutional fee. These properties in the City of Portland shall be charged the rate outlined by the stormwater rate ordinance.

3.) Exempt property. There shall be no stormwater user fee for exempt property or as otherwise provided by State law.

- a) Property outside of the incorporated City Limits.
- b) Undeveloped Property that is not altered from its natural state.
- c) Agricultural property upon which the owner or operator conducts activities that satisfy the requirements of a qualified farmer or nurseryman under Tennessee Code Annotated §67-6-

207(e). The owner or operator shall bear the burden of establishing such exempt status.

- d) Cemeteries.
- e) Railroad Right of Ways.

21-209. Base Rate.

- (1) The Board of Mayor and Alderman shall, by ordinance in the fee schedule as adopted by the Board of Mayor and Alderman, establish the base rate for the ERU. The base rate shall be calculated to ensure adequate revenues to fund the costs of stormwater management and to provide for the operation, maintenance, and capital improvements of the storm water system in the City of Portland.

21-210. Property Owners to Pay Charges.

- 1.) The owner of each property/tax lot shall be obligated to pay the stormwater user fee as provided in this ordinance, provided however, that if no water or sewer service is being provided by the City of Portland or local water utility district at the property to the owner as a customer of record and such service is being provided to a customer of record other than the owner, it shall be presumed that the owner and such customer of record have agreed that the customer of record shall be obligated to pay such stormwater user fee.
- 2.) If the customer of record other than the owner refuses to pay the stormwater user fee, the owner of each property shall be obligated to pay the stormwater user fee as defined in this ordinance.
- 3.) Non-residential multi-tenant properties shall be billed according to the placement of utility meters, i.e., if the property contains individual unit meters, then billing for the stormwater user fee shall be billed to individual units based on the unit's pro rata percentage of impervious surface. If the multi-tenant property contains a master meter, then the storm water user fee for the entire impervious surface area shall be billed to the customer of record for such master meter.
- 4.) Each unit of a multi-tenant residential building shall be billed a minimum charge, the same being the single-family residential fee, to the customer of record for the unit. If an individual unit is not individually billed for any water or sewer service, i.e., water and sewer utilities are billed to a master meter, then the customer of record for the master meter shall be billed as commercial property based on the total impervious surface area.

21-211. Billing Procedures and Penalties for Late Payment.

- (1) Rate and collection schedule. A stormwater user fee shall be set at a rate as set forth in the Stormwater User Fee Schedule as adopted by the Board of Mayor and Alderman by ordinance, collected at a location, and collected on a schedule, established in accordance with this ordinance. The storm water user fee shall be billed and collected monthly with the monthly utility services bill for those properties within the incorporated limits. The stormwater user fee for those properties utilizing city utilities is part of a consolidated statement for utility customers, which is generally paid by a single payment to the property owner's

water utility or to the City of Portland Stormwater Department, unless other means of billing is established at any time by the City.

- (2) The stormwater user fee for those properties utilizing utilities not provided by the City of Portland shall be billed and collected by the City of Portland directly to the utility provider or as directed by the Finance Director. All bills for the stormwater user fee shall become due and payable in accordance with the rules and regulations of the applicable utilities department pertaining to the collection of the storm water user fees.
- (3) Delinquent bills. The stormwater user fee shall be considered delinquent if not received by the City of Portland or applicable billing water utility by the due date stated within the utility statement, and subsequent late fees shall be imposed as set forth in the fee schedule as adopted by the Board of Mayor and Alderman as established by an ordinance.
- (3) Penalties for late payment; failure to pay. Stormwater user fees shall be subject to a late fee established by ordinance as indicated in the Stormwater User Fee Schedule. The City of Portland shall be entitled to recover attorney's fees incurred in collecting delinquent stormwater user fees. The City or other collecting utility provider may discontinue utility service to any stormwater user who fails or refuses to pay the stormwater user fees and may refuse to accept payment of the utility bill from any user without receiving at the same time, payment of the stormwater user fee charges owned by such user and further may refuse to re-establish service until all such fees have been paid in full.
- (4) Mandatory statement. Pursuant to Tennessee Code Annotated § 68-221-1112, each bill that shall contain stormwater user fees shall contain the following statement in bold: "**THE STORMWATER FEE HAS BEEN MANDATED BY CONGRESS PURSUANT TO TENNESSEE CODE ANNOTATED § 68-221-1112**". The City of Portland Board of Mayor and Alderman hereby finds and declares that the stormwater user fee is a utility service fee and not a tax.

21-212. Appeal of Fees.

- (1) Any person who disagrees with the calculation of the storm water user fee, as provided in this ordinance, may appeal such fee determination to the City of Portland's Stormwater Appeal board within ten (10) days after the date the payment is due. Any appeal not filed within the time permitted by this section shall be deemed waived.
- (2) All appeals shall be filed in writing addressed to the Stormwater Administrator for the City of Portland and shall state the grounds for the appeal and the amount of the stormwater user fee the appellant asserts is appropriate. The appeal shall provide such information and documentation supporting the basis of the appeal. The appeal shall be accompanied by a nonrefundable appeal review fee of \$100.
- (3) Any matter, decision, conclusion, pronouncement, or evaluation made by the City cannot be considered for The Portland Stormwater Appeal Board review until the matter has first been submitted to the City of Portland Stormwater Department for evaluation. Only after the Public Works Director and Stormwater Administrator has had an opportunity to fully consider the matter, and denied the appeal, or a timely review has not taken place, can Appellate Review be considered with the Portland Stormwater Appeal Board.
- (4) The Portland Stormwater Appeal board shall then review the appeal and determine whether the challenged determination is consistent with the provisions of this chapter.

Appeals related to the stormwater user fee shall be decided based on substantiated evidence with a sound engineering and factual basis. All appeal determinations shall be applied utilizing a strict interpretation of the Stormwater Utility Ordinance. At any hearing related to an appeal or credit determination, the City shall be allowed to present evidence, findings, and recommendations; appealing parties and applicants shall be given an opportunity to present evidence, findings, and recommendations.

- (5) The Portland Stormwater Appeal board may request additional information from the appealing party; the committee may defer the determination of an appeal one time to the next regularly scheduled meeting of the Portland Stormwater Appeal board. Each appeal shall be placed on the Portland Stormwater Appeal board agenda for the next scheduled meeting, which meeting is at least twenty (20) days after the Stormwater Administrator receives the written appeal.
- (6) The Stormwater Administrator shall notify the appellant customer of the date of the appeal review hearing in writing; such written notice shall be given at least ten (10) days prior to the hearing by regular mail at the address provided in the written appeal document. The decision of the Portland Stormwater Appeal board shall be final and conclusive with no further administrative review.
- (7) If a refund is due, the Finance Director shall authorize the refund which will be provided as the Stormwater Administrator deems necessary.

21-213. Storm Water User Fee Credit and Adjustment Policy.

- (1) All applications for Stormwater User Fee Credits and Adjustments shall be submitted as outlined in the City of Portland's Utility Credit Manual. Stormwater User Fee Credits and Adjustments may be available for developed properties that provide an up-to-date certified engineered plan, stamped by a current State-approved engineer licensed to practice in Tennessee, documenting reduced stormwater runoff and shows the stormwater on the property is not encountering the City's stormwater system. A detailed hydrologic report is required.

Chapter 3

Stormwater User Fee Credit Manual

SECTION

- 21-301. Overview
- 21-302. Definitions
- 21-303. User Fee Credits.
- Appendix A: Impervious Surface Credit Application
- Appendix B: Right-of-Entry Form
- Appendix C: Detention/ Water Quality Application
- Appendix D: Education Credit Application
- Appendix E: NPDES Credit Application

21-301. Overview

The stormwater user fee provides a stable and adequate source of revenue for the stormwater management program that allocates the costs of stormwater services across every stormwater “user” in the City of Portland’s Incorporated City Limits through a stormwater user fee (or service charge). Developed land is charged a fee based on the amount of impervious surface area on the property. The stormwater user fee that a property owner pays is directly proportional to the impervious area found on the property. A credit is an ongoing downward adjustment in the service charge. The stormwater user fee credit manual provides for adjustments to the stormwater user fee for properties that reduce demand on the public storm system.

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

Impervious surface area means the number of square feet of horizontal surface covered by buildings, and other impervious surfaces.

The purpose of the credit policy is to provide properties with credit for mitigating stormwater runoff impacts through education, or source controls, for water quantity or quality. The available credits are:

- Detention Credit up to 50%
- Quality Credit up to 25%
- Education Credit up to 10% (Places of Worship and Schools)
- NPDES Credit up to 10%

A property may qualify for more than one credit, but the maximum credit that a property can receive is 50%.

To qualify for credits, the stormwater user must submit a credit application form (found in Appendix 1), and any applicable application fees, to the City of Portland Stormwater Department. The application will be evaluated to determine credit eligibility and the amount of credit the user shall receive if granted. The credit applications should be addressed to the following:

Stormwater User Fee Credit Application

The Stormwater User Fee Credit Manual stipulates the design and performance standards of on-site systems, facilities, activities, and services that qualify for application of a stormwater user fee credit.

21-302. Definitions.

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

“Best Management Practices or BMPs” shall mean the physical, structural, and/or managerial practices that, when used singly or in combination, prevent or reduce pollution of water, that have been approved by the City of Portland, and that have been incorporated by reference into the Stormwater Management Ordinance as if fully set out therein.

“Construction” shall mean the erection, building, acquisition, alteration, reconstruction, improvement or extension of stormwater facilities; preliminary planning to determine the economic and engineering feasibility of stormwater facilities; the engineering, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary in the construction of stormwater facilities; and the inspection and supervision of the construction of stormwater facilities.

“Department” shall mean the City of Portland Stormwater Department.

“Detention Facility” shall mean a stormwater structure that, by means of a single control point, provides temporary storage of stormwater runoff for future release, and is used to delay and attenuate peak flow.

“Developed Property or Developed Land” means developed property which has been altered from its natural state by the creation or addition of buildings, structures, pavement or other impervious surfaces, or by the alteration of the property that results in a meaningful change in the hydrology of the property.

“Exempt Property” All public rights-of-way, public streets and public roads, public alleys, public sidewalks and public greenways, public drainage facilities, privately owned residential streets, property that does not discharge stormwater runoff to the stormwater or flood control facilities and railroad right-of-way properties within the City of Portland. For purposes of this definition, “public” shall mean that which is maintained by or is or is to be dedicated to the City of Portland and/or the State of Tennessee or the government of the United States.

“Green Infrastructure” shall mean stormwater management systems that mimic nature by promoting infiltration of stormwater runoff. These stormwater management systems may include downspout disconnection, rainwater harvesting, rain gardens, planter boxes, bio swales, permeable pavements, green alleys and streets, green parking, green roofs, urban tree canopy, and land conservation as approved by the Department.

“Impervious Area or Impervious Surface Area” The number of square feet of horizontal surface covered by buildings, and other impervious surfaces. All building measurements shall be made between exterior limits of the structure, foundations, columns or other means of support or enclosure.

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

“National Pollutant Discharge Elimination System or NPDES” shall mean the Federal Environmental Protection Agency's (USEPA) national program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits and imposing and enforcing pretreatment requirements under sections 307, 318, 402, and 405 of the Clean Water Act, United States Code, title 33, sections 1317, 1328, 1342, and 1345.

“Other Developed Property” means all Developed Property located within the municipal limits of the city other than (i) Residential Property; (ii) Exempt Property; (iii) Vacant Property and (iv) Park Lands/Cemetery. Other Developed Property shall include commercial properties, industrial properties, apartments, parking lots, hospitals, schools, recreational and cultural facilities, industrial properties, hotels, offices, churches, federal, state and local government properties and multi-use properties. Such property shall also include single family dwellings which are attached to or otherwise a part of a building housing a commercial enterprise. Any single-family residential structure which contains more than two attached dwelling units is specifically included in this definition.

“Person” Any and all persons, natural or artificial, including any individual, firm or association, and any municipal or private corporation organized or existing under the laws of this or any other state or country.

“Property Owner or Owner” The property owner of record as listed in the City’s and/or county’s tax assessment roll. A property owner includes any individual, corporation, firm, partnership, or group of individuals acting as a unit, and any trustee, receiver, or personal representative.

“Qualified Control Structure” shall mean a device or structure meeting design standards and approved by the Department that substantially limits the discharge of stormwater from a parcel of property into or through any Public System or that substantially improves the purity of stormwater so discharged.

“Residential Property” shall mean a developed property which serves the primary purpose of providing a permanent dwelling unit to a single family. A single-family detached dwelling, a townhouse, an accessory apartment or second dwelling unit, a condominium, a duplex, a triplex, a quadruplex, a villa, or a garden home is included in this definition. A single-family dwelling which is attached to, or otherwise a part of, a building housing a commercial enterprise is not included in this definition.

“Stormwater or Storm Water” Stormwater runoff, snow melt runoff, surface runoff, infiltration, and drainage.

“Stormwater Management” means the planning, design, construction, regulation, improvement, repair, maintenance, and operation of facilities and programs relating to water, flood plains, flood control, grading, erosion, tree conservation, and sediment control.

“Stormwater System or System” means all stormwater facilities, stormwater drainage systems and flood protection systems of the city and all improvements thereto which operate to, among other things, control discharges and flows necessitated by rainfall events; and incorporate methods to collect, convey, store, absorb, inhibit, treat, prevent or reduce flooding, over drainage, environmental degradation and water pollution or otherwise affect the quality and quantity of discharge from such system.

“Stormwater User or User” The owner or customer of record of property subject to the storm water user fee imposed by the Stormwater Utility Ordinance.

Stormwater User Fee or Fee The utility service fee established under this ordinance and levied on owners or users of parcels or pieces of developed property to fund the costs of storm water management and of operating, maintaining, and improving the storm water system in the City of Portland. The storm water user fee is in addition to other fees that the City of Portland has the right to charge under any other rule or regulation of the City of Portland.

“Stormwater Utility” A management structure that is responsible solely and specifically for the stormwater management program and system.

“Stormwater Utility Ordinance” shall mean Title 21, chapter 2 of the City of Portland Municipal Code.

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

“Ten Percent Rule” shall mean analyzing the development’s downstream impact to stormwater runoff to the point where the site makes up ten percent or less of the total drainage area to the point in question. This analysis consists of developing a simplified hydrologic model of the development site and contributing areas to insure there is no increase in flow values at each significant junction point down to the point where the site is ten percent or less of the total land area.

“Undeveloped Property or Undeveloped Land” shall mean property that is in its natural state and has not been developed; does not have impervious surfaces on it.

“User Fee Credit” shall mean a downward adjustment in the amount of the stormwater user fee given to properties for maintaining qualified control structures or implementing an approved education program as discussed herein.

“Vacant / Undeveloped Property” Property on which there is no structure for which a certificate of occupancy has been issued.

21-303. User Fee Credits.

The purpose of user fee credits is to provide an ongoing reduction in fees to customers that place an ongoing reduction in demand on the stormwater system than would be reflected in the calculation of their stormwater user fee or for specific customer types, who through private efforts, provide a direct reduction in the cost of stormwater programs funded by the stormwater user fee.

General provisions for stormwater user fee credits are listed below. See the following pages for details for individual credits.

- Credits are available to all developed properties within the incorporated city limits of Portland.
- It is the responsibility of the property owner (or his/her designee) to apply for stormwater user fee credits, and to provide the necessary substantiating information with a credit application, as described herein.
- The Credit Application and supporting documents are included in the appendices to the Credit Manual. The Department shall not be responsible for initiating applications, performing engineering calculations, or otherwise assisting with the preparation of credit applications.
- Credits can be combined for a maximum credit of 50%.
- Credits are granted only upon approval of a credit application. A non-refundable review fee of \$100 shall accompany credit applications.

- The Department shall review credit applications within four (4) weeks after a complete application is submitted. If a credit is granted, the credit shall be applied one (1) billing cycle after the approval date.

- The Department maintains the right to inspect properties to ascertain credit applicability at the time of credit application and at any time during which the site is receiving credit.

- Credits shall be valid for a period of 5 years. It is the user's responsibility to reapply for credits no later than 60 days prior to expiration to assure continuity of the credits applied to the user fee.

- Credits can be revoked or reduced at any time that it is determined by the Department that controls, measures, or activities are not performing to the requisite design standard, that controls are not being maintained to function as designed, or that the controls, measures, or activities no longer meet the purpose of the credit.

- If a Stormwater Utility credit is granted, the credit shall be applied one (1) billing cycle after the approval date. Retroactive Credits will not be granted.

Stormwater Detention Credit (up to 50%)

Qualified properties with structural controls or measures such as detention facilities for reducing peak demand and controlling the rate at which the runoff volume enters the stormwater system may be eligible for a Stormwater Detention Credit up to 50%.

Properties may be eligible for a full credit of up to 50% where a stormwater detention facility is utilized to reduce post-developed discharges to pre-developed levels for the 2-year through 100-year flood events along with performing a downstream analysis for the "Ten Percent Rule". The Ten Percent Rule analyzes the development's downstream impact to stormwater runoff to the point where the site makes up ten percent or less of the total drainage area to the point in question. This analysis consists of developing a simplified hydrologic model of the development site and contributing areas to insure there is no increase in flow values at each significant junction point down to the point where the site is ten percent or less of the total land area. Properties may be eligible for a partial credit of 40% where a stormwater detention facility is utilized to reduce post-developed discharges to pre-developed levels for the 2-year through 100-year flood events.

Properties may be eligible for a partial credit of 25% where a stormwater detention facility is used to reduce post-developed discharges to pre-developed levels for the 2-year through 25-year flood events. This level of detention may be achieved, for example, by rehabilitating a temporary sediment control pond to serve as a permanent stormwater detention facility.

Conditions of Credit:

1. The property owner must submit a site plan, design calculations, as-built drawings, and/or other data signed and sealed by a professional engineer that are sufficient for the Department to render an opinion regarding the applicability of credit. Original design plans currently verified "as built" by a professional engineer will suffice.

2. The property owner must submit a maintenance plan, maintenance agreement, and annual documentation of maintenance on all structural controls and non-structural activities that serve as the basis for the credit according to the assessment by the Department.

3. The annual documentation of maintenance on all structural controls and non-structural activities that serve as the basis for the credit may be submitted by a State of Tennessee licensed Professional Engineer, licensed Landscape Architect, or TDEC EPSC Level 1 or 2 certified inspector.

Stormwater Quality Credit (up to 25%)

Qualified properties with structural controls or measures that reduce stormwater runoff pollution to the Municipal Separate Storm Sewer System (MS4) may be eligible for a Stormwater Quality Credit up to 25%. These controls should provide runoff pollution characteristics similar to undeveloped land.

Properties may be eligible for the full 25% credit if they contain water quality Best Management Practices (BMP) that meet performance criteria for the capture and infiltration of the first one inch of runoff through the use of Green Infrastructure.

Properties may be eligible for a partial credit of 10% if they contain water quality Best Management Practices (BMP) that meet minimum performance criteria for removal of 80% total suspended solids (TSS) and remain in compliance with City of Portland's State of Tennessee NPDES Phase II Municipal Separate Storm Sewer Systems (MS4) General Permit for Discharges.

Industrial properties may be eligible for a partial credit of 10% if they maintain a separate approved State of Tennessee NPDES permit for stormwater management.

Conditions of Credit:

1. The property owner must submit a site plan, design calculations, as-built drawings, and/or other data signed and sealed by a valid State of Tennessee professionally licensed engineer that are sufficient for the Department to render an opinion regarding the applicability of credit. Original design plans currently verified "as built" by a professional engineer will suffice.

2. The property owner must submit a maintenance plan, maintenance agreement, and annual documentation of maintenance on all structural controls and non-structural activities that serve as the basis for the credit according to the assessment by the Department. Reports are due annually by June 30.

3. The annual documentation of maintenance on all structural controls and non-structural activities that serve as the basis for the credit may be submitted by a State of Tennessee licensed Professional Engineer, licensed Landscape Architect, or TDEC EPSC Level 1 or 2 certified inspector.

Stormwater Education Credit (up to 10%)

A credit of up to 10 percent will be available to public or private educational institutions and Places of Worship that provide a regular and continuing program of education approved by the Department and concentrating on stewardship of water resources and minimization of demand on the public stormwater system. Qualified educational institutions and Places of Worship have the ability to provide significant stormwater education that will not only assist the City of Portland in meeting NPDES permit requirements but will also instill an appreciation and stewardship of water resources that will benefit and/or decrease the demand on the stormwater system, or program, in the long term.

The credit eligibility will be determined by the Department based on the content of the education materials, the ability for the education to meet the NPDES permit requirements, the number of

students / members / parishioners receiving education, increasing the water quality, and the potential for reducing the water quantity and demand on the public stormwater system.

Brochure templates and suggested education material can be obtained from the City.

Conditions of Credit:

1. Institution/Place of Worship must submit a description of the educational program, curriculum or program materials, and estimated number of students / members / parishioners that will receive the education for review by the Department for credit approval.
2. Institution/Place of Worship must provide educational take-home materials to all students / members / parishioners at least once annually.
3. Institution/Place of Worship must submit an annual report documenting the number of students/members/parishioners that received the education in that year.
4. The credit will be applied only to the property(s) where the curriculum is taught (e.g., if the curriculum is taught only at an Elementary School, the credit will be applied only to that property, not the entire school system).

To receive the credit, the curriculum must be scheduled with the intention that all students/parishioners will receive the curriculum at least once during a calendar year. For example, a typical tenure for high school would be four (4) years, so it would be expected that approximately 25% of students in the school would be taught the curriculum each year and that a student that attended the school for four years would receive the education at least once.

Appendices

Appendix A: Impervious Surface Credit Application
Appendix B: Right-of-Entry Form
Appendix C: Detention/ Water Quality Application
Appendix D: Education Credit Application
Appendix E: NPDES Credit Application

Appendix A Impervious Surface Credit Application Form

For review of this application, you must:

- Fill out this application completely.
- Provide a set of plans of your property showing the total impervious surface area as conducted by a licensed land surveyor.

Instructions:

The applicant must provide site plans from a licensed land surveyor, outlining the impervious surfaces that exist on your property, and provide those measurements, with this application, to the City of Portland Engineering Department. A site plan of your property, with the appropriate measurements clearly indicated, must be provided to be considered for an Impervious Surface Credit. **The licensed land surveyor is required to sign and seal the plans.**

Impervious surfaces are those surfaces that prevent the infiltration of rainfall into the soil. Common impervious surfaces may include, but are not limited to rooftops, sidewalks, walkways, patio areas, driveways, parking lots, storage buildings/pads, compacted gravel or soil surfaces, awnings (and other fabric or plastic coverings) and any other surface that prevents or impedes the natural infiltration of stormwater runoff.

Property Owner Information

Name: _____ Phone: _____

Address: _____

Applicant Information (if different from owner)

Name: _____ Phone: _____

Address: _____

Property Information (if different from above)

Address: _____

Parcel Identification Number (if known): _____

Utility Account Number: _____

I hereby request the City of Portland to review this application for an Impervious Surface Credit to my stormwater utility fee. I certify that I have the authority to make such a request and grant such authority for this property. The attached information is true and correct to the best of my knowledge and belief. I agree to provide corrected information to the City of Portland Engineering Department should there be any change in the information provided herein. I further authorize the City of Portland to access the property identified in this application for the purpose of assessment for a stormwater fee credit.

Signature: _____ Name: _____

Date: _____

Do not write in shaded areas – for City use only.

Calculated Impervious Area: _____ sf Credit Approved? ☐ Yes ☐ No

Signature: _____ Name: _____

Title: _____ Date: _____

Appendix B Right-of-Entry Form

Owner or Owner's Representative (Contact):	Property Parcel Number:
Property Address:	
Contact Phone Number:	Contact Email:
Mailing Address (if different than property address):	
<p>This agreement gives authorization by the property owner, _____ (Owner) to City of Portland Stormwater Department to enter onto the property at the above listed location, for the purposes of inspection. Inspections may be conducted of any stormwater facility for which a user fee credit was applied. Inspections may be performed by the Department employees or their designee, including consulting engineers, contractors or other representatives.</p> <p>IN WITNESS WHEREOF, the parties have caused their respective names to be signed hereto on the day of _____ 20____.</p>	
Owner's Signature	Date
Department Representative's Signature	Date

Appendix C

Detention, Quality, or Education Credit Application Form

Owner or Owner's Representative (Contact):	Property Parcel Number:
Property Address:	
Contact Phone Number:	Contact Email:
Mailing Address (if different than property address):	
Credits for Consideration (check all that apply):	
<div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Detention Credit (up to 50%) – Attached: <ul style="list-style-type: none"> <input type="checkbox"/> Supporting Drawings and Calculations <input type="checkbox"/> Executed Maintenance Agreement <input type="checkbox"/> Maintenance Plan <input type="checkbox"/> Executed Right of Entry Form </div> <div> <input type="checkbox"/> 25% <input type="checkbox"/> 40% <input type="checkbox"/> 50% </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div> <input type="checkbox"/> Quality Credit (up to 25%) – Attached: <ul style="list-style-type: none"> <input type="checkbox"/> Supporting Drawings and Calculations <input type="checkbox"/> Executed Maintenance Agreement <input type="checkbox"/> Maintenance Plan <input type="checkbox"/> Executed Right of Entry Form </div> <div> <input type="checkbox"/> 10% <input type="checkbox"/> 25% </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div> <input type="checkbox"/> Education Credit (up to 10%) – Attached: <ul style="list-style-type: none"> <input type="checkbox"/> Description of Education Program (list of education tools used, est. number of students that will complete education) <input type="checkbox"/> Stormwater Education Credit Form <input type="checkbox"/> Executed Right of Entry Form </div> <div> <input type="checkbox"/> 10% </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div> <input type="checkbox"/> NPDES Permit Credit (up to 10%) – Attached: <ul style="list-style-type: none"> <input type="checkbox"/> Copy of Active State of Tennessee NPDES Permit <input type="checkbox"/> Supporting Documents and Inspection Reports </div> <div> <input type="checkbox"/> 10% </div> </div>	
This application is to request credit or adjustment to the assigned stormwater user fee for the property at the above location.	
Owner's Signature	Date

Appendix D Education Credit Form

Owner or Owner's Representative (Contact):	Property Parcel Number:			
Property Address:				
Contact Phone Number:	Contact Email:			
Mailing Address (if different than property address):				
<p>Applicant must provide adequate documentation to demonstrate to City of Portland Stormwater Department that sufficient focus and instruction upon stormwater management issues and water quality protection are covered in the time frame suggested. Summarize all appropriate documentation in the table below and attach documentation to the application.</p>				
Method and Tools for Stormwater Education	Grade Level(s)	Number of Students Annually	Percent of Total Students	Contact Hours

Appendix E NPDES Credit Form

Owner or Owner's Representative (Contact):	Property Parcel Number:			
Property Address:				
Contact Phone Number:	Contact Email:			
Mailing Address (if different than property address):				
<p>Applicant must provide adequate documentation to demonstrate to the City of Portland Stormwater Department that an Active NPDES permit is on file with the State of Tennessee. Summarize all appropriate documentation in the table below and attach documentation to the application.</p>				
NPDES Permit Number	Effective Date	Expiration Date	Date of Last Inspection	Facility Manager