

ORDINANCE NO. 2010 - 7

AN ORDINANCE TO AMEND CHAPTER 21 (UTILITIES) AND CHAPTER 23 (ZONING) OF THE CODE OF ORDINANCES OF THE CITY OF GERMANTOWN TO ADOPT CERTAIN PROVISIONS RELATED TO STORM WATER MANAGEMENT

WHEREAS, The City of Germantown (“City”) is required by the Federal Clean Water Act, 33 U.S.C. 1251 *et seq.*, and Tennessee Code Annotated, § 68-221-1101 *et seq.* to (i) impose controls to reduce the discharge of pollutants in storm water to the maximum extent practicable using management practices, control techniques and system design and engineering methods, and such other provisions which are determined to be appropriate for the control of such pollutants; and (ii) to obtain a National Pollutant Discharge Elimination System (NPDES) Permit from the Tennessee Department of Environment and Conservation for storm water discharges from the City’s stormwater system; and

WHEREAS, To comply with the requirements of the NPDES Permit and federal and state law, the City adopted ordinances codified as Chapter 23, Zoning, Article VI, Stormwater Management and Pollution Control on November 22, 2004; and

WHEREAS, In response to the increasing costs related to stormwater management, on February 22, 2010, the City adopted an amendment to Chapter 21, Utilities, by adding Article VIII to said Chapter 21 of the City’s ordinances which established a stormwater user fee to provide dedicated funding sources for the administration of stormwater management programs and the stormwater system of the City; and

WHEREAS, Ordinances related to stormwater user fees are located in Chapter 21, Utilities, because such stormwater user fees are to be billed, collected and monitored in connection with the City’s other utilities; and, accordingly, the City has determined that all stormwater management ordinances which are currently located in Chapter 23, Zoning, should be codified together in Chapter 21, Utilities, of the City’s Code of Ordinances;

WHEREAS, The Germantown Planning Commission considered this proposed amendment to the zoning ordinances; and, on April 6, 2010, recommended that the City of Germantown Board of Mayor and Aldermen adopt this amendment to Chapter 23, Zoning;

WHEREAS, Pursuant to Tennessee Code Annotated § 68-221-1106(d) whereby a municipality shall establish a procedure for review of a civil penalty or damage assessment related to the stormwater management ordinances by either the governing body of the municipality or by a board established to hear such appeals; the City desires to also amend the stormwater management ordinances to establish a local hearing board for the purpose of hearing appeals related to civil penalties, damage assessments, and/or reductions in stormwater user fees; and


WHEREAS, a public hearing before the Board of Mayor and Aldermen was held on September 13, 2010 pursuant to notice thereof published in a newspaper of general circulation within the community on August 25, 2010.

THEREFORE, BE IT NOW ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN FOR THE CITY OF GERMANTOWN THAT:

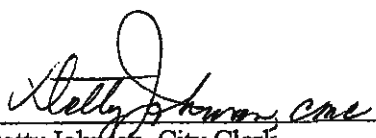
Section 1. Chapter 23 (Zoning) of the Code of Ordinances, City of Germantown, is hereby amended by deleting Article VI in said Chapter 23; and Chapter 21 (Utilities) is hereby amended by adding Article VII in Chapter 21 (Utilities), which Article reads as set forth in Exhibit A attached hereto.

Section 2. BE IT FURTHER ORDAINED that this ordinance shall take effect upon its passage on third and final reading, the health, safety and welfare of the citizens requiring it.

First Reading August 9, 2010
Second Reading September 13, 2010
Third Reading September 27, 2010



Sharon Goldsworthy, Mayor



Dotty Johnson, City Clerk

EXHIBIT A

ARTICLE VII. STORM WATER MANAGEMENT AND POLLUTION CONTROL.

DIVISION 1. GENERALLY

SEC. 21-300. OBJECTIVES

- (a) The objectives of this article are:
- (1) To protect public health, safety and general welfare.
 - (2) To eliminate any non-allowable discharges to City of Germantown MS4 that adversely impact water quality.
 - (3) To provide for the sound use and development of all flood-prone areas in such a manner as to maximize beneficial use without increasing flood hazard potential or diminishing the quality of the natural stormwater resources.
 - (4) To provide for sound fiscal management of the community and maintain a stable tax base by providing appropriate fees and other dedicated funding sources for the administration of the watershed management program.
 - (5) To increase the awareness of the public, property owners and potential homebuyers regarding storm water impacts (i.e. flooding, erosion).
 - (6) To minimize prolonged business interruptions.
 - (7) To minimize storm water damage to public facilities and utilities such as water and gas mains; electric, telephone, storm and sanitary sewer lines; and streets and bridges.
 - (8) To promote a functional public and private stormwater management system that will not result in excessive maintenance costs.
 - (9) To encourage the use of natural and aesthetically pleasing design that maximizes preservation of natural areas.
 - (10) To promote the use of comprehensive watershed management plans.
 - (11) To encourage preservation of floodplains, floodways and open spaces.
 - (12) To encourage community stewardship of the City of Germantown's water resources.
 - (13) It is further the purpose of this Chapter to enable the City of Germantown to comply with the NPDES Permit and applicable regulations (at 40 CFR 122.32-35) for storm water discharges.

SEC. 21-301. CONFLICT

All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this Chapter are hereby repealed to the extent of such inconsistency or conflict. If any provisions of this ordinance and any other provisions of law impose overlapping or contradictory regulations, or contain any restrictions covering any of the same subject matter, that provision which is more restrictive or imposes higher standards or requirements shall govern.

SEC. 21-302. SEVERABILITY

If any provision of this Chapter or its application to any person, entity, or property is held invalid, the remainder of the Chapter or the application of the provision to other persons or property shall not be affected. Should any article, section, subsection, clause or provision of ordinance be declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole or any part thereof other than the part declared to be unconstitutional or invalid, each article, section clause and provision being declared severable.

SEC. 21-303. DEFINITIONS

For the purpose of this ordinance, unless specifically defined below, words or phrases shall be interpreted so as to give them the meaning they have in common usage and to give this article its most effective application. Words in the singular shall include the plural, and words in the plural shall include the singular. Words used in the present tense shall include the future tense. The word "shall" connotes mandatory and not discretionary; the word "may" is permissive.

Accidental Discharges - means a discharge prohibited by this Chapter into the City of Germantown MS4 that occurs by chance and without planning or consideration prior to occurrence.

Best Management Practices or BMPs - means schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce the pollution of storm water runoff. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

Clean Water Act or the Act - means the Federal Water Pollution Control Act, as amended, codified at 33 U.S.C. 1251 *et. seq.*

Commercial - means property devoted in whole or part to commerce, that is, the exchange and buying and selling of commodities or services. The term shall include, by way of example, but not be limited to the following businesses: amusement establishments, animal clinics or hospitals, automobile service stations, automobile car washes, automobile and vehicular repair shops, banking establishments, beauty and barber shops, bowling alleys, and repair shops, camera shops, dental offices or clinics, day care centers, department stores, drug stores, funeral homes, furniture stores, gift shops, greenhouses, grocery stores, hardware stores, hotels, jewelry stores, laboratories, laundries, and dry cleaning establishments, liquor stores, medical offices and clinics, motels, movie theaters, office buildings, paint stores or shops, parking lots, produce markets, professional offices, radio stations, repair establishments, retail stores, television stations and production facilities, theaters, and truck or construction equipment service stations.

Construction activity shall mean any clearing, grading, excavating, or equipment usage that will result in the disturbance of the land surface and is subject to Storm Water Permit requirements under the State of Tennessee General Permit for Storm Water Discharges Associated with Construction Activity. The term shall not include:

(A) Such minor construction activities as home gardens and individual home landscaping, home repairs, home maintenance work and other related activities that result in minor soil erosion;

(B) Individual service and sewer connections for single or two family residences;

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

(D) Any project carried out under the technical supervision of the Natural Resources Conservation Service of the United States Department of Agriculture;

(E) Installation, maintenance, and repair of any underground public utility lines when such activity occurs in an existing hard surface road, street or sidewalk, provided the activity is confined to the area of the road, street or sidewalk which is hard surfaced and a street, curb, gutter or sidewalk Permit has been obtained;

Critical design storm - means the design storm specified in the Shelby County Watershed Management Manual (SWMM).

Development – means any activity subject to the Tennessee General Permit for Construction Activities.

Director – means City of Germantown Director of Community Development.

Erosion and Sediment Control Plan - means a written plan, including drawings or other graphic representations, for the control of soil erosion and sedimentation resulting from a construction activity.

Impervious - means not allowing the passage of water through the surface of the ground or ground covering or a substantial reduction in the capacity for water to pass through the surface of the ground or ground covering.

Industrial Facility - is a business engaged in industrial production or service, that is, a business characterized by manufacturing or productive enterprise or a related service business. This term shall include but not be limited to the following: greenhouses, and utility transmission.

Institutional - means an established organization, especially of a public or charitable nature. This term shall include, by way of example, but not be limited to, the following: churches, community buildings, colleges, day care facilities, dormitories, drug or alcohol rehabilitation facilities, fire halls, fraternal organizations, golf courses and driving ranges, government buildings, hospitals, libraries, kindergartens, or preschools, nursing homes, mortuaries, schools social agencies, synagogues, parks and playgrounds.

Junk motor vehicle - means any vehicle that shall include by way of example, but not be limited to the following vehicle types: automobiles, construction equipment, motorcycles, and trucks, which meets all of the following requirements:

- (1) Is three years old or older;
- (2) Is extensively damaged, such damage including, but not limited to any of the following: A broken window or windshield or missing wheels, engine or transmission;
- (3) Is apparently inoperable;
- (4) Is without a valid current registration;
- (5) Has a fair market value equivalent only to the value of the scrap in it.

Manager - means the City of Germantown City Engineer or his/her designee who designated to supervise the operation of the storm water management program and who is charged with certain duties and responsibilities by this Chapter, or his/her duly authorized representative.

Multi-Family Residential - means an apartment building or other residential structure built for three or more units or lots under common ownership, and condominiums of three or more units.

National Pollutant Discharge Elimination System or NPDES Permit - means a permit issued pursuant to 33 U.S.C. Chapter 26 Water Pollution Prevention and Control, Subchapter IV Permits and Licenses, Section 1342.

Notice of Intent or N.O.I. - means a written notice by the discharger to the Commissioner of the Tennessee Department of Environment and Conservation, or his designee, that a person wishes his discharge to be authorized under a general permit authorized by state law or regulation.

Non-storm water - any discharge to the City of Germantown MS4 that is not discharged pursuant to a NPDES permit; discharged pursuant to a State of Tennessee Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity, or any discharge as described at 40 CFR Part 122.26 (d) (2) (iv) (B) (1).

Person - means any individual, partnership, co-partnership, firm, company, trust estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. The masculine gender shall include the feminine, the singular shall include the plural where indicated by context.

Pollution Prevention Plans - means a written site specific plan to eliminate or reduce and control the pollution of storm water through designed facilities, natural or constructed, and best management practices.

Redevelopment – any development subject to the Tennessee General Permit for Construction Activities.

Regional Facility – means a storm water management facility designed to serve more than two properties and 100 or more acres of drainage area. A regional facility typically includes a storm water pond.

Significant Spills - Releases of oil or hazardous substances in excess of reportable quantities under Section 311 of the Clean Water Act (at 40 CFR 110.10 and CFR 117.21) or Section 102 of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), (at CFR 302.4).

Shelby County Watershed Management Manual – means the guidance document for use by Shelby County as may be adopted and amended from time to time by the Board of County Commissioners.

Storm Water – refers to water induced or created from precipitation whether rain, snow or ice and either stored, collected, detained, absorbed, or discharged.

Storm Water Management - means the collection, conveyance, storage, treatment and disposal of storm water in a manner to meet the objectives of this Chapter and its terms, including, but not be limited to measures that control the

increase volume and rate of storm water runoff and water quality impacts caused or induced by man made changes to the land.

Storm Water Management Facility – means a storm water management control device, structure, or system of such physical components designed to treat, detain, store, convey absorb, conserve, protect, re-use or otherwise control storm water.

Storm Water Management Manual (SWMM) – means the guidance document adopted for use by the City of Germantown. The manual provides the technical standards and information necessary for property design and construction of storm water management facilities and the management of storm water management infrastructure as defined in Sec. 21-341. The City of Memphis Drainage Design Manual shall be used until this guidance document is adopted for use.

Storm Water Pollution Prevention Plans – means a written site specific plan to eliminate or reduce and control the pollution of storm water through designed facilities, natural or constructed, and best management practices.

Storm Water Sewer System – means the network of conveyances and storage facilities that collect, detain, absorb, treat, channel, discharge, or otherwise control the quantity and quality of storm water.

Stream – means any river, creek, slough or natural water-course in which water usually flows in a defined bed or channel. It is not essential that the flowing be uniform or uninterrupted. The fact that some parts of the bed have been dredged or improved does not prevent the water-course from being a stream. For the purposes of this ordinance, a stream is not a “wet weather conveyance” as also defined herein. Typically, streams are identified on USGS maps by solid blue lines and intermittent streams are depicted by dashed blue lines. The Tennessee Department of Environment and Conservation shall be the arbiter in making a determination of whether a putative stream fits this definition.

Storm Water Management Plan or SWMP - means the set of drawings and other documents that comprise all of the information and specifications for the programs, drainage systems, structures, BMPs, concepts, and techniques for the City of Germantown and as part of this Chapter.

Toxic Pollutant - means any pollutant or combination of pollutants listed as toxic in 40 CFR Part 401 promulgated by the Administrator of the Environmental Protection Agency under the provisions of 33 U.S.C. 1317.

Variance - means the modification of the minimum storm water management requirements contained in this Chapter and the Storm Water Management Plan for Specific circumstances where strict adherence of the requirement would result in unnecessary hardship and not fulfill the intent of this Chapter.

Water Quality - means characteristics that are related to the physical, chemical, biological, and/or radiological integrity of storm water.

Watershed Management Program – means a balanced program and plan of controlling the quantity and quality of water resources through comprehensive land and water resource management. Such management includes but is not limited to pollution control, land development controls, best management practices both structural and non-structural, preservation, habitat protection, and well-head protection. This program incorporates the State’s NPDES storm water quality permit program within such watersheds or portions thereof as are located inside the City of Germantown’s geographical boundaries.

Watershed Master Plan – means the guidance document for implementing the “Watershed Management Program”.

Waterway Buffer- means an area separating a waterway or body of water from buildings and/or structures. Typically, buffers are maintained in a “natural” or vegetative state providing environmental and aesthetic benefits, as will be further defined in the SWMM.

Wet Weather Conveyance – as defined in Rule 1200-4-3-.04 of the Rules of the Tennessee Department of Environment and Conservation. Wet weather conveyances are manmade or natural water courses, including natural water courses that have been modified by channelization, that flow only in direct response to precipitation runoff in their immediate locality, the channels of which are above the groundwater table and which do not support fish or aquatic life and are not suitable for drinking water supplies. Rule 1200-4-3-.02(7) requires that water designated as wet weather conveyances shall be protective of wildlife and humans that may come in contact with them and

maintain standards applicable to all downstream waters. No other use classification or water quality criteria apply to these waters.

Sec. 21-304. ABBREVIATIONS

CERCLA - means the Comprehensive Environmental Response, Compensation and Liability Act in its original form or as amended.

CFR - Code of Federal Regulations

FEMA- Federal Emergency Management Agency

MS4 – Municipal Separate Storm Sewer System means the City of Germantown separate storm water system both natural and man made as may be subject to the NPDES Storm Water Permit for the City of Germantown.

SCWMM – Shelby County Watershed Management Manual

SWMM – Storm Water Management Manual

SWPPP - Storm Water Pollution Prevention Plan

TCA - Tennessee Code Annotated (latest version)

TMSP – Tennessee Multi-Sector Permit (TMSP) for Storm Water Discharges Associated with Industrial Activity (See Section 21-310)

USACOE – means United States Army Corps of Engineers

U.S.C - means United States Code

SEC. 21-305. UNAUTHORIZED DISCHARGE A PUBLIC NUISANCE

Discharge of storm water in any manner in violation of this Chapter; or any violation of any condition of a permit issued pursuant to this Chapter; or any violation of any condition of a storm water discharge Permit issued by the State of Tennessee Department of Environment and Conservation is hereby declared a public nuisance and shall be corrected or abated.

SEC. 21-306. IMPROPER DISPOSAL AND ILLICIT DISCHARGES

(A) It shall be unlawful for any person to dispose of any contaminant into the City of Germantown MS4. Contaminants include, but are not limited to the following:

- 1) Trash, debris, or household waste;
- 2) Construction materials;
- 3) Petroleum products including but not limited to oil, gasoline, grease, fuel oil, or hydraulic fluids;
- 4) Antifreeze and other automotive products;
- 5) Metals in either particulate or dissolved form;
- 6) Flammable or explosive materials;
- 7) Radioactive material;
- 8) Batteries, including but not limited to, lead acid automobile batteries, alkaline batteries, lithium batteries, or mercury batteries;
- 9) Acids, alkalis, or bases;
- 10) Paints, stains, resins, lacquers, or varnishes;
- 11) Degreasers and/or solvents;
- 12) Drain cleaners;
- 13) Pesticides, herbicides, or fertilizers;
- (14) Steam cleaning wastes;
- (15) Soaps, detergents, or ammonia;

- (16) Swimming pool backwash including chlorinated swimming pool discharge;
- (17) Chlorine, bromine, and other disinfectants;
- (18) Heated water;
- (19) Animal waste from commercial animal or feeder lot operations;
- (20) Leaking sanitary sewers and connections;
- (21) Recreational vehicle waste;
- (22) Animal carcasses;
- (23) Food wastes;
- (24) Medical wastes;
- (25) Collected lawn clippings, leaves, branches, bark, and other fibrous materials;
- (26) Collected silt, sediment, or gravel;
- (27) Dyes, except as stated in subsection (B)
- (28) Chemicals, not normally found in uncontaminated water;
- (29) Any hazardous material or waste, not listed above;
- (30) Washing of fresh concrete for cleaning and/or finishing purposes or to expose aggregates.
- (31) Junk motor vehicles, as defined in section 21-303.
- (32) Leaking solid waste disposal containers.

Penalties for minor discharges that have no significant adverse impact on safety, health, the welfare of the environment, or the functionality of the City of Germantown's storm water collection system may be waived at the discretion of the Manager.

(B) DYE TESTING

Dye testing is allowed but requires written notification to the Manager a minimum of twenty-four (24) hours prior to the date of the test. **The City of Germantown governmental agencies are exempt from this requirement.**

(C) JUNK MOTOR VEHICLES

SEC. 21-307. EXCEPTIONS, ALLOWABLE DISCHARGES

The following types of discharges shall not be considered prohibited discharges for the purpose of this article unless the Manager determined that the type or quantity of discharge, whether singly or in combination with others, is causing significant contamination of the City of Germantown MS4.

- 1) Potable water;
- 2) Potable water line flushing;
- 3) Air conditioning condensate;
- 4) Discharges from emergency fire fighting activities and exercises (A Storm Water Pollution Prevention Plan should be prepared to address discharges or flows from fire fighting only where such discharges are identified as significant sources of pollutants to waters of the United States);
- 5) Uncontaminated water from crawl space, pumps or footing drains;
- 6) Lawn watering;
- 7) Residential car and boat washing;
- 8) De-chlorinated swimming pool water;
- 9) Materials placed as part of an approved habitat restoration or bank stabilization project;
- 10) Rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, uncontaminated springs, diverted stream flows; riparian habitats and wetlands;
- 11) Flows from riparian habitats and wetlands;
- 12) Common practices for water well disinfections;
- 13) Discharges within the constraints of a National Pollutant Discharge Elimination System (NPDES) permit from the Tennessee Department of Environment and Conservation (TDEC);
- 14) Unless otherwise prohibited by this ordinance, any discharge that could be made directly to "Waters of the State" without a Federal or State permit being required;
- 15) Dye testing in compliance with SEC.21-306 (B);
- 16) Other types of discharges as determined by the Manager.

SEC. 21-308. ILLICIT CONNECTION, DEFINED

Any connection, existing or future, identified by the Manager, as that which could convey anything not composed entirely of storm water directly to the City of Germantown MS4 is considered an illicit connection and is prohibited with the following exceptions:

- 1) Connections conveying allowable discharges as defined in SEC. 21-307.
- 2) Connections conveying discharges pursuant to an NPDES Permit (other than an NPDES Storm Water Permit).

Existing illicit connections must be stopped, at owner's expense.

SEC. 21-309. MONITORING AND INSPECTION

(A) **MONITORING.** The Manager shall periodically monitor the quantity of, and the concentration of pollutants in storm water discharges from the areas and locations as may be designated in the NPDES Storm Water Permit.

(B) **DETECTION OF ILLICIT CONNECTIONS AND IMPROPER DISPOSAL.** The Manager shall take appropriate steps to detect and eliminate illicit connections to the City of Germantown MS4, including the adoption of programs to identify illicit discharges and their source or sources and provide for public education, public information and other appropriate activities to facilitate the proper management and disposal of used oil, toxic materials and household hazardous waste.

(C) **INSPECTIONS**

1) The Manager or his/her designee, bearing proper credentials and identification, may enter and inspect all properties for regular periodic inspections, investigations, monitoring, observation, measurement, enforcement, sampling and testing, to effectuate the provisions of this Chapter, the Storm Water Management Plan (SWMP), and/or the NPDES Storm Water Permit. The Manager or his/her designee shall duly notify the owner of said property or the representative on site and the inspection shall be conducted at reasonable times.

2) Upon refusal by any property owner to permit an inspector to enter or continue an inspection, the Inspector shall terminate the inspection or confine the inspection to areas wherein no objection is raised. The inspector shall immediately report the refusal and the grounds to the Manager. The Manager may seek **appropriate compulsory process.**

3) In the event the Manager or his/her designee reasonably believes that discharges into the City of Germantown MS4 may cause an imminent and substantial threat to human health or the environment, the inspection may take place at any time and without notice to the owner of the property or a representative on site. The inspector shall present proper credentials upon request by the owner or representative.

4) At any time during the conduct of an inspection or at such other times as the Manager or his/her designee may request information from an owner or representative, the owner or representative may identify areas of the facility or establishment, material or processes which contains or may contain a trade secret. If the Manager or his designee has no clear and convincing reason to question such identification, the inspection report shall note that trade secret information has been omitted. **To the extent practicable, the Manager shall protect all information that is designated as a trade secret by the owner or their representative.**

SEC. 21-310. CONSTRUCTION ACTIVITY AND EROSION AND SEDIMENT CONTROL

All Construction Activity, defined below, shall be in compliance with all applicable requirements under this Article. If one (1) or more acres of land are disturbed or planned to be disturbed as part of a larger plan by Construction Activity, an application shall be applied for under the "State of Tennessee's General Permit for Storm Water Discharges Associated with Construction Activity". The State of Tennessee utilizes a "Notice of Intent" for dischargers to obtain coverage under the general permit program for discharges associated with Construction Activities and Industrial Activities. These documents are subject to change and amendment and therefore the user should obtain the latest versions directly from the State of Tennessee Department of Environment and Conservation, Water Quality Division. These may be obtained at the State's web page: www.state.tn.us/environment/permits. If a Tennessee General NPDES Permit is applied for, a copy of the Notice of Intent (N.O.I.) shall be sent by registered mail, hand delivered or as directed by the Manager to the Manager of the Storm Water Management

Section at least 30 days prior to the commencement of construction activities (i.e. the initial disturbance of soils associated with clearing, grading, excavating, or other construction activities). A copy of the NOI shall also be available for inspection by the Manager or Manager's representative on the construction site at all times during which construction activities are in progress. To seek coverage under the Tennessee Department of Environment and Conservation General Permit, the N.O.I. shall be submitted to the following address:

Tennessee Department of Environment and Conservation
Division of Water Pollution Control, Memphis Field Office
Storm Water NOI Processing
2510 Mt. Moriah, Suite 645
Memphis, TN 38115-1520

The copy of the N.O.I. should be sent to the following address:

City of Germantown
Department of Community Development – Engineering Division
1920 Germantown Rd.
Germantown, TN 38138

SEC. 21-311. CONSTRUCTION ACTIVITY, REGULATED

(A) **UNLAWFUL ACTIVITY:** It shall be unlawful for any person to permit any discharge of storm water from a Construction Activity from land owned or controlled by them on a total land area of one (1) or more acres disturbed by construction activity or part of a larger plan without a General Permit for Storm Water Discharges Associated with Construction Activity from the Tennessee Department of Environment and Conservation, with a copy of the Notice of Intent (N.O.I.) provided to the Storm Water Management Section at the same address listed in SEC. 21-308.

(B) **EXEMPTED CONSTRUCTION ACTIVITY:** The following activities may be undertaken without formal notice; however, the persons conducting these excluded activities shall remain responsible for otherwise conducting those activities in accordance with the provisions of this Article and other applicable law including responsibility for controlling sedimentation and runoff.

- 1) Such minor construction activities as home gardens and individual home landscaping, home repairs, home maintenance work and other related activities that result in minor soil erosion;
- 2) Individual service and sewer connections for single or two family residences;
- 3) Agricultural practices involving the establishment, cultivation or harvesting of products of the field or orchard, preparing and planting of pastureland, forestry land management practices including harvesting, farm ponds, dairy operations, and livestock and poultry management practices and the construction of farm buildings;
- 4) Any project carried out under the technical supervision of the Natural Resources Conservation Service of the United States Department of Agriculture;
- 5) Installation, maintenance, and repair of and underground public utility lines when such activity occurs in an existing hard surface road, street or sidewalk, provided the activity is confined to the area of the road, street or sidewalk which is hard surfaced and a street, curb, gutter or sidewalk permit has been obtained;

(C) **BEST MANAGEMENT PRACTICES GUIDE FOR CONSTRUCTION ACTIVITIES:**
The minimum standards for controlling erosion and sedimentation from the discharge of storm water from a construction activity shall be set forth in the Shelby County Watershed Management Manual (SCWMM) as may be adopted and amended from time to time. Such adoption or amendment shall be by resolution of the Board of County Commissioners. A copy of this guide will be maintained on file in the offices of the Manager. Until such time as this guide document is prepared, the guidelines in the most current Tennessee Department of Environment and Conservation's "Erosion and Sediment Control Handbook" shall be used. The specific application of BMP practices is subject to approval of the Manager. A copy of the Storm Water Pollution Prevention Plan (SWPPP) required by applicable construction permits shall be provided to the Manager as a part of the approval process. Approval of the construction project will be subject to a favorable review by the Manager and the Tennessee Department of Environment and Conservation.

SEC. 21-312. COMPLIANCE WITH PERMITS

New construction shall be allowed only when permitted by applicable construction permits and when construction plans have been approved by the Manager, or when deemed appropriate by the Building Permits Official. The Manager may stop construction on properties, or administer other enforcement actions as defined in this Ordinance that do not have adequate erosion prevention and sedimentation control measures.

SEC. 21-313. LOCAL HEARING BOARD

(A) Purpose. There is hereby created a local hearing board for the purposes of hearing appeals (i) by any person incurring a damage assessment or civil penalty pursuant to the enforcement of the City's ordinances relating to stormwater management; or (ii) by any person who disagrees with the calculation of the stormwater user's fee or the determination related to a stormwater user's fee credit. The board shall consist of five members, including the Director and one alderman designated by the board of mayor and aldermen. The other three members shall be appointed by the board of mayor and aldermen. Such appointed members shall be professionally qualified in the fields of engineering or landscape design. The Director shall serve as the chair of the local hearing board. The local hearing board shall meet and organize to select a vice-chair and a secretary.

(B) Terms. Terms of the three members appointed to the local hearing board shall be for such length as the board of mayor and aldermen shall specify; provided, however, that the terms shall be arranged so that the term of one appointed member shall expire each year. Terms shall expire on December 31 of said year, but each member shall serve until their successor is appointed. Any vacancy of an appointive membership shall be filled for the unexpired term by appointment of the mayor. Any member of the local hearing board may be removed at any time without cause by the board of mayor and aldermen.

(C) Meetings. Board meetings shall be held at least monthly and scheduled by the chairman of the local hearing board to coordinate with the time frames for appeals as set forth in this Article and Article VIII of Chapter 21 of the City's Ordinances. A majority of the members shall constitute a quorum, and a quorum shall be required to transact board business. The board shall keep minutes of the proceedings showing the vote of each member upon each question, or if a member is absent or fails to vote, indicating such fact. Copies of these minutes shall be transmitted to the board of mayor and aldermen monthly. The local hearing board, by majority vote, may adopt rules governing its procedures.

DIVISION 2. INFRASTRUCTURE AND DEVELOPMENT

SEC. 21-341. STORM WATER MANAGEMENT INFRASTRUCTURE, DEFINED

Storm water management infrastructure consists of the entire physical system of storm water management both publicly and privately owned. This system consists of both man made and natural components as well as rivers, streams, creeks, lakes, reservoirs, ponds, springs, wetlands, wells and including features defined by the State of Tennessee as "waters of the state".

SEC. 21-342. POLICY STATEMENTS FOR DEVELOPMENT

Minimum standards and procedures for the design, construction, operation, and maintenance of the storm water management infrastructure shall be set forth in the Shelby County Watershed Management Manual (SCWMM) as may be adopted and amended from time to time. Such adoption or amendment shall be by resolution of the Board of County Commissioners. A copy of this document will be maintained on file in the offices of the Manager. Until such time as this document is prepared and adopted, the City of Memphis - "Drainage Design Manual" as it exists at the final adoption of this ordinance, located in the Manager's office shall be used. The following general policy statements shall apply:

(A) All development in the City of Germantown shall be subject to the provisions of this ordinance.

(B) Proposed plans for construction shall be stamped by a professional engineer licensed in the State of Tennessee. This shall include all proposed improvements or modifications to the existing or new storm water infrastructure, erosion prevention and sediment control practices, and other related improvements or modifications.

(C) An “as-built plan”, certified by a professional engineer appropriately licensed in the State of Tennessee, must be submitted in a format acceptable to the Manager upon completion of the public or private storm water management facility. The professional engineer shall certify that: the facilities have been constructed in substantial and essential conformance to the design plan.

(D) Each project shall be evaluated by the Manager for consistency with a watershed master plan, when available, for the major watershed or watersheds within which the project site is located. The individual project evaluation will determine if storm water quantity and quality management practices can adequately serve the property and limit impacts to downstream public and private properties. The presence of a regional facility(s) will be considered in determining the extent to which quantity and/or quality controls will be necessary.

(E) In the absence of such a storm water quantity and/or quality master plan, a system of uniform requirements shall be applied to each individual project site. In general, these uniform requirements may be based on the criterion that post-development storm water peak runoff, volume over the critical design-storm period, and water quality must not differ significantly from pre-development conditions.

(F) Development will be permitted in the floodplain; however, the developer may be required by the Manager to demonstrate “no adverse impact” on upstream or downstream facilities, uses, residences, or related structures. (For example, this may be shown by modification of the USACOE/FEMA model by applying full upstream development criteria and new cross-sections reflecting the development and depiction of the elevations of all structures, facilities, etc., within the impacted upstream or downstream floodplain.)

(G) Under no circumstances shall a site be graded or drained in such a way as to increase surface runoff to sinkholes, “dry wells” or “drainage wells”.

(H) The City encourages regional watershed management practices and facilities. These practices will be encouraged in order to replace or reduce the implementation of on-site storm water management facilities.

(I) Development of properties containing existing on-site storm water management facilities may be permitted, at the discretion of the Manager, provided the property and downstream public and private properties, infrastructure or “Waters of the State” are adequately protected from adverse storm water impacts.

(J) The developer shall control acceleration of erosion or sedimentation, or transport of other pollutants or forms of pollution, due to various land development activities.

(K) The City encourages soil bioengineering, “green” and other “soft” slope and stream bank stabilization methods over rip-rap, concrete and other hard armoring techniques. The City encourages use of greenway right-of-ways for appropriate properties.

(L) The City encourages the use of waterway buffers. A waterway buffer should be applied to all major waterways serving more than 100 acres of tributary area as specified in the SCWMM. No new construction of any building or structure shall be permitted in the buffer except as may be permitted by the City Engineer and supported with adequate technical and environmental analysis and appropriate mitigation measures. For example, mitigation strategies may include:

1. Additional floodplain storage through excavation
2. Publicly dedicated Greenways
3. Restoration of impacted waterways with bioengineering or “green” approaches
4. New and innovative technologies are applied to address water quantity or quality
5. Modification to density, trees or other development requirements acceptable to the City Community Development Department

SEC. 21-343. INFRASTRUCTURE MAINTENANCE

It shall be the responsibility of the property owner of record for the maintenance of storm water infrastructure. Maintenance of storm water infrastructure shall consist of, but not be limited to the following items: outlet cleaning, mowing, herbicide spraying, litter control, removal of sediment from basin and outlet control structures, and repair of drainage structures. The property owner shall conduct all such activities in an environmentally sound manner and consistent with applicable codes, rules, and standards.

SEC. 21-344. MAINTENANCE RESPONSIBILITY- PRIVATELY OWNED INFRASTRUCTURE

(A) Any storm water management facility that is privately owned shall receive general routine maintenance (i.e. controlling vegetative growth, removing sediment and debris) provided for by the owner(s).

(B) The owner(s) shall maintain a perpetual right of access for inspection and emergency access by the City. The City has the right, but not the duty to enter premises for inspection and emergency repairs.

(C) Any storm water management facility that services commercial and industrial development shall be privately owned and maintained.

(D) Maintenance requirements may also be prescribed by a site-specific agreement between the owner or operator and the City of Germantown. These agreements shall be based on an approved site design, a storm water pollution prevention plan, an inspection program, a long-term maintenance plan, an emergency repair plan, easements, and proof or surety of financial responsibility.

(E) If privately owned infrastructure is not maintained, the Manager may assess a non-punitive fine on the private owner(s) as detailed in this article. Such a fine will be used for cost recovery, to abate damages, and to restore impacted areas.

SEC. 21-345. MAINTENANCE RESPONSIBILITY- PUBLICLY OWNED INFRASTRUCTURE

(A) All storm water management control facilities proposed by the owners, recommended by the Manager, and approved by the City of Germantown Board of Mayor and Aldermen for dedication as a public regional facility, shall be publicly owned and/or maintained.

(B) All other storm water management control facilities shall be publicly owned and/or maintained only if accepted for maintenance by the City.

SEC. 21-346. PURPOSE OF STORM WATER DISCHARGES FROM REGULATED INDUSTRIAL SOURCES

It is the purpose of this Article to control storm water runoff from industrial sources in order to minimize, to the maximum extent practicable, pollutants discharged from industrial sources into the City of Germantown MS4. This reduction may be achieved by a combination of management practices, control techniques, system design, engineering methods and plan review.

SEC. 21-347. INDUSTRY, DEFINED

An industrial facility is one defined in Sec. 21-303, and subject to the Tennessee Multi-Sector Permit (TMSP) for Storm Water Discharges Associated with Industrial Activity.

SEC. 21-348. RIGHT OF INSPECTION, DEFINED

Right of inspection is described in Sec. 21-309 (C) of this article.

SEC. 21-349. AVAILABILITY OF INFORMATION ON DISCHARGER TO PUBLIC; USE OF INFORMATION ACCEPTED AS CONFIDENTIAL

All information and data on a discharger obtained from reports, questionnaires, permits, monitoring programs, and from inspections shall be available to the public without restriction unless the discharger specifically requests confidential treatment and is able to demonstrate to the satisfaction of the approving authority that the release of such information would divulge information regarding processes or methods that would be detrimental to the discharger's competitive position. Information accepted by the approving authority as confidential shall not be transmitted to the general public by the approving authority unless written permission has been obtained from the discharger or under court order. Any report, questionnaire or other item required to be submitted by the discharger that contains such confidential data will be submitted in duplicate with one version containing the information and the second copy showing the information deleted that has been claimed as confidential. To the extent practicable, the Manager shall protect all information that is designated as confidential by the owner or their representative.

SEC. 21-350. INFORMATION REQUIRED

The State of Tennessee utilizes a "Notice of Intent" for dischargers to obtain coverage under the general permit program for discharges associated with Construction Activities and Industrial Activities. These documents are subject to change and amendment and therefore the user should obtain the latest versions directly from the State of Tennessee Department of Environment and Conservation, Water Quality Division. These may be obtained at the State's web page: www.state.tn.us/environment/permits. All industries subject to the TMSP and discharging into the City of Germantown storm sewer system shall provide the Manager with a copy of their Notice of Intent (NOI). A copy of the Storm Water Pollution Prevention Plan (SWPPP) must be kept on the industrial site and available for inspection and copying at reasonable times by the Manager.

SEC. 21-351. STORM WATER POLLUTION PREVENTION PLAN (SWPPP) REQUIREMENTS

The Storm Water Pollution Prevention Plan (SWPPP) must follow, at a minimum, the outline of the plan listed in the Tennessee Multi-Sector Permit language or a facility's NPDES Storm Water Permit language, whichever is applicable.

SEC. 21-352. SAMPLING AT INDUSTRIAL FACILITIES

(A) Samples of storm water collected for compliance monitoring shall be representative of the discharge. Sampling locations will be those defined in the Tennessee Multi-Sector Permit or an NPDES Permit. Sampling and analyses shall be in accordance with 40 CFR Part 122.21 and 40 CFR Part 136 and/or applicable Permit language.

(B) Samples that may be taken by the Manager and/or his designated representatives for the purpose of determining compliance with the requirements of this Chapter or rules adopted hereunder may be split with the discharger if requested before the time of sampling.

(C) The Manager may require a storm water discharger to install and maintain at the Discharger's expense a suitable manhole or sampling facility at the discharger's facility or suitable monitoring access to allow observation, sampling, and measurement of all storm water runoff being discharged into the City storm sewer system. Sampling manhole or access shall be constructed in accordance with plans approved by the Division and shall be designed so that flow measurement and sampling equipment can be installed. Access to the manhole or monitoring access shall be available to the Manager and/or his/her designated representatives at all times.

SEC. 21-353. REPORTING

(A) Any facility required to sample under either the TMSP or an NPDES Storm Water Permit shall provide a copy of the periodic monitoring report to the Manager.

(B) The Manager may require reporting by dischargers of storm water runoff to the storm water system, even if an NPDES storm water permit is not required. This information may include any data necessary to characterize the storm water discharge.

SEC. 21-354. ACCIDENTAL DISCHARGES

(A) In the event of a "significant spill" as defined in this article or any other discharge which could constitute a threat to human health or the environment, the owner or operator of the facility shall give notice to the Manager and the local field office of the Tennessee Department of Environment and Conservation as required by State and federal law following the accidental discharge.

If an emergency response by governmental agencies is needed, the owner or operator should also call the Memphis and Shelby County Emergency Management Agency, immediately to report the discharge. A written report must be provided to the Manager within five (5) days of the time the discharger becomes aware of the circumstances, which report must contain, at a minimum, the following particulars:

- (1) A description of the discharge, including an estimate of volume.
- (2) The exact dates, times and duration of the discharge.
- (3) Steps being taken to eliminate and prevent recurrence of the discharge, including any planned modification to contingency, SWPPP or maintenance plans.

- (4) A site drawing that shows the location of the spill on the property, the direction of flow of the spill in relation to the topographical grade of the property, the impacted watercourse(s), and the property or properties adjacent to the spill site.

(B) The discharger shall take all steps reasonably necessary to minimize any adverse impact to the City of Germantown MS4, including but not limited to accelerated or additional monitoring as necessary to determine the nature and impact of the discharge. The interruption of business operations of the discharger shall not be a defense in an enforcement action necessary to maintain water quality and minimize any adverse impact that the discharge may cause.

(C) It shall be unlawful for any entity, whether an individual, residential, commercial or industrial entity to fail to comply with the provisions of this article.

SEC. 21-355. FRAUD AND FALSE STATEMENTS

Any reports required by this Article or rules adopted hereunder and any other documents required by the City to be submitted or maintained by the discharger shall be signed by a responsible corporate official and certified as accurate to the best of his or her personal knowledge after appropriate investigation. Such documents shall be subject to the enforcement provisions of this article and any other applicable local and State laws and regulations pertaining to fraud and false statements. Additionally, the discharger shall be subject to the provisions of 18 U.S.C. Section 309 of the Clean Water Act, as amended, governing false statements and responsible corporate officials.

SEC. 21-356. ADMINISTRATIVE REMEDIES OF ENFORCEMENT AND ABATEMENT

The enforcement remedies enumerated herein shall be applicable to all sections of this article.

(A) Whenever the Manager finds any permittee or Person discharging storm water, or other pollutants into the City of Germantown MS4 or otherwise has violated or is violating this article, conditions of a Storm Water Permit, or order issued hereunder, the Manager or his or her designee may serve upon such permittee or person a notice of alleged violation of the noticed violation. This notice shall be by personal service, or registered or certified mail with return receipt. Within ten (10) days of the date of this notice, the subject person or permittee shall provide the Manager with a written response to the notice of violation. Such written response shall include a plan for satisfactory correction and prevention at a hearing schedule for such purpose. 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.

(B) Prior to the issuance of a notice of alleged violation, the Manager may order any Person who causes or contributes, or may be a cause or contributor, to a violation of a Storm Water Permit or order issued hereunder to show cause at a hearing scheduled for such purpose why a proposed enforcement action should not be taken. A written notice of such hearing shall be served on such Person specifying the time and place for the hearing, the proposed enforcement action and the reasons for such action, and a request that the Person show cause why this proposed enforcement should not be taken. The hearing notice shall be served personally or by registered or certified mail with return receipt, and postmarked at least ten (10) business days prior to the hearing date. Such notice may be served on any person, principal executive, general partner, corporate officer, or other person with apparent authority to receive such notice.

(C) The Manager is hereby empowered to enter into consent agreements, assurances of voluntary compliance, or other similar documents establishing an agreement with the person or persons responsible for the non-compliance. Such agreements will include specific action to be taken by the permittee or person discharging storm water to correct the non-compliance within a time period specified by such agreement. Consent agreements shall have the same force and effect as compliance orders issued pursuant to paragraph (D) below.

(D) When the Manager finds that any person has violated or continues to violate this article or any order issued hereunder, the Manager may issue an order to the violator directing that, following a specified time period, adequate structures and/or devices be installed or procedures implemented and properly operated or followed. Orders may also contain such other requirements as might be reasonably necessary to address the non-compliance, including the construction of appropriate structures, installation of devices, self-monitoring and related management practices.

(E) When the Manager finds that any person has violated or continues to violate this article or any Permit or order issued hereunder and such action or inaction has or may have the potential for immediate and

significant adverse impact on the MS4 or the stormwater discharges to it, the Manager may issue an order to cease and desist all such violations immediately and direct those persons in non-compliance to:

- (1) Take such appropriate remedial or preventative action as may be needed to properly address a continuing or threatened violation, including halting operations and terminating the discharge.
- (2) Receiving an Order that includes an instruction to halt operations shall receive an expedited review and appeal of such order within two (2) business days.

SEC. 21-357 CIVIL PENALTY

Any Person who performs any of the following acts or omissions shall be subject to a civil penalty as set out in Chapter 1, Section 1-10, Code of the City of Germantown per day for each day, or part thereof, during which the act or omission continues or occurs.

1. Fails to obtain any required Permit;
2. Violates the terms and conditions of such required Permit in #1 above;
3. Violates a final determination or order of the Manager; or
4. Violates any provision of this article.

The City Attorney, with consent of the Board of Mayor and Aldermen, may initiate civil proceedings in any court of competent jurisdiction seeking monetary damages for any damages caused to the City of Germantown MS4 by any Person, and seek injunctive or other equitable relief to enforce compliance, with any lawful orders of the Manager.

SEC. 21-358. UNLAWFUL ACTS, MISDEMEANOR

It shall be unlawful for any person to knowingly:

- (A) Violate a provision of this article;
- (B) Violate the provisions of any Permit issued pursuant to this Chapter;
- (C) Fail or refuse to comply with any lawful notice to abate issued by the Manager, which has not been timely appealed to the Local Hearing Board within the time specified by such notice; or
- (D) Violate any lawful order of the Manager within the time allowed by such order.

Such person shall be guilty of a misdemeanor; and each day of such violation or failure or refusal to comply shall be deemed a separate offense and punishable accordingly. Any person found to be in violation of the provisions of this article shall be punished by a fine as set out in Chapter 1, Section 1-10, Code of the City of Germantown. Upon learning of such act or omission, the Manager may issue a City Ordinance Citation charging the Person, with violating one (1) or more provisions of this article, criminal violation of this ordinance may also be the basis for injunctive relief, with such actions being brought and enforced through the Shelby County General Sessions Environmental Court or such court of competent jurisdiction as may have been duly established by the City of Germantown.

SEC. 21-359. PROCESSING A VIOLATION

- (A) The Manager may issue an assessment against any person or permittee responsible for the violation;
- (B) Any person against whom an assessment or order has been issued may secure a review of such assessment or order by filing with the Local Hearing Board a written petition setting forth the specific legal and technical grounds and reasons for his objections and asking for a hearing in the matter involved before the Local Hearing Board and if a petition for review of the assessment or order is not filed within thirty (30) days after the date the assessment or order is served, the violator shall be deemed to have consented to the assessment and it shall become final;

(C) Whenever any assessment has become final because of a person's failure to appeal the Manager's assessment, the Manager may apply to the appropriate court for a judgment and seek execution of such judgment. The court, in such proceedings, shall treat a failure to appeal such assessment as a confession of judgment in the amount of the assessment;

(D) The Local Hearing Board may consider the following factors when reviewing a petition:

- (1) Whether the civil penalty imposed will be an appropriate economic deterrent to the illegal activity by the violator or others in the City of Germantown;
- (2) Damages to the City of Germantown, including compensation for the damage or destruction of the City of Germantown MS4, and also including any penalties, costs (direct or indirect) and attorneys' fees incurred by the City as a result of the illegal activity, as well as the expenses involved in enforcing this Chapter and the costs involved in rectifying any damages;
- (3) Cause of the discharge or violation;
- (4) The severity of the discharge and its effect on the City of Germantown MS4.
- (5) Effectiveness of action taken by the violator to cease the violation;
- (6) The technical and economic reasonableness of reducing or eliminating the discharge; and
- 7) The economic benefit gained by the violator.

(E) Any civil penalty assessed to a violator pursuant to this section may be in addition to any civil penalty assessed by the Commissioner of the Tennessee Department of Environment and Conservation for violations of T.C.A. 69-3-115; however, the sum of penalties imposed by this section and by T.C.A. 69-3-115 shall not exceed ten thousand dollars (\$10,000) per day during which the act or omission continues or occurs.

(F) Any appeal of this final determination shall be made to a court of competent jurisdiction. Such appeal must be filed within fifteen days of the decision by the Local Hearing Board.

SEC. 21-360. APPEAL JUDICIAL PROCEEDINGS AND RELIEF

The Manager, through the City Attorney, may initiate proceedings in any court of competent jurisdiction against any person who has:

- 1.) Violated the provisions of this article;
- 2.) Violated the provisions of any Permit issued pursuant to this article;
- 3.) Failed or refused to comply with any lawful order issued by the Manager that has not been timely appealed within the time allowed by this article; or
- 4.) Violated any lawful order of the Manager.

Any Person who commits any act declared unlawful under this article shall be guilty of a misdemeanor, and each day of such violation shall be deemed a separate offense and punishable accordingly.

SEC. 21-361. DAMAGES, DISPOSITION OF FUNDS

All damages collected under the provisions of this ordinance and civil penalties collected under the provisions of Section 21-357, following the adjustment for the expenses incurred in making such collections shall be allocated and appropriated to the City's Storm Water Management Program.

SEC. 21-362. RECORDS RETENTION

All dischargers subject to this article shall maintain and preserve for no fewer than five (5) years, all records, books, documents, memoranda, reports, correspondence and any summaries thereof, relating to monitoring, sampling, and chemical analyses made by or in behalf of the discharger in connection with its discharge. All records that pertain to matters that are the subject of any enforcement or litigation activities brought by the City pursuant to this article shall be retained and preserved by the discharger until all enforcement activities have concluded and all periods of limitation with respect to any and all appeals have expired.

SEC. 21-363. FACILITIES MAINTENANCE AGREEMENT

All owners and all operators of storm water infrastructure not owned by the City shall enter into a storm water facilities maintenance agreement with the City which agreement shall be in the form prescribed by the City.