

TITLE 14

ZONING AND LAND USE CONTROL

CHAPTER

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CHAPTER 1

MUNICIPAL PLANNING COMMISSION

SECTION

- 14-101. Creation and membership.
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14-101. Creation and membership. Pursuant to the provisions of Tennessee Code Annotated, § 13-4-101 there is hereby created a municipal planning commission, hereinafter referred to as the planning commission. The planning commission shall consist of seven (7) members; two (2) of these shall be the mayor, and a member of the board of mayor and aldermen selected by the board of mayor and aldermen; the other five (5) members shall be appointed by the mayor. All members of the planning commission shall serve as such without compensation. Except for the initial appointments, the terms of the five (5) members appointed by the mayor shall be for four (4) years each. Members may be removed by the board of mayor and aldermen at the request of the chairman of the board or committee and the city recorder, if the member is absent from two (2) or more scheduled meetings in a row. Upon more than one (1) vacancy, the mayor may at his discretion appoint one (1) or more of the new appointments in such a way as to allow each term to expire a year apart. The terms of the mayor and members selected by the board of mayor and aldermen shall run concurrently with their terms of office. Any vacancy in an appointive membership shall be filled for the unexpired term by the mayor, who shall also have the authority to remove any appointive member at his will and pleasure. (1994 Code, § 14-101, as replaced by Ord. #2011-26, Oct. 2011)

14-102. Organization, powers, duties, etc. The planning commission shall elect its own chairman from among its appointive membership for one (1) year. The transactions, rules, findings, and determinations of the planning commission shall be a matter of public record. The expenditures of the planning commission, exclusive of gifts, shall be within the amount appropriated by the board of mayor and aldermen of the City of La Vergne. The planning commission shall be organized and shall carry out its powers, functions, and duties in accordance with all applicable provisions of Tennessee Code Annotated, title 13. (1994 Code, § 14-102)

14-103. Jurisdiction--subdivisions. The rules and regulations governing the subdivision of land heretofore adopted on March 25, 1980, by the La Vergne Planning Commission and as may be amended from time to time by the La Vergne Planning Commission, shall apply to all subdivisions of land within the area of the City of La Vergne, Rutherford County, Tennessee. (1994 Code, § 14-103)

CHAPTER 2

ZONING ORDINANCE

SECTION

14-201. Land use to be governed by zoning ordinance.

14-201. Land use to be governed by zoning ordinance. Land use within the City of La Vergne shall be governed by Ordinance Number 90-5, titled "Zoning Ordinance, La Vergne, Tennessee," and any amendments thereto.¹ (1994 Code, § 14-201)

¹Ordinance No. 90-5, and any amendments thereto, are published as separate documents and are of record in the office of the city recorder.

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

- 14-301. Purpose.
- 14-302. Rules applying to chapter.
- 14-303. Definitions.
- 14-304. Land disturbance permits.
- 14-305. Land disturbance permit fees.
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- 14-310. Appeals.
- 14-311. Penalties.
- 14-312. [Deleted.]
- 14-313. [Deleted.]
- 14-314. [Deleted.]

14-301. Purpose. The City of La Vergne has in the past experienced development causing the displacement of large quantities of earth. Significant problems resulting from such development are soil erosion and sedimentation. Sediment is the cause of contamination of water supplies and water resources and a major source of pollution. A build-up of sediment destroys valuable resources, clogs water courses and causes flooding which results in substantial damage to public and private lands. The result is a serious threat to the health, safety, and general welfare of the community.

Therefore, the purpose of this chapter is to substantially reduce erosion and sediment damage within the City of La Vergne and is designed to safeguard the health, safety, and general welfare of the citizens; to preserve the value of land throughout the city; to establish reasonable and accepted standards of design and procedures for development which prevent sediment damage; to prevent the pollution of streams, ponds, and other water courses of sediment; to minimize property damage by means of flooding and to preserve the natural beauty and aesthetics of the community. (1994 Code, § 14-301, as replaced by Ord. #2011-24, Oct. 2011)

14-302. Rules applying to chapter. For the purpose of this chapter, certain rules of construction shall apply herein as follows:

- (1) Words used in the present tense shall include the future tense and the singular includes the plural, unless otherwise indicated in the text.
- (2) The term "shall" is always mandatory and not discretionary; the words "may" and "should" are permissive in nature.

(3) Except as herein provided, all words used in this chapter shall have their common dictionary definition. (1994 Code, § 14-302, as replaced by Ord. #2011-24, Oct. 2011)

14-303. Definitions. (1) "Building permit." A general permit issued authorizing any owner, authorized agent, or contractor to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to perform any or to cause any such work to be done.

(2) "Cut." Portion of land surface or area from which earth has been removed or will be removed by excavation; the depth below original ground surface to the excavated surface.

(3) "Developer." The person, firm, partnership, or corporation authorized by the owner to carry out the development of the land.

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

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

(6) "Erosion Prevention and Sediment Control (EPSC) plan." The plan required before a grading permit may be issued. The plan may be included as part of a preliminary plan required under another city ordinance or a separate plan following the specifications set out in this chapter.

(7) "Excavation." See cut.

(8) "Existing grade." The slope or elevation of existing ground surface prior to cutting or filling.

(9) "Fill." 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.

(10) "Final grade." The final slope or elevation of the ground surface after cutting or filling.

(11) "Final plan." The approved erosion and sediment control plan. This plan may differ from the erosion and sediment control plan if adjustments or amendments are required by the city.

(12) "Inspector." The person designated by the city manager to issue grading permits and to carry out inspections of the permitted activities.

(13) "Land disturbance" 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, re-development, demolition, construction, reconstruction, clearing, grading, filling, and excavation. "Grading" shall be synonymous with "land disturbing activity."

(14) "Land disturbance permit." A permit issued to authorize land disturbance to be performed under the guidelines of this chapter.

(15) "Mulching." The application of plant or other suitable materials on the soil surface to conserve moisture, reduce erosion, and aid in establishing plant cover.

(16) "Owner." The legal owner of the property as recorded in the Rutherford County Register of Deeds office at the time of application of the grading permit. The person ultimately responsible for adhering to the provisions of this chapter.

(17) "Sediment." Rock, sand, gravel, silt, or other material deposited by action of wind, water, or gravity.

(18) "Sediment basin, trap, barrier, or perimeter dike." A barrier or dam built across a waterway or water course, or at other locations to retain sediment.

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

(20) "Stormwater appeals and advisory board." The body which has been delegated the authority by the Council of the City of La Vergne to hear appeals concerning decisions made by the city administrator or his designee as to the interpretation of the meaning of this code.

(21) "Stormwater Pollution Prevention Plan (SWPPP)" 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.

(22) "Stripping." Any activity which removes or significantly disturbs the vegetative surface cover including clearing and grubbing operations.

(23) "Use." Any purpose for which a building or other structure or a tract of land which may be designed, arranged, intended, maintained, or occupied, or any activity, occupation, business, or operation carried on, or intended to be carried on, in a building or other structure or tract of land. (1994 Code, § 14-303, as replaced by Ord. #2011-24, Oct. 2011)

14-304. Land disturbance permits. No building permit shall be issued until the applicant has obtained a land disturbance permit where the same is required by this chapter.

(1) Land disturbance permit applicability. Every person will be required to obtain a land disturbance permit from the city engineer in the following cases:

(a) Land disturbing activity disturbs one (1) or more acres of land;

(b) Land disturbing activity of less than one (1) acre of land if such activity is part of a larger common plan of development that affects one (1) or more acres of land;

(c) Land disturbing activity of less than one (1) acre of land, if in the discretion of the city engineer or other appropriate authority, such activity poses a threat to water, public health, or safety; and

(d) The creation and use of borrow pits.

(2) Land disturbance permit application. (a) Application for a land disturbance permit on sites requiring a "Tennessee General Permit for Stormwater Discharges from Construction Activities" shall require the following be submitted to the city engineer for review and approval:

(i) The Notice of Intent (NOI) required by TDEC for coverage under the "Tennessee General Permit for Stormwater Discharges from Construction Activities."

(ii) The Notice of Coverage (NOC) proving coverage under the "Tennessee General Permit for Stormwater Discharges from Construction Activities."

(iii) The Stormwater Pollution Prevention Plan (SWPPP) prepared for coverage under the "Tennessee General Permit for Stormwater Discharges from Construction Activities."

(iv) Separate sheets, at a scale not to exceed one inch (1") equal to fifty feet (50'), for pre-construction, construction, and post construction stormwater BMPs. For site disturbances less than five (5) acres, at least two (2) separate EPSC plan sheets shall be developed. At least two (2) stages shall be identified, with associated EPSC measures addressed. The plan stages shall be addressed separately in plan sheets, with each reflecting the conditions and EPSC measures necessary to manage stormwater runoff, erosion and sediment during the initial land disturbance (initial grading) and the conditions and EPSC measures necessary to manage stormwater, erosion and sediment at final grading. For site disturbances more than five (5) acres at least three (3) separate EPSC sheets shall be developed. Three (3) stages shall be identified. The first plan sheet should reflect the conditions and EPSC measures necessary to manage stormwater runoff during the initial land disturbance (initial grading). The second plan sheet shall reflect the conditions the EPSC measures necessary to manage stormwater runoff from interim land disturbance activities. The third plan sheet shall reflect the conditions and EPSC measures necessary to manage stormwater runoff, erosion and sediment at final grading.

(b) Application for a land disturbance permit on sites which pose a threat to water, public health, or safety, as determined by the city engineer or other appropriate authority, shall require the following be submitted for review and approval:

(i) Name of applicant;

(ii) Business or residence address of applicant;

(iii) Name, address and telephone number of the owner of the property of record in the office of the assessor of property;

(iv) Address and legal description of subject property including the tax reference number and parcel number of the subject property;

(v) Name, address and telephone number of the contractor and any subcontractor(s) who shall perform the land disturbing activity and who shall implement the erosion and sediment control plan;

(vi) A statement indicating the nature, extent and purpose of the land disturbing activities including the size of the area for which the permit shall be applicable and a schedule for the starting and completion dates of the land disturbing activity.

(vii) Where the property includes a sinkhole, the applicant shall obtain from the Tennessee Department of Environment and Conservation appropriate permits.

(viii) The applicant shall obtain from any other state or federal agency any other appropriate environmental permits that pertain to the property. However, the inclusion of those permits in the application shall not foreclose the City of La Vergne from imposing additional development requirements and conditions, commensurate with this chapter, on the development of property covered by those permits.

(ix) Additional information and calculations as deemed necessary by the city engineer.

(3) Review and approval of land disturbance permit application. The city engineer will review each application for a land disturbance permit to determine its conformance with the provisions of this chapter. The city engineer shall provide one (1) of the following responses in writing:

(a) Approval of the permit application;

(b) Approval of the permit application, subject to such reasonable conditions as may be necessary to secure substantially the objectives of this ordinance, and issue the permit subject to these conditions; or

(i) If the city engineer has granted conditional approval of the permit, the applicant shall submit a revised plan that conforms to the conditions established by the city engineer. However, the applicant shall be allowed to proceed with his land disturbing activity so long as it conforms to conditions established by the city engineer.

(c) Denial of the permit application, indicating the reason(s) for the denial.

(d) No development plans will be released until the land disturbance permit has been approved.

(4) Permit duration. Every land disturbance permit shall expire and become null and void if substantial work authorized by such permit has not

commenced within one hundred eighty (180) calendar days of issuance, or is not complete within eighteen (18) months from the date of the commencement of construction.

(5) Performance bonds. (a) The City of La Vergne shall require the submittal of a performance security or performance bond prior to issuance of a permit in order to ensure that the stormwater practices are installed by the permit holder as required by the approved stormwater management plan. The amount of the installation performance security or performance bond shall be the total estimated construction cost of the structural BMP(s) approved under the permit. The performance security shall contain forfeiture provisions for failure to complete work specified in the stormwater management plan. The applicant shall provide an itemized construction cost estimate complete with unit prices which shall be subject to acceptance, amendment or rejection by the City of La Vergne. Alternatively the City of La Vergne shall have the right to estimate the cost of construction.

(b) The performance security or performance bond shall be released in full only upon submission of as-built plans and written certification by a registered professional engineer licensed to practice in Tennessee that the structural BMP(s) has been installed in accordance with the approved plan and other applicable provisions of this chapter. The city engineer or designee will make a final inspection of the structural BMP(s) to ensure that it is in compliance with the approved plan and the provisions of this chapter. Provisions for a partial pro-rata release of the performance security or performance bond based on the completion of various development stages can be made at the discretion of the city engineer. (1994 Code, § 14-304, as replaced by Ord. #2011-24, Oct. 2011)

14-305. Land disturbance permit fees. If the total area of the property being graded is less than one (1) acre, the grading permit fee shall be fifty dollars (\$50.00). If the total area of the property being graded is one (1) acre or more, the grading permit fee shall be one hundred dollars (\$100.00). (1994 Code, § 14-305, as replaced by Ord. #2011-24, Oct. 2011)

14-306. Inspection and enforcement. The requirements of this chapter shall be enforced by the city administrator or his designee who shall inspect all the work, land disturbance or construction involved. If the designee finds any person, firm, or entity engaged in land disturbing activities without having obtained a required land disturbance permit, he shall issue a stop order. In addition, if anyone is found conducting or to have conducted land disturbing activities in violation of this chapter or any approved plan the designee may require compliance or refuse to approve further work and/or issue a stop order pending a hearing before the board of adjustments and appeals.

If the city administrator or his designee determines that significant erosion or related problems are occurring on a graded site despite approved protective practices, he shall require the permit holder to take additional corrective actions to protect the adversely affected area. The specifications of the additional measures shall be part of the amended erosion and sediment control plan.

If it is determined that the permit holder has failed to comply with the approved plan, the inspector shall immediately serve upon the owner, developer, or contractor, a correction notice setting forth the measures needed to come into compliance and specifying a time for such compliance. Failure to comply within the time specified shall subject permittee to revocation of the permit, and he shall be deemed in violation of the chapter requirements and subject to the penalties provided therein.

Stormwater discharges coming from a permitted site with an objectionable color contrast to receiving waters could also be in violation to the Stormwater Management Ordinance, title 14 chapter 6 of the municipal code. (1994 Code, § 14-306, as replaced by Ord. #2011-24, Oct. 2011)

14-307. General criteria. The following general criteria are minimum requirements for controlling erosion and sedimentation from land-disturbing activities and should be satisfied in each approved erosion-sediment control plan. No permit issued using the general criteria is intended to restrict the use of other innovative practices or modifications to the specified practices if such practices are thoroughly described and detailed and approved given as part of a supplement to the approved plan prior to installation.

(1) Establishment of permanent vegetation. A permanent vegetative cover shall be established on disturbed areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved which, in the opinion of the city administrator or his designee, is mature enough to control soil erosion satisfactorily and to survive seasonal weather conditions. If it is determined by the city administrator that the vegetation will not withstand seasonal weather conditions, the release of unobligated monies or bonds shall be determined by the board of adjustments and appeals.

(2) Protection of adjacent properties. Properties adjacent to the site of land disturbance shall be protected from sediment deposition. This may be accomplished by preserving a well vegetated buffer strip around the lower perimeter of the land disturbance, by installing perimeter controls such as sediment barriers, filters, or dikes, or sediment basins, or by a combination of such measures.

Vegetated buffer strips may not be used alone.

(3) Cut and fill slopes. Cut and fill slopes must be designed and constructed in a manner which will minimize erosion. Consideration must be given to the length and steepness of the slope, the soil type, upslope drainage

area, groundwater conditions, and other applicable factors. Slopes which are found to be eroding excessively within one (1) year of the construction must be provided with additional slope stabilizing measures until the problem is corrected.

The following guidelines are provided to aid site planners and plan reviewers in developing an adequate design.

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

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

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

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

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

(4) Protection of storm sewer inlets. All storm sewer inlets which are made operable during construction shall be protected so that sediment-laden water is necessary, precautions must be taken to stabilize the work area during construction to minimize erosion.

(5) Work in stream channel. The channel (including bed and banks) must always be re-stabilized immediately after in-channel work is completed.

Where a live (wet) water course must be crossed by construction vehicles regularly during construction, a temporary stream crossing must be provided, the design of which must be approved by the city administrator or his designee.

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

(a) No more than five hundred feet (500') of open trench will be allowed at one time.

(b) Where consistent with safety and space considerations, excavated materials are to be placed on the uphill side of trenches.

(c) Trench dewatering devices shall discharge in a manner which will not adversely affect flowing streams, drainage systems, or offsite property.

(7) Construction access routes. Off-site vehicle tracking of sediments and the generation of dust shall be minimized. A stabilized construction access (a point of entrance/exit to a construction site) shall be described and implemented, as needed, to reduce the tracking of mud and dirt onto public roads by construction vehicles. The design of the construction access should at a minimum, be consistent with the requirements and recommendations contained in the current edition of the Tennessee Erosion and Sediment Control

Handbook. Where sediment is transported onto a public road surface, the roads, shall be cleaned thoroughly at the end of each day or more often if deemed necessary. Sediment shall be removed from roads by shoveling or sweeping and be transported to a sediment-controlled disposal area. Street washing shall be allowed only after sediment is removed in this manner.

(8) Disposition of temporary measures. All temporary erosion and sediment-control measures shall be disposed of within thirty (30) days after final site stabilization is achieved or after the temporary measures are no longer needed, unless otherwise authorized by the city manager or his designee. Trapped sediment and other disturbed soil areas resulting from the disposition of temporary measures shall be permanently stabilized to prevent further erosion and sediment.

(9) Maintenance. All temporary and permanent erosion and sediment-control practices shall be maintained and repaired as needed by property owners to assure continued performance of their intended function, as determined by the city administrator or his designee.

(10) The construction-phase erosion prevention controls shall be designed to eliminate (or minimize if complete elimination is not possible) the dislodging and suspension of soil in water. Sediment controls shall be designed to retain mobilized sediment on site to the maximum extent practicable.

(11) The design, inspection, and maintenance of Best Management Practices (BMPs) as described in the Stormwater Pollution Prevention Plan (SWPPP) must be prepared in accordance with good engineering practices and, at a minimum, shall be consistent with the requirements and recommendations contained in the current edition of the Tennessee Erosion and Sediment Control Handbook. In addition, all control measures must be properly selected, installed, and maintained in accordance with the manufacturer's specifications (where applicable). All control measures selected must be able to slow runoff so that rill and gully formation is prevented.

(12) Off-site sediment. If sediment escapes the permitted area, off-site accumulations of sediment that have not reached a stream must be removed at a frequency sufficient to maximize off-site impacts (e.g. fugitive sediment that has escaped the construction site and has collected in a street must be removed so that it is not subsequently washed into storm sewers and streams by the next rain and/or so that it does not pose a safety hazard to users of public streets). A land disturbance permit does not authorize access to private property. Arrangements concerning removal of sediment on adjoining property must be settled by the permittee with the adjoining landowner.

(13) Sediment removal. Sediment should be removed from sediment traps, silt fences, sedimentation ponds, and other sediment controls as recommended in the Tennessee Erosion and Sediment Control Handbook, and must be removed when design capacity has been reduced by fifty percent (50%).

(14) Removal of vegetation. Pre-construction vegetative ground cover shall not be destroyed, removed or disturbed more than fifteen (15) days prior

to grading or earth moving unless the area is seeded and/or mulched or temporary cover is installed.

Clearing and grubbing must be held to the minimum necessary for grading and equipment operation. Existing vegetation at the site should be preserved to the maximum extent practicable.

(15) Construction phasing. Construction phasing is required on all projects regardless of size as a major practice for minimizing erosion and limiting sedimentation. Construction must be phased to keep the total disturbed area less than fifty (50) acres at any one time. Areas of the completed phase must be stabilized within fifteen (15) days. No more than fifty (50) acres of active soil disturbance is allowed at any time during the construction project. This includes off-site borrow or disposal areas.

The fifty (50) acre limitation does not apply to linear construction projects (such as roadway, pipeline, and other infrastructure construction activities) if the following conditions are met:

(a) Where no one (1) area of active soil disturbance is greater than fifty (50) acres and the various areas of disturbance have distinct receiving waters; or

(b) Where contiguous disturbances amount to greater than fifty (50) acres, but no one (1) district water is receiving run off from more than fifty (50) disturbed acres; or

(c) With the department's written concurrence, where more than fifty (50) acres of disturbance is to occur and where one (1) receiving water will receive run-off from more than fifty (50) acres; or

(d) Where no one (1) area of active soil disturbance is greater than fifty (50) acres and the various areas of disturbance are more than five (5) miles apart.

In order for a linear project to take advantage of the fifty (50) acre rule exemption outlined in this subsection, the contractor shall conduct monthly site assessments until the site is permanently stabilized.

(16) Erosion prevention and sediment control measures must be in place and functional before earth moving operations begin, and must be constructed and maintained throughout the construction period. Temporary measures may be removed at the beginning of the workday, but must be replaced at the end of the workday.

(17) Stabilization. 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 no later than fifteen (15) 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:

(a) 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

(b) Where construction activity on a portion of the site is temporarily ceased, and earth disturbing activities will be resumed within fifteen (15) days.

Steep slopes shall be temporarily stabilized not later than seven (7) days after construction activity on the slope has temporarily or permanently ceased.

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.

(18) Design of erosion and sediment control measures. Erosion prevention and sediment control measures must be prepared in accordance with good engineering practices and the latest edition of the Tennessee Erosion and Sediment Control Handbook. In addition, erosion prevention and sediment controls shall be designed to minimize erosion and maximize sediment removal resulting from a 2-year, 24-hour storm, as a minimum, either from total rainfall in the designated period or the equivalent intensity as specified on the following website http://hdsc.nws.noaa.gov/hdsc/pfds/orb/tn_pfds.html. When clay and other fine particle soils are present at the construction site, chemical treatment may be used to minimize amount of sediment being discharged. For construction sites discharging into a water body on the list of impaired waters or waters designated by TDEC as exceptional Tennessee waters shall be designed to minimize erosion and maximize sediment removal resulting from a 5-year, 24-hour storm, as a minimum, either from total rainfall in the designated period or the equivalent intensity as specified on the following website http://hdsc.nws.noaa.gov/hdsc/pfds/orb/tn_pfds.html.

(19) Sediment basin. For an on-site outfall which receives drainage from ten (10) or more acres, a minimum sediment basin volume that will provide treatment for a calculated volume of runoff from a 2-year, 24-hour storm and runoff from each acre drained, or equivalent control measures as specified in the Tennessee Erosion and Sediment Control Handbook, shall be provided until final stabilization of the site. For construction sites discharging into a water body on the list of impaired waters or waters designated by TDEC as Exceptional Tennessee waters a minimum sediment basin volume that will provide treatment for a calculated volume of runoff from a 5-year, 24-hour storm and runoff from each acre drained, or equivalent control measures as specified in the Tennessee Erosion and Sediment Control Handbook, shall be provided until final stabilization of the site. A drainage area of ten (10) or more acres includes both disturbed and undisturbed portions of the site or areas adjacent to the site, all draining through the common outfall.

(20) Settling basins. Muddy water to be pumped from excavation and work areas must be held in settling basins or filtered or chemically treated prior to its discharge into surface waters. Water must be discharged through a pipe, well-grassed or lined channel or other equivalent means so that the discharge does not cause erosion and sedimentation. Discharged water must not cause an objectionable color contrast with the receiving stream. (1994 Code, § 14-307, as replaced by Ord. #2011-24, Oct. 2011)

14-308. Adjustments. The city administrator may waive or modify any of the general criteria which are deemed inappropriate or too restrictive for site conditions, by granting an adjustment. Adjustments may be granted in writing under the following conditions:

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

(2) During construction, the applicant may request adjustments to the approved plan in writing. A response, in writing, approving or disapproving such request, should be given within five (5) working days. Without a written approval, no adjustment shall be considered valid. (1994 Code, § 14-308, as replaced by Ord. #2011-24, Oct. 2011)

14-309. Final inspection. Upon completion of the work specified in the final plan, the applicant shall request a final inspection and approval. Final inspection will occur within five (5) days. If upon final inspection, the city administrator or his designee would determine that the final plan has been completed with, he shall sign the appropriate blank on the grading permit, approving compliance with the plan. If he should determine that there has not been compliance, he shall so notify the applicant and state his reason for so deciding. The applicant may then correct any deficiencies and then request a final inspection and approval; or submit a performance bond with narrative stating when the unfinished work will be completed. (1994 Code, § 14-309, as replaced by Ord. #2011-24, Oct. 2011)

14-310. Appeals. Pursuant to Tennessee Code Annotated, § 68-221-1106(d), any person aggrieved by the imposition of a civil penalty, decision or damage assessment as provided by this chapter may appeal said penalty, decision or damage assessment to the City of La Vergne's Stormwater Appeals and Advisory Board. Any person aggravated by a final decision of the board may seek review by a court competent jurisdiction. (1994 Code, § 14-310, as replaced by Ord. #2011-24, Oct. 2011)

14-311. Penalties. (1) Violations. Any person who shall commit any act declared unlawful under this chapter, who violates any provision of 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 of La Vergne, shall be guilty of a civil offense.

(2) Penalties. Under the authority granted in Tennessee Code Annotated, § 68-221-1106, the City of La Vergne declares that any person violating the provisions of this chapter may be assessed a civil penalty by the City of La Vergne 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 City of La Vergne may consider:

- (a) The harm done to the public health or the environment;
- (b) Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity;
- (c) The economic benefit gained by the violator;
- (d) The amount of effort put forth by the violator to remedy this violation;
- (e) Any unusual or extraordinary enforcement costs incurred by the City of La Vergne;
- (f) The amount of penalty established by ordinance or resolution for specific categories of violations; and
- (g) Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.

(4) Recovery of damage and costs. In addition to the civil penalty in § 14-314(2), the City of La Vergne may recover:

- (a) All damages proximately caused by the violator to the City of La Vergne, which may include but not be limited to any reasonable expenses incurred in investigating violations of, and enforcing compliance with, this chapter, or any other actual damages caused by the violation including attorney's fees.
- (b) The costs of the City of La Vergne's maintenance of stormwater facilities when the user of such facilities fails to maintain them as required by this chapter.

(5) Other remedies. The City of La Vergne may bring legal action to enjoin the continuing violation of this chapter, and the existence of any other remedy, at law or equity, shall be no defense to any such actions.

(6) 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. (1994 Code, § 14-311, as replaced by Ord. #2011-24, Oct. 2011)

14-312. [Deleted.] (1994 Code, § 14-312, as deleted by Ord. #2011-24, Oct. 2011)

14-313. [Deleted.] (1994 Code, § 14-313, as deleted by Ord. #2011-24, Oct. 2011)

14-314. [Deleted.] (1994 Code, § 14-314, as deleted by Ord. #2011-24, Oct. 2011)

CHAPTER 4

RIGHT-OF-WAY MANAGEMENT¹

SECTION

- 14-401. General use of and construction in right-of-way.
- 14-402. Construction.
- 14-403. Relocation.
- 14-404. Restoration of city's rights of way.
- 14-405. Maintenance and workmanship.
- 14-406. Acquisition of facilities.
- 14-407. Reservation of city right-of-way rights.
- 14-408. Reservation of rights and privileges.
- 14-409. Street vacation.
- 14-410. Discontinuing use of facilities.
- 14-411. Hazardous substances.
- 14-412. Undergrounding of cable.
- 14-413. Construction codes.
- 14-414. Construction and use of poles.
- 14-415. Tree trimmings.

14-401. General use of and construction in right-of-way.

Relationship with other laws. Construction work and maintenance of any and all facilities within the city's rights of way shall be done in accordance with the La Vergne Municipal Code, including but not limited to, LMC Title 16; City of La Vergne Standard Specifications for Road, Bridge and Municipal Construction; City of La Vergne Standard Plans for Municipal Construction; any other applicable ordinance, rule or policy; and any amendments thereto. The provisions of chapter 4 are meant to be supplemental to the, above provisions. In the event of a conflict between the above provisions and this section, the above provisions shall prevail. (1994 Code, § 14-401)

14-402. Construction. (1) All construction and maintenance of any and all facilities within the city's rights of way incident to grantee's cables, lines, piping, fibers, and appurtenances shall be and remain the grantee's responsibility regardless of who performs the construction. Grantee shall apply for and obtain all permits necessary for construction or installation of any facilities, and for excavating and laying any facilities, within the city's rights of way. Grantee shall pay all applicable fees upon issuance of the requisite

¹Ord. No. 97-07 (Feb. 1997) added this chapter as chapter 3 to title 14. However, since a chapter 3 was added by Ord. No. 95-8 (June 1995), these provisions were added here as Chapter 4.

construction permits by the city to grantee, and shall pay all inspection fees and other costs incurred by the city as a result of work authorized by such permit.

(2) Before beginning any construction, grantee shall provide the city with a construction schedule for work in the city's rights of way. As grantee's construction of facilities of the city's rights of way is completed on its location subsequently altered during the term of the permit, grantee shall periodically provide the city with maps showing the location of the installed facility in the city's rights of way, as built.

(3) Before beginning any work in the city's rights of way, grantee shall apply for and obtain appropriate permits from the city, and give appropriate notices to any other franchisees, licensees or permittees of the city, or other units of government owning or maintaining pipes, wires, conduits or other facilities which may be affected by the proposed excavation.

(4) When facilities pass over or under private or publicly owned property it shall be grantee's sole responsibility to obtain all necessary permission from the owner thereof before commencing work, and to notify all utility companies and property owners who may be subject to damage or inconvenience during such work. (1994 Code, § 14-402)

14-403. Relocation. The city shall have the right to require grantee to change the design or location of any of grantee's cables, lines, piping, fibers, and appurtenances within the city's rights of way when the public convenience or public interest would be served by such a change, and the expense thereof shall be paid by grantee. Should grantee fail to remove or relocate or redesign any such facilities by the date reasonably established by the city, the city may effect such removal or relocation or redesign, and the expense thereof shall be paid by grantee, including all costs and expenses incurred by the city due to grantee's delay. If the city requires grantee to relocate its facilities located within the city's rights of way, the city shall provide grantee with an alternate location within the city's rights of way. Nothing herein shall prevent grantee from participating in any alternative funding for relocation. (1994 Code, § 14-403)

14-404. Restoration of city's rights-of-way. Whenever grantee disturbs the surface of any right of way for any purpose, the grantee shall be responsible for restoration of the city's right of way and its surface within the area affected by the excavation unless the city authorizes itself in the street use permit to perform such restoration work. The cost of all restoration work, including the cost of inspection and supervision shall be paid by the grantee. All excavations made by grantee in the city's rights of way shall be properly safeguarded for the prevention of accidents. (1994 Code, § 14-404)

14-405. Maintenance and workmanship. (1) Grantee's cables, lines, piping, fibers, and appurtenances shall be constructed and maintained so as not to interfere with sewers, water pipes, conduits or any other property of the city,

or with any other pipes, wires, conduits, structures or other facilities that may have been laid in the city's rights of way by or under the city's authority.

(2) Grantee shall operate its system so as to prevent injury to the city's property or property belonging to any person within the city, grantee, at its own expense, shall repair, renew, change and improve its facilities from time to time as may be necessary to accomplish this purpose.

(3) Grantee shall not construct its system in any manner that requires any subscriber to install any cable, wire, conduits or other facilities, under or over a right of way. (1994 Code, § 14-405)

14-406. Acquisition of facilities. Upon Grantee's acquisition of facilities in any city right of way, or upon the addition or annexation to the city of any area in which grantee owns or operates any facility in any city right of way, the grantee shall, at the city's request, submit to the city a statement and as-built plans describing all existing facilities, whether authorized by franchise, permit, license or other prior right, and depicting the location of all such facilities with such specificity as the city property may reasonably require. Such facilities shall immediately be subject to the terms of this chapter, and shall be brought into compliance with it as soon as practicable. In the event the new facilities or annexed area have characteristics that make literal application of any term of the chapter inappropriate, the parties will negotiate in good faith to modify the chapter solely with respect to such characteristics and only to the extent necessary to achieve consistency with the purposes of this chapter. (1994 Code, § 14-406)

14-407. Reservation of city right-of-way rights. Nothing in this chapter shall prevent the city from constructing, maintaining, or repairing any city right of way, or public work or improvement in the city's rights of way. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of grantee's cables, lines, piping, fibers, and appurtenances. However, if any of the grantee's system will interfere with the construction maintenance, or repair of any city right of way or public work or improvement in the city's rights of way, at its own expense the grantee shall remove or relocate its system as the city directs. Should the grantee fail to remove, adjust or relocate its facilities by the date established by the city's written notice to grantee, the city may effect such removal, adjustment or relocation and recover the cost thereof from the grantee, including all costs and expenses incurred by the city due to grantee's delay. (1994 Code, § 14-407)

14-408. Reservation of rights and privileges. Nothing in this chapter shall deprive the city of any rights or privileges which it now has, or which may hereafter be conferred upon it, including any rights to exercise its police powers in the regulation and control the use of the rights-of-way. (1994 Code, § 14-408)

14-409. Street vacation. If any street or portion thereof used by grantee is vacated by the city during the term of their agreement, unless the city council specifically reserves to grantee the right to continue its installation in the vacated street, grantee shall, without delay or expense to the city, remove its facilities from such street and the expense thereof shall be paid by grantee. (1994 Code, § 14-409)

14-410. Discontinuing use of facilities. Whenever grantee intends to discontinue using any facility or capacity within the city's rights of way, grantee shall submit for the City of La Vergne's approval a complete description of the facility and the date on which the grantee intends to discontinue using the facility or capacity. Grantee may remove the facility or request that the city permit it to remain in place. Notwithstanding the grantee's request that any such facility remain in place, the City of La Vergne may require the grantee to remove the facility from the city's right of way or modify or maintain the facility or capacity to protect the public health and safety or otherwise serve the public interest. The City of La Vergne may require the grantee to perform a combination of modification, maintenance, and/or removal of the facility and/or capacity. Grantee shall complete such removal or modification in accordance with a schedule set by the City of La Vergne. Until such time as grantee removes or modifies the facility as directed by the City of La Vergne, or until the rights to and responsibility for the facility are accepted by another person having authority to construct and maintain such facility, grantee shall be responsible for all necessary repairs and relocation's of the facility, as well as maintenance of the city's right of way, in the same manner and degree as it the facility were in active use, and grantee shall retain all liability for such facility. (1994 Code, § 14-410)

14-411. Hazardous substances. (1) Grantee shall comply with all applicable state and federal laws, statutes, regulations and orders concerning hazardous Substances relating to grantee's cable system in the city's rights of way. For purposes of section 14-311, "Hazardous Substances" shall be all substances so characterized in RCW 70.1050.020 (5).

(2) Grantee shall maintain and inspect its facilities located in the city's rights of way and immediately inform the city of any release of hazardous substances. Upon reasonable notice to grantee, the city may inspect grantee's facilities in the city's rights of way to determine if any release of hazardous substances has occurred, or may occur, from or related to grantee's facilities. In removing or modifying grantee's facilities as provided in this chapter, grantee shall also remove all residue of hazardous substances related thereto provided, however, if it is determined that grantee's owned facilities did not cause the release of hazardous substances, grantee shall have no duty to remove such substances.

(3) Grantee agrees to forever indemnify the city against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the city arising out of a release of hazardous substances arising from, connected to or incident to grantee's facilities in the city's rights of way. (1994 Code, § 14-411)

14-412. Undergrounding of cable. Grantee is strongly encouraged to locate and construct its present and future cables and other facilities underground. Grantee shall install its cables or other facilities underground wherever and at the same time existing utilities in the immediate vicinity are installed underground, where all utilities are placed underground, or where statute or ordinance requires utilities to be placed underground. Previously installed aerial cable shall be underground in concert, and on a reasonable cost-sharing basis, with other utilities pursuant to the general ordinances of the city or applicable state law, or in the event that a telecommunications utility or a public utility decides to underground its on a voluntary basis, unless the city grants an exception. (1994 Code, § 14-412)

14-413. Construction codes. Grantee shall strictly adhere to all building and zoning codes currently or hereafter in affect. Grantee shall arrange its lines, cables, and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of said public or private property by any person. In the event at such interference, the city may require the removal or relocation of the grantee's lines, cables, and other appurtenances from the property in question at grantee's expense. (1994 Code, § 14-413)

14-414. Construction and use of poles. Grantee shall negotiate and enter into pole attachment agreements with utilities maintaining poles in the grantee's franchise area on terms acceptable to grantee and the affected utilities; provided, any obligations to provide fiber or capacity that might be imposed on grantee, shall be deemed fully satisfied for the term of their agreement and any extensions by grantee's agreement to install, at the time of grantee's own construction, fiber for the city in accordance with the following provisions:

(1) In the course of Grantee's own construction of its optical fiber system grantee shall include at the city's request additional fiber for the city's exclusive use for governmental purposes. Such purposes shall not include any lease, license, or other transfer to any third party of the right to use such fiber and shall not include any commercial use. However, such purposes may include the following uses, for which the city may receive payment to defray its costs of installation and maintenance.

(a) The City may share use of the fiber with other governments for governmental purposes where signals are mixed with city signals in the same transmission system- and the city may make fibers available to

schools as distinctly leased fibers or as part of a shared transmission system as described above.

(b) The city shall bear the incremental cost of adding the additional fiber during grantee's construction and the incremental cost, if any, of maintenance.

(c) The total amount of fiber installed for the city under this provision shall not exceed thirty (30) miles in distance, nor two hundred (200) fiber miles (number of fibers in a sheath times distance) without the express consent of grantee.

(d) Grantee's agreement to provide fiber under this section shall not be construed as acquiescence in or admission of the city's authority to impose such obligations unilaterally. (1994 Code, § 14-414)

14-415. Tree trimmings. The grantee must submit all construction plans and/or pruning plans to the city for initial review before any work begins. This review may take place concurrently with reviews required by the La Vergne Engineering Department. (1994 Code, § 14-415)

CHAPTER 5

BOARD OF ZONING APPEALS

SECTION

14-501. Creation and membership.

14-502. Term of members.

14-503. Procedures and powers.

14-501. Creation and membership. Pursuant to Tennessee Code Annotated, § 13-7-205, the board of mayor and aldermen does hereby create the La Vergne Board of Zoning Appeals consisting of five (5) members. The members shall be appointed by the mayor with confirmation of the board of aldermen. The members shall serve without compensation. (Ord. #2007-32, Sept. 2007, as replaced by Ord. #2010-27, Oct. 2011)

14-502. Term of members. Term of members. The initial members of the board of zoning appeals shall serve terms where one (1) member's terms shall expire each year. Upon the expiration of each initial term, a member shall be appointed for a four (4) year term. Members shall be eligible for re-appointment. Members may be removed by the board of mayor and aldermen at the request of the chairman of the board or committee and the city recorder, if the member is absent from two (2) or more scheduled meetings in a row. Vacancies shall be filled by an appointment by the mayor with the affirmation of the board of mayor and aldermen to serve out the remainder of the vacating member's term. (Ord. #2007-32, Sept. 2007, as replaced by Ord. #2010-27, Oct. 2011, and Ord. #2011-26, Oct. 2011)

14-502. Procedures and powers. The procedures and powers of the board of zoning appeals shall be outlined in section 8.070 of the La Vergne Zoning Ordinance. (as added by Ord. #2010-27, Oct. 2011)

CHAPTER 6

STORMWATER MANAGEMENT ORDINANCE

SECTION

- 14-601. General provisions.
- 14-602. Definitions.
- 14-603. Stormwater system design and management objectives and standards.
- 14-604. Land disturbance permits.
- 14-605. Post construction.
- 14-606. Existing locations and developments.
- 14-607. Inspections.
- 14-608. Illicit discharges.
- 14-609. Enforcement.
- 14-610. Penalties.
- 14-611. Appeals.
- 14-612. Severability.

14-601. General provisions. (1) Title. This chapter shall be known as the "Stormwater Management Ordinance" for the City of La Vergne, Tennessee.

(2) Applicability and jurisdiction. The stormwater management ordinance shall govern all properties within the limits of the City of La Vergne, Tennessee.

(3) Purpose. It is the purpose of this ordinance to:

(a) Protect, maintain, and enhance the environment of the City of La Vergne and the public health, safety and the general welfare of the citizens of the city, by controlling discharges of pollutants to the 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 of La Vergne to comply with the National Pollution Discharge Elimination System permit (NPDES) and applicable regulations, 40 C.F.R. § 122.26 for stormwater discharges.

(c) Allow the City of La Vergne to exercise the powers granted in Tennessee Code Annotated, § 68-221-1105 or as amended by the State of Tennessee.

(4) Authority. (a) The City of La Vergne shall have authority to implement and supplement this ordinance by reference to appropriate guidance or other related materials. In this regard, guidance or other related materials may be modified to meet the objectives and policies of this ordinance, so long as such modifications to guidance or other related materials are not contrary or beyond the intent of this ordinance. Guidance or other related materials shall not in any way endorse specific

commercially available products. However, they may refer to performance specifications, class of devices, construction, or management practice.

(b) The City of La Vergne shall have right-of-entry upon the property subject to this ordinance and any permit or document issued hereunder. The City of La Vergne shall be provided ready access to all parts of the premises for the purposes of inspection, monitoring, sampling, inventory, records examination and copying, and the performance of any other duties necessary to determine compliance with this ordinance.

(c) Where a property, site or facility has security measures in place that require proper identification and clearance before entry into its premises, the person shall make necessary arrangements with its security personnel so that, upon presentation of suitable identification, the City of La Vergne will be permitted to enter without delay for the purposes of performing specific responsibilities.

(d) The City of La Vergne shall have the right to operate and maintain on the person's property such devices as are necessary to conduct sampling and metering of the person's stormwater operations or discharges.

(e) Any temporary or permanent obstruction to safe and easy access to the areas to be inspected and/or monitored shall be removed promptly by the person at the written or verbal request of the City of La Vergne. The costs of clearing such access shall be borne by the person.

(f) The City of La Vergne may reserve the right to determine and impose inspection schedules necessary to enforce the provisions of this ordinance. Inspections may include, but are not limited to, the following:

(i) An initial inspection prior to land disturbance permit issuance approval;

(ii) A bury inspection prior to burial of any underground drainage structure;

(iii) Erosion prevention and sediment control inspections as necessary to ensure effective control of erosion and sedimentation; and

(iv) A final inspection when all work, including installation of storm management facilities, has been completed.

(v) Periodic inspections to ensure stormwater facilities are being maintained.

(5) Duty to provide information. The owner/operator shall furnish to the City of La Vergne any information that is requested to determine compliance with this ordinance or other information.

(6) Jurisdiction. The stormwater management ordinance shall govern all properties within the corporate limits of the City of La Vergne, Tennessee.

(7) Exemptions. The following activities are exempt from the provisions of this chapter and requirements of providing stormwater management:

- (a) Agricultural land management activities;
- (b) Any emergency activity that is immediately necessary for the protection of life, property, or natural resources; and
- (c) Developments that do not disturb more than one (1) acre of land. This exception may not be applied for contiguous properties that may have been subdivided and/or are attributed to multiple separate owners. This exemption does not apply to any discharge of sediment or other form of water pollution that may leave a small site, or if in the discretion of the City of La Vergne, the land disturbance activity poses a threat to water, public health, or safety.

(8) Savings provision. This ordinance shall not be construed as altering, modifying, vacating or nullifying any action now impending or any rights of obligations obtained by any person, firm or corporation through approval of a preliminary plat by the City of La Vergne Planning Commission or through the approval of any land disturbance permit or any other lawful action of the city prior to the adoption of this ordinance. (1994 Code, § 14-601, as replaced by Ord. #2011-25, Oct. 2011)

14-602. Definitions. For the purpose of this ordinance, 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.

(1) "Agricultural land management activities." The practice of cultivating the soil, producing crops, and raising livestock for the preparation and marketing of the resulting products.

(2) "As built plans." Drawings depicting conditions as they were actually constructed.

(3) "Best Management Practices (BMPs)." 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 La Vergne, and that have been incorporated by reference into this ordinance as if fully set out therein.

(4) "Channel." A natural or artificial watercourse with a definite bed and banks that conducts flowing water continuously or periodically.

(5) "Community water." Any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wetlands, wells and other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of the City of La Vergne, Tennessee.

(6) "Contaminant." Any physical, chemical, biological, or radiological substance or matter in water.

(7) "Design storm event." A hypothetical storm event, of a given frequency interval and duration, used in the analysis and design of a stormwater facility.

(8) "Discharge." 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 municipal separate storm sewer system.

(9) "Easement." An acquired privilege or right of use or enjoyment that a person, party, firm, corporation, City of La Vergne or other legal entity has in the land of another.

(10) "Engineer." An engineer duly registered, licensed or otherwise authorized by the State of Tennessee to practice in the field of civil engineering.

(11) "Erosion." 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 anthropogenic activities or effects.

(12) "Erosion and sediment control plan." A written plan (including drawings or other graphic representations) that is designed to minimize the accelerated erosion and sediment runoff at a site during construction activities.

(13) "Illicit connections." Illegal and/or unauthorized connections to the municipal separate stormwater system whether or not such connections result in discharges into that system.

(14) "Illicit discharge." Any discharge to the municipal separate storm sewer system that is not composed entirely of stormwater and not specifically exempted under § 14-608.

(15) "Land disturbing activity." 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, re-development, demolition, construction, reconstruction, clearing, grading, filling, and excavation.

(16) "Maintenance." Any activity that is necessary to keep a stormwater facility in good working order so as to function as designed. Maintenance shall include complete reconstruction of a stormwater facility if reconstruction is needed in order 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 facility.

(17) "Maintenance agreement." 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.

(18) "Municipal Separate Storm Sewer System (MS4)." The conveyances owned or operated by the municipality 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.

(19) "National Pollutant Discharge Elimination System permit (NPDES permit)." A permit issued pursuant to 33 U.S.C. 1342.

(20) "Off-site facility." A structural BMP located outside the subject property boundary described in the permit application for land development activity.

(21) "On-site facility." A structural BMP located within the subject property boundary described in the permit application for land development activity.

(22) "Peak flow." The maximum instantaneous rate of flow of water at a particular point resulting from a storm event.

(23) "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.

(24) "Priority area." An area where land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in stormwater.

(25) "Runoff." That portion of the precipitation on a drainage area that is discharged from the area into the municipal separate stormwater system.

(26) "Sediment." Solid material, both mineral 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.

(27) "Sedimentation." Soil particles suspended in stormwater that can settle in stream beds and disrupt the natural flow of the stream.

(28) "Soils report." 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.

(29) "Stabilization." Providing adequate measures, vegetative and/or structural, that will prevent erosion from occurring.

(30) "Stormwater." Stormwater runoff, snow melt runoff, surface runoff, street wash waters related to street cleaning or maintenance, infiltration and drainage.

(31) "Stormwater management." The programs to maintain quality and quantity of stormwater runoff to pre-development levels.

(32) "Stormwater management facilities." The drainage structures, conduits, ditches, combined sewers, sewers, and all device appurtenances by means of which stormwater is collected, transported, pumped, treated or disposed of.

(33) "Stormwater management plan." The set of drawings and other documents that comprise all the information and specifications for the

programs, drainage systems, structures, BMPs, concepts and techniques intended to maintain or restore quality and quantity of stormwater runoff to pre-development levels.

(34) "Stormwater runoff." Flow on the surface of the ground, resulting from precipitation.

(35) "Structural BMPs." Devices that are constructed to provide control of stormwater runoff.

(36) "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.

(37) "Top of bank." The uppermost limit of the active channel of a stream during "bank full" conditions, usually marked by a break in slope.

(38) "Watercourse." A permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

(39) "Watershed." All the land area that contributes runoff to a particular point along a waterway. (1994 Code, § 14-602, as amended by Ord. #2007-18, June 2007, and replaced by Ord. #2011-25, Oct. 2011)

14-603. Stormwater system design and management objectives and standards. (1) Objectives. The objectives of this ordinance are:

(a) To protect human life and health.

(b) To minimize the need for rescue and relief efforts associated with flooding.

(c) To eliminate any non-allowable discharges to the City of La Vergne's Municipal Separate Storm Sewer System (MS4) that impact water quality.

(d) To help maintain a stable tax base by providing for the sound use and development of 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.

(e) To ensure that potential home buyers are notified that property is in a flood area and generally increase the public awareness of flooding potential.

(f) To minimize prolonged business interruptions.

(g) To minimize damage to public facilities and utilities such as water and gas mains; electric, telephone, and sewer lines; and streets and bridges located in flood plains.

(h) To ensure a functional public and private stormwater quantity and quality management system that will not result in excessive maintenance costs.

(i) To encourage the use of natural and aesthetically pleasing design that maximizes preservation of natural areas.

(j) To guide the construction of stormwater management facilities by developing comprehensive master plans to address stormwater quantity and quality.

(k) To encourage preservation of floodplains, floodways and open spaces to protect and benefit the community's quality of life and natural resources.

(l) To encourage community stewardship of the City of La Vergne's water resources and their impacts on the community character and quality of life.

(2) Stormwater Best Management Practices (BMPs). To implement the objectives of this ordinance, the City of La Vergne adopts as its stormwater design and Best Management Practices (BMPs). These manuals include a list of acceptable BMPs including the specific design performance criteria and operation and maintenance requirements for each stormwater practice. The manual may be updated and expanded at the discretion of the City of La Vergne, based on improvements in engineering, science, monitoring and local maintenance in accordance with these BMP criteria will be presumed to meet the minimum water quality performance standards.

(3) Stormwater quality. To implement the objectives of this ordinance, the following general stormwater quality policy statements shall apply:

(a) There shall be no distinctly visible floating scum, oil or other matter contained in the stormwater discharge.

(b) The stormwater discharge must not cause an objectionable color contrast in the receiving stream.

(c) Development will be required to minimize the impact to stormwater quality by applying structural and/or nonstructural management practices selected to address site-specific conditions. The goal for water quality treatment shall be eighty percent (80%) removal of total suspended solids from the first flush, defined by land use characteristics or at least one half inch (0.5") were not defined.

(d) Re-development activities will be required to follow stormwater quality requirements.

(e) No land disturbance activities, whether by private or public action, shall be performed in a manner that will negatively impact stormwater quality whether by flow restrictions, increased runoff, or by diminishing channel or floodplain storage capacity. Acceleration of erosion or sedimentation, or transport of other pollutants or forms of pollution, due to various land development activities must be controlled.

(4) Stormwater quantity. To implement the objectives of this ordinance, the following general stormwater quantity policy statements shall apply:

(a) New development shall meet a stormwater quantity level of service defined by:

(i) Designing road catch basins and connecting culverts to convey the 10-year, 24-hour design storm runoff.

(ii) Designing bridges, culverts, channels and crossdrains to pass the 25-year, 24-hour design storm runoff. Calculations shall also be provided for the 100-year, 24-hour design storm.

(b) Stormwater infrastructure shall be designed in a way that:

(i) Critical service roads are not inundated by more than three inches (3") of water over one-half (1/2) the roadway under a 100-year, 24-hour design storm event.

(ii) Other new roads shall be designed to have no more than six inches (6") of road overtopping at the 25-year, 24-hour design storm event.

(c) Re-development activities will be required to follow stormwater quantity requirements.

(d) No land disturbance activities, whether by private or public action, shall be performed in a manner that will negatively impact stormwater quantity whether by flow restrictions, increased runoff, or by diminishing channel or floodplain storage capacity.

(e) All site designs shall control the post-development peak, flow rates of stormwater discharge associated with 2-, 10-, 25-, 50-, and 100-year, 24-hour design storms to the pre-development peak flow rates. These practices should seek to utilize pervious areas for stormwater treatment and to infiltrate stormwater runoff from driveways, sidewalks, rooftops, parking lots, and landscaped areas to the maximum extent practical to provide treatment for both water quality and quantity.

(f) Hydrologic and hydraulic design calculations for the predevelopment and post-development conditions for the 2-, 10-, 25-, 50- and 100-year, 24-hour design storms shall be provided to the City of La Vergne. These calculations must show that the proposed stormwater management measures are capable of controlling runoff from the site in compliance with this ordinance.

(g) If hydrologic or topographic conditions warrant greater control than that provided by the minimum control requirements, the City of La Vergne may impose any and all additional requirements deemed necessary to control the volume, timing, and rate of runoff.

(h) To protect stream channels from degradation, specific channel protection criteria shall be provided.

(i) At the discretion of the City of La Vergne, stormwater discharges may be subject to additional performance criteria, or may need to utilize or restrict certain stormwater management practices.

(j) Prior to or during the site design process, applicants for land disturbance permits shall consult with the City of La Vergne to determine if they are subject to additional stormwater design requirements. (1994 Code, § 14-603, as replaced by Ord. #2011-25, Oct. 2011)

14-604. Land disturbance permits. No building permit shall be issued until the applicant has obtained a land disturbance permit where the same is required by this ordinance:

(1) Land disturbance permit applicability. Every person will be required to obtain a land disturbance permit from the city engineer in the following cases:

(a) Land disturbing activity disturbs one (1) or more acres of land;

(b) Land disturbing activity of less than one (1) acre of land if such activity is part of a larger common plan of development that affects one (1) or more acre of land;

(c) Land disturbing activity of less than one (1) acre of land, if in the discretion of the city engineer or other appropriate authority, such activity poses a threat to water, public health, or safety; and

(d) The creation and use of borrow pits.

(2) Land disturbance permit application. (a) Application for a land disturbance permit on sites requiring a "Tennessee General Permit for Stormwater Discharges from Construction Activities" shall require the following be submitted to the city engineer for review and approval:

(i) The Notice of Intent (NOI) required by TDEC for coverage under the "Tennessee General Permit for Stormwater Discharges from Construction Activities."

(ii) The Notice of Coverage (NOC) proving coverage under the "Tennessee General Permit for Stormwater Discharges from Construction Activities."

(iii) The stormwater pollution prevention plan prepared for coverage under the "Tennessee General Permit for Stormwater Discharges from Construction Activities."

(iv) Separate sheets, at a scale not to exceed one inch (1") equal to fifty feet (50'), for pre-construction, construction, and post construction storm water BMPs. For site disturbances less than five (5) acres, at least two (2) separate EPSC plan sheets shall be developed. At least two (2) stages shall be identified, with associated EPSC measures addressed. The plan stages shall be addressed separately in plan sheets, with each reflecting the conditions and EPSC measures necessary to manage stormwater runoff, erosion and sediment during the initial land disturbance (initial grading) and the conditions and EPSC measures necessary to manage stormwater, erosion and sediment at final grading. For site disturbances more than five (5) acres at least three (3) separate EPSC sheets shall be developed. Three (3) stages shall be identified. The first plan sheet should reflect the conditions and EPSC measures necessary to manage stormwater runoff during the initial land disturbance (initial grading). The second plan

sheet shall reflect the conditions the EPSC measures necessary to manage stormwater runoff from interim land disturbance activities. The third plan sheet shall reflect the conditions and EPSC measures necessary to manage stormwater runoff, erosion and sediment at final grading.

(b) Application for a land disturbance permit on sites which pose a threat to water, public health, or safety, as determined by the city engineer or other appropriate authority, shall require the following be submitted for review and approval:

(i) Name of applicant;

(ii) Business or residence address of applicant;

(iii) Name, address and telephone number of the owner of the property of record in the office of the assessor of property;

(iv) Address and legal description of subject property including the tax reference number and parcel number of the subject property;

(v) Name, address and telephone number of the contractor and any subcontractor(s) who shall perform the land disturbing activity and who shall implement the erosion and sediment control plan;

(vi) A statement indicating the nature, extent and purpose of the land disturbing activities including the size of the area for which the permit shall be applicable and a schedule for the starting and completion dates of the land disturbing activity.

(vii) Where the property includes a sinkhole, the applicant shall obtain from the Tennessee Department of Environment and Conservation appropriate permits.

(viii) The applicant shall obtain from any other state or federal agency any other appropriate environmental permits that pertain to the property. However, the inclusion of those permits in the application shall not foreclose the City of La Vergne from imposing additional development requirements and conditions, commensurate with this ordinance, on the development of property covered by those permits.

(ix) Additional information and calculations as deemed necessary by the city engineer.

(3) Review and approval of land disturbance permit application. The city engineer will review each application for a land disturbance permit to determine its conformance with the provisions of this ordinance. The city engineer shall provide one (1) of the following responses in writing:

(a) Approval of the permit application;

(b) Approval of the permit application, subject to such reasonable conditions as may be necessary to secure substantially the

objectives of this ordinance, and issue the permit subject to these conditions; or

(i) If the city engineer has granted conditional approval of the permit, the applicant shall submit a revised plan that conforms to the conditions established by the city engineer. However, the applicant shall be allowed to proceed with his land disturbing activity so long as it conforms to conditions established by the city engineer.

(c) Denial of the permit application, indicating the reason(s) for the denial.

(d) No development plans will be released until the land disturbance permit has been approved.

(4) Permit duration. Every land disturbance permit shall expire and become null and void if substantial work authorized by such permit has not commenced within one hundred eighty (180) calendar days of issuance, or is not complete within eighteen (18) months from the date of the commencement of construction.

(5) Performance bonds. (a) The City of La Vergne shall require the submittal of a performance security or performance bond prior to issuance of a permit in order to ensure that the stormwater practices are installed by the permit holder as required by the approved stormwater management plan. The amount of the installation performance security or performance bond shall be the total estimated construction cost of the structural BMP(s) approved under the permit. The performance security shall contain forfeiture provisions for failure to complete work specified in the stormwater management plan. The applicant shall provide an itemized construction cost estimate complete with unit prices which shall be subject to acceptance, amendment or rejection by the City of La Vergne. Alternatively the City of La Vergne shall have the right to estimate the cost of construction.

(b) The performance security or performance bond shall be released in full only upon submission of as-built plans and written certification by a registered professional engineer licensed to practice in Tennessee that the structural BMP(s) has been installed in accordance with the approved plan and other applicable provisions of this ordinance. The city engineer or designee will make a final inspection of the structural BMP(s) to ensure that it is in compliance with the approved plan and the provisions of this ordinance. Provisions for a partial pro-rata release of the performance security or performance bond based on the completion of various development stages can be made at the discretion of the city engineer. (1994 Code, § 14-604, as replaced by Ord. #2011-25, Oct. 2011)

14-605. Post construction. (1) As-built plans. All applicants are required to submit as-built plans for any stormwater management structures located on-site 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 licensed to practice in Tennessee.

(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 revegetated according to a schedule approved by the city engineer. 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.

(3) Stormwater system long-term operation and maintenance. (a) The maintenance responsibilities for permanent stormwater runoff control facilities shall be responsibility of the owner.

(b) An engineer shall provide a stormwater infrastructure long-term operation and maintenance plan with an opinion of probable costs and schedule, subject to approval by the city engineer. The long-term operation and maintenance plan shall be in writing, shall be in recordable form, and shall, in addition to any other terms deemed necessary by the city engineer, contain a provision permitting inspection at any reasonable time by the city engineer or his designee of the facilities deemed critical to the public welfare.

(c) The City of La Vergne will have the authority to maintain facilities not properly maintained and to recover costs associated with the maintenance from the owner.

(d) Upon approval of the stormwater management facilities by the city engineer, the facility owner shall demonstrate the ability to garner and apply the financial resources necessary for long-term maintenance requirements. The funding mechanism shall be in a form approved by the City of La Vergne. The city will only approve funding

mechanism(s) for long-term maintenance responsibilities that can be demonstrated to be permanent or transferable to another entity with equivalent longevity.

(e) If a responsible party fails or refuses to meet the design or maintenance standards required for stormwater facilities under this ordinance, the City of La Vergne, 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. In the event that the stormwater management facility becomes a danger to public safety or public health, the City of La Vergne shall notify in writing the party responsible for maintenance of the stormwater management facility. Upon receipt of that notice, the responsible person shall have ten (10) 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 of La Vergne may take necessary corrective action. The cost of any action by the City of La Vergne under this section shall be charged to the responsible party.

(4) Waterway buffer policy. (a) A waterway buffer shall be defined as a strip of undisturbed vegetation either original or re-established, that borders streams and rivers, ponds, and lakes, wetlands, and springs.

(b) A waterway buffer shall be applied along all intermittent and perennial waterways as determined by the City of La Vergne (stormwater appeals and advisory board) or state. Waterway determination shall be conducted at the concept stage.

(c) The waterway buffer shall be defined as the area contained within a boundary established sixty feet (60') perpendicular beyond the top of bank on each side of the waterway.

(d) Waterways buffer variances:

(i) The stormwater appeals and advisory board may grant variances for the following:

(A) Those projects or activities where it can be clearly demonstrated that unique circumstances make it impracticable to meet some or all of the buffer requirements; or

(B) Those projects or activities serving a public need where no feasible alternative is available; or

(C) The granting of the variance will not have the effect of preventing the orderly development of other land in the area in accordance with this chapter.

(D) The construction repair and maintenance of public improvements where avoidance and minimization of adverse impacts to wetlands and associated aquatic ecosystems have been addressed.

(ii) When considering a request for a variance, the stormwater appeals and advisory board may require additional information such as, but not limited to, site design, landscape planting, fencing, the placement of signs, and the establishment of water quality best management practices in order to reduce adverse impacts on water quality, streams, and wetlands.

(iii) When deemed appropriate by the stormwater appeals and advisory board, the water quality buffer zone width may be relaxed and permitted to become narrower as long as the width is not reduced to less than the minimum width required under applicable law, rules and regulations adopted by the State of Tennessee with regard to the same, but in no event shall it be less than twenty-five feet (25') perpendicular to the top of bank.

(e) Waterway buffers shall be recorded on the plat.

(f) Site development plans and plats prepared for recording shall:

(i) Define the boundaries of a waterway buffer on the subject property and be labeled as "waterway buffer."

(ii) Provide a note stating: "There shall be no clearing, grading construction or disturbance of vegetation in the waterway buffer except as permitted by the City of La Vergne."

(iii) Provide a note to reference any protective covenants governing waterway buffers stating: "waterway buffers shown hereon are subject to protective covenants which may be found in the land records and which restrict disturbance and use of these areas."

(g) Waterway buffers shall be protected during development activities. The waterway buffers shall be clearly marked during construction activities.

(h) Minor landscaping shall be allowed within the waterway buffer to repair erosion, damaged vegetation, or provide other maintenance. Landscaping or stabilization activities must have prior approval by the engineering department.

(i) Loss of floodplain storage due to activities within the waterway buffer is not permitted. Provided erosion prevention and sediment control, and water quality policies are adequately addressed, the following activities in the waterway buffer may be permitted with prior approval by the engineering department:

(i) Roads and utilities crossing waterways.

(ii) Pedestrian trails and walkways proximate to waterways.

(iii) Water quality devices. 1994 Code, § 14-605, as amended by Ord. #2005-23, Oct. 2005 and Ord. #2007-18, June 2007, and replaced by Ord. #2011-25, Oct. 2011)

14-606. Existing locations and developments. (1) Requirements for existing locations and developments. The following requirements shall apply to all locations and development at which land disturbing activities have occurred previous to the enactment of this ordinance:

(a) Denuded areas shall be vegetated or covered using guidelines specified in the BMP manual and on a schedule acceptable to the city engineer.

(b) Trash, junk, rubbish, etc. shall be cleared from drainage ways.

(c) Stormwater runoff shall be controlled to the extent reasonable to prevent pollution of local waters. Such control measures may include, but are not limited to, the following:

- (i) Ponds;
- (ii) Constructed wetlands;
- (iii) Infiltration systems;
- (iv) Filtering systems;
- (v) Open channel.

(2) Requirements for existing problem locations. The city engineer shall in writing notify the owners of existing locations and developments of specific drainage, erosion or sediment problem affecting such locations and developments, and the specific actions required to correct those problems. The notice shall also specify a reasonable time for compliance.

(3) Inspection of existing facilities. The City of La Vergne may, to the extent authorized by state and federal law, establish inspection programs to verify that all stormwater management facilities, including those built before the adoption of this ordinance, are functioning within design limits. These inspection programs may be established on any reasonable basis, including but not limited to: routine 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; 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 BMPs. (1994 Code, § 14-606, as replaced by Ord. #2011-25, Oct. 2011)

14-607. Inspections. Inspections shall be performed to ensure that vegetation, erosion and sediment control measures and other protective measures identified in the site plan are kept in good and effective operating condition.

(1) Inspection requirements. (a) Inspections required by TDEC.

(b) Submission of inspection documentation upon request by the city engineer.

(c) Pre-construction stormwater management BMPs must be inspected and certified that the BMPs are in accordance with the approved plans.

(d) Construction stormwater management BMPs must be inspected and certified that the BMPs are in accordance with the approved plans, prior to granting building permit on sites requiring a land disturbance permit.

(e) Post construction BMPs must be inspected and certified that the BMPs are in accordance with the approved plans prior to release of surety.

(2) City of La Vergne inspections. City inspections may include, but are not limited to, the following:

(a) An initial inspection prior to issuance of a land disturbance permit;

(b) A bury inspection prior to burial of any underground drainage structure;

(c) Erosion prevention and sediment control inspections as necessary to ensure effective control of erosion and sedimentation;

(d) A final inspection when all work, including installation of storm management facilities, has been completed; and

(e) Periodic inspections to ensure stormwater facilities are being maintained. (1994 Code, § 14-607, as replaced by Ord. #2011-25, Oct. 2011)

14-608. Illicit discharges. (1) Prohibition of illicit discharges.

(a) Pursuant to the National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) program administered by the Tennessee Department of Environment and Conservation (TDEC) illicit discharges to the MS4 are being defined as illegal. This is accomplished by identifying allowable non-stormwater discharges into the MS4 in the best interest of the City of La Vergne, Tennessee.

(b) Non-stormwater discharge means any discharge to the municipal separate storm sewer system except as permitted by subsection (2).

(c) Except as hereinafter provided, all non-stormwater discharges into the municipal separate storm sewer system are prohibited and declared to be unlawful.

(2) Allowable stormwater discharges. (a) Unless the City of La Vergne, TDEC, EPA or other regulatory agency has identified them as a source of pollutants to the "Waters of the State of Tennessee," the following nonstormwater discharges into the municipal separate storm sewer system are lawful:

(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 or footing drains;
- (viii) Crawl space pumps;
- (ix) Air conditioning condensation;
- (x) Springs;
- (xi) Non-commercial washing of vehicles;
- (xii) Natural riparian habitat or wet-land flows;
- (xiii) Swimming pools (if dechlorinated);
- (xiv) Fire fighting activities;
- (xv) Discharges specified in writing by the City of La Vergne as being necessary to protect public health and safety; and
- (xvi) Dye testing as an allowable discharge if the City of La Vergne has so specified in writing.

(3) 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 stormwater, the municipal separate storm sewer system, 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 engineer in person or by telephone or facsimile 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 engineer 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. (1994 Code, § 14-608, as replaced by Ord. #2011-25, Oct. 2011)

14-609. Enforcement. (1) Enforcement authority. The city engineer or his designee shall have the authority to issue notices of violation and citations, and to impose the civil penalties provided in this section.

(2) Notification of violation. (a) Written notice. Whenever the city engineer or other appropriate city official 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 city engineer or his designee may serve upon such person written notice of the violation. Within ten (10) days of this 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 city engineer. 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) Consent orders. The City of La Vergne is empowered to enter into 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 subsections (d) and (e) below.

(c) Show cause hearing. The City of La Vergne may order any person who violates this ordinance or permit or order issued hereunder, to show cause why a proposed enforcement action should not be taken. Notice shall be served on the person specifying the time and place for the meeting, the proposed enforcement action and the reasons for such 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.

(d) Compliance order. When the city engineer or his designee finds that any person has violated or continues to violate this ordinance or a permit or order issued hereunder, the city engineer or his designee may issue an order to the violator directing that, following a specific time period, adequate structures, devices, be installed 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 structures, installation of devices, self-monitoring, and management practices.

(e) Cease and desist orders. When the city engineer or his designee finds that any person has violated or continues to violate this ordinance or any permit or order issued hereunder, the city engineer or his designee may issue 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 and terminating the discharge.

(iii) Conflicting standards. Whenever there is a conflict between any standard contained in this ordinance and in the BMP

manual adopted by the City of La Vergne under this ordinance, the strictest standard shall prevail. (1994 Code, § 14-609, as replaced by Ord. #2011-25, Oct. 2011)

14-610. Penalties. (1) Violations. Any person who shall commit any act declared unlawful under this ordinance, who violates any provision of this ordinance, who violates the provisions of any permit issued pursuant to this ordinance, or who fails or refuses to comply with any lawful communication or notice to abate or take corrective action by the City of La Vergne, shall be guilty of a civil offense.

(2) Penalties. Under the authority provided in Tennessee Code Annotated, § 68-221-1106, the City of La Vergne declares that any person violating the provisions of this ordinance may be assessed a civil penalty by the City of La Vergne 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 City of La Vergne may consider:

- (a) The harm done to the public health or the environment;
- (b) Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity;
- (c) The economic benefit gained by the violator;
- (d) The amount of effort put forth by the violator to remedy this violation;
- (e) Any unusual or extraordinary enforcement costs incurred by the City of La Vergne;
- (f) The amount of penalty established by ordinance or resolution for specific categories of violations; and
- (g) Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.

(4) Recovery of damages and costs. In addition to the civil penalty in § 14-610(2), the City of La Vergne may recover:

- (a) All damages proximately caused by the violator to the City of La Vergne, which may include but not be limited to any reasonable expenses incurred in investigating violations of, and enforcing compliance with, this ordinance, or any other actual damages caused by the violation including attorney's fees.
- (b) The costs of the City of La Vergne's maintenance of stormwater facilities when the user of such facilities fails to maintain them as required by this ordinance.

(5) Other remedies. The City of La Vergne may bring legal action to enjoin the continuing violation of this ordinance, and the existence of any other remedy, at law or equity, shall be no defense to any such actions.

(6) 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. (1994 Code, § 14-610, as replaced by Ord. #2011-25, Oct. 2011)

14-611. Appeals. Pursuant to Tennessee Code Annotated, § 68-221-1106(d), any person aggrieved by the imposition of a civil penalty, decision or damage assessment as provided by this ordinance may appeal said penalty, decision or damage assessment to the City of La Vergne's Stormwater Administrative Board.

(1) Appeals to be in writing. The appeal shall be in writing and filed with the City of La Vergne clerk within fifteen (15) days after the civil penalty and/or damage assessment is served in any manner authorized by law.

(2) Public hearing. Upon receipt of an appeal, the City of La Vergne's Stormwater Administrative Board shall hold a public hearing within thirty (30) 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. 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 City of La Vergne's Stormwater Administrative Board shall be final.

(3) Appealing decisions of the City of La Vergne. Any alleged violator may appeal a decision of the City of La Vergne's Stormwater Administrative Board pursuant to the provisions of Tennessee Code Annotated, title 27, chapter 8. (1994 Code, § 14-611, as replaced by Ord. #2011-25, Oct. 2011)

14-612. Severability. Should any article, section, subsection or provision of this Comprehensive Stormwater Management 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. 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. (1994 Code, § 14-612, as replaced by Ord. #2011-25, Oct. 2011)

CHAPTER 7

STORMWATER USER FEE

SECTION

- 14-701. Definitions.
- 14-702. Stormwater user fee.
- 14-703. Stormwater user fee collection.
- 14-704. Stormwater user fee determination.

14-701. Definitions. For the purpose of this chapter, the following definitions shall apply; words used in the singular shall include the plural, and the plural, 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 herein shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary.

(1) "Billing period" means the period identified from the first day of the month to the last day of the month. All bills rendered during a month are for the period beginning on the first day of the same month and are valid for that entire month unless otherwise identified. When city water service is discontinued during a month, the drainage fee due for that account shall be the pro rata portion of the month for which water services were active. When a developed property that does not receive city water service changes ownership during a billing period, the account existing on the first day of the billing period shall be liable for the pro rata portion of the drainage fee for that billing period from the first day of the billing period until the day the deed conveying the real property is executed.

(2) "Bonds" means revenue bonds, notes, loans or any other debt obligations issued or incurred to finance the costs of construction.

(3) "Calendar year" means a twelve (12) month period commencing on the first day of January of any year.

(4) "City engineer" means the city engineer, or his designee.

(5) "Costs of construction" means reasonable costs incurred in connection with providing capital improvements to the system or any portion thereof, including, but not limited to, the costs of:

(a) Acquisition of all property, real or personal, and all interests in connection therewith including all rights-of-way and easements therefor,

(b) Physical construction, installation and testing, including the costs of labor, services, materials, supplies and construction services used in connection therewith,

(c) Architectural, engineering, legal and other professional services,

(d) Insurance premiums taken out and maintained during construction, to the extent not paid for by a contractor for construction and installation,

(e) Any taxes or other charges which become due during construction,

(f) Expenses incurred by the city or on its behalf with its approval in seeking to enforce any remedy against any contractor or bus-contractor in respect of any default under a contract relating to construction,

(g) Principal of and interest of any bonds, and

(h) Miscellaneous expenses incidental thereto.

(6) "Debt service" means, with respect to any particular calendar year and any particular series of bonds, an amount equal to the sum of (i) all interest payable on such bonds during such calendar year, plus (ii) any principal installments of such bonds during such calendar year.

(7) "Developed property" means real property other than undisturbed property and vacant improved property.

(8) "Dwelling unit" means a singular unit or apartment providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

(9) "Equivalent Residential Unit" or "ERU" means the average impervious area of residential developed property per dwelling unit located within the city and as established by the board of mayor and aldermen.

(10) "ERU rate" means a utility fee charged on each ERU as established by the board of mayor and aldermen.

(11) "Exempt property" means property owned and/or operated by the City of La Vergne, public rights-of-way, public streets, public alleys, and public sidewalks.

(12) "Extension and replacement" means costs of extensions, additions and capital improvements to, or the renewal and replacement of capital assets of, or purchasing and installing new equipment for, the system, or land acquisitions for the System and any related costs thereto, or paying extraordinary maintenance and repair, including the costs of construction, or any other expenses which are not costs of operation and maintenance or debt service.

(13) "Impervious area" means the number of square feet of hard surfaced areas which either prevent or retard the entry of water into soil mantle, as it entered under natural conditions as undisturbed property, and/or causes water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions as undisturbed property, including, but not limited to, roofs, roof extensions, patios, porches, driveway, sidewalks, pavement and athletic courts.

(14) "Nonresidential developed property" means developed property that is not utilized for dwelling units within the city.

(15) "Operating budget" means the annual operating budget adopted by the city for the succeeding fiscal year.

(16) "Operations and maintenance" means the current expenses, paid or accrued, of operation, maintenance and current repair of the system, as calculated in accordance with sound accounting practice, and includes, without limiting the generality of the foregoing, insurance premiums, administrative expenses, labor, executive compensation, and cost of materials and supplies used for current operations, and charges for the accumulation of appropriate reserves for current expenses not annually incurred, but which are such as may reasonably be expected to be incurred in accordance with sound accounting practice.

(17) "Revenues" mean all rates, fees, assessments, rentals or other charges or other income received by the stormwater user fee fund, in connection with the management and operation of the system, including amounts received from the investment or deposit of moneys in any fund or account and any amounts contributed by the city, all as calculated in accordance with sound accounting practice.

(18) "Stormwater management system" or "system" means the existing stormwater management of the city and all improvements thereto which by this chapter are constituted as the property and responsibility of the city, to be operated as an enterprise fund to, among other things, conserve water, control discharges necessitated by rainfall events, incorporate methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over-drainage, environmental degradation and water pollution or otherwise affect the quality and quantity of discharge from such system.

(19) "Stormwater user fee" means a fee authorized by ordinance(s) established to pay operations and maintenance, extension and replacement and debt service.

(20) "Stormwater user fee fund" means the enterprise fund created by this chapter to operate, maintain and improve the system and for such other purposes as stated in this chapter.

(21) "Undisturbed property" means real property which has not been altered from its natural state by grading, dredging, filling, removal of trees and vegetation or other activities which have disturbed or altered the topography or soils on the property.

(22) "User fee district" means the area or property within the corporate limits of the City of La Vergne.

(23) "Vacant improved property" means vacant property which is, or could reasonably be, served by any subdivision improvements that allow egress. (Ord. #2005-08, June 2005, as amended by Ord. #2009-27, Oct. 2009)

14-702. Stormwater user fee. Subject to the provisions of this chapter, each and every residential developed property, nonresidential developed property and vacant improved property, other than exempt property, within the

corporate limits of the city, and the owners and non-owner users thereof, have imposed upon them a stormwater user fee. In the event the owner and non-owner users of a particular property are not the same, the liability for each the owner and non-owner user for the user fee attributable to that property shall be joint and several. The stormwater user fee shall be a monthly or a regular interval service charge and shall be determined by the provisions of this chapter and the ERU and ERU rate which shall be established and changed from time to time by the board of mayor and aldermen. (Ord. #2005-08, June 2005)

14-703. Stormwater user fee collection. The stormwater user fee for metered property shall be billed and collected monthly with the monthly city's services utility bill for those properties within the corporate limits of the city utilizing the city utilities and billed and collected separately as stormwater user fees for those properties not utilizing other city utilities. All such bills for stormwater user fees shall be rendered monthly by the City of La Vergne. 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. In the event that a partial payment is received, the payment shall be applied pro-rata to each account billed on the consolidated statement in the proportion that an individual account bears to the total consolidated statement of all current charges for all accounts. The stormwater user fee for unmetered property shall be billed at regular intervals. All bills for stormwater user fees shall become due and payable in accordance with the rules and regulations of the City of La Vergne pertaining to the collection of the stormwater user fees. (Ord. #2005-08, June 2005)

14-704. Stormwater user fee determination. There is hereby established the following uniform schedule of rates for the services and use of facilities of the stormwater management system by the owner, tenant, or occupant of the premises using the services and facilities of said system:

(1) The board of mayor and aldermen, upon recommendation of the city engineer, shall, by resolution, establish reasonable rates for stormwater management systems for each single family residence: Each single family residence shall be billed at a flat fee established by the board of mayor and aldermen for an equivalent residential unit. An equivalent residential unit is hereby defined as the statistical average horizontal impervious area of detached single family residential units in the City of La Vergne.

(2) Parcels which are undeveloped shall be assessed a stormwater user fee. The bill shall be determined by dividing the total land area of the property, in square feet, by the area of an equivalent residential unit times a correction factor. The correction factor shall be based on the relative volume of runoff from an undeveloped property and that of a typical single family residence, under typical hydrologic conditions.

(3) For all nonresidential properties, that is enterprise, business establishment, building, or other occupancy not covered by subsections (1) and (2) of this section, the rate shall be computed based on the total impervious area of the property divided by the average impervious area of an equivalent residential unit times the rate established for an equivalent residential unit. The billing amount shall be updated by the city engineer based on any additions to the impervious areas as approved through the building permit process. (Ord. #2005-08, June 2005, modified)

CHAPTER 8

STORMWATER APPEALS AND ADVISORY BOARD

SECTION

- 14-801. Creation and membership of the stormwater appeals and advisory board.
- 14-802. Terms and vacancies.
- 14-803. General administration.
- 14-804. Duties of the board.
- 14-805. Appeals to the board.
- 14-806. Public hearing.
- 14-807. Appealing decisions of the board.

14-801. Creation and membership of the stormwater appeals and advisory board. Pursuant to Tennessee Code Annotated, § 68-221-1106, the City of La Vergne hereby creates a board to hear and decide appeals of the stormwater management ordinance and to make recommendations to the board of mayor and aldermen regarding the stormwater management ordinance. This board shall be called the "stormwater appeals and advisory board" (hereinafter referred to as "the board"). The board shall consist of seven (7) members, appointed by the mayor, subject to confirmation by the board of mayor and aldermen. Every effort shall be made to appoint six (6) members from the following general constituencies: one (1) member shall be from the profession of building contractors; one (1) member shall be from the profession of engineering; one (1) member shall be from the profession of agriculture; one (1) member shall be from the residential / commercial development community; one (1) member shall be a member of an environmental association; and one (1) member shall be a resident of the City of La Vergne without regard to the location of the member's residence. One (1) member shall be appointed by the mayor from the board of aldermen, subject to the confirmation by the board of mayor and aldermen. Members of the board shall serve without compensation, but may be reimbursed for reasonable and necessary expenses. Every effort shall be made to appoint residents of the City of La Vergne to the board. (Ord. #2005-28, Nov. 2005)

14-802. Terms and vacancies. Members shall be appointed for four (4) year terms. Members shall be eligible for re-appointment. Members may be removed by the board of mayor and aldermen at the request of the chairman of the board or committee and the city engineer, if the member is absent from two (2) or more scheduled meetings in a row. Vacancies shall be filled by an appointment by the mayor, subject to confirmation by the board of mayor and aldermen to serve out the remainder of the vacating member's term. The alderman appointed to the board shall vacate his/her position by resignation,

upon departure from the board of mayor and aldermen, or by removal by the board of mayor and aldermen. (Ord. #2005-28, Nov. 2005, as replaced by Ord. #2011-26, Oct. 2011)

14-803. General administration. The board shall meet as needed. The board shall be empowered to adopt bylaws to govern the order of proceedings as well as a method for electing officers and keeping records. The city recorder or his designee shall be present at all meetings of the board, and shall keep a full and accurate record of all business transacted by the board to be preserved in permanent form. The board shall not have any authority over employees of the city, the stormwater management budget or property of the city, but shall act solely as an appeals and advisory board. The city engineer or his designee shall provide the necessary staff support for the work of the board and shall act as the liaison to the board of mayor and aldermen on the behalf of the board. (Ord. #2005-28, Nov. 2005)

14-804. Duties of the board. (1) The board is hereby authorized to hear and decide appeals of any order, decision or ruling of the city engineer or director of codes or their designee issued pursuant to the stormwater management ordinance. Following the hearing on an application for appeal, the board may affirm, reverse, modify or remand for more information, the order, decision or ruling of the city engineer or director of codes or their designee. In no event shall the board issue a decision that in any way conflicts or contradicts the stormwater management ordinance or any other federal, state or local laws or regulations relating to stormwater, wastewater, zoning or planning.

(2) The board shall also be authorized to hear and decide applications for a variance to the waterway buffer policy.

(3) The board shall also act as the advisory board for the planning of the stormwater management program for the City of La Vergne. The board shall make recommendations to the board of mayor and aldermen regarding the stormwater management ordinance. (Ord. #2005-28, Nov. 2005, as amended by Ord. #2007-18, June 2006)

14-805. Appeals to the board. (1) 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 these regulations may appeal said penalty or damage assessment to the board, created pursuant to the stormwater management ordinance. The appeal shall be in writing and filed with the city recorder within fifteen (15) days after the civil penalty and/or damage assessment is served in any manner authorized by law.

(2) Any person who applies for a variance to the waterway buffer policy must file an application with the city recorder. A fee of one hundred dollars (\$100.00) payable to the City of La Vergne shall be charged to cover

partial review and processing of each application. (Ord. #2005-28, Nov. 2005, as amended by Ord. #2007-18, June 2006)

14-806. Public hearing. Upon receipt of an appeal or an application for a variance, the board shall hold a public hearing within thirty (30) days. Ten (10) days prior notice of the time, date, and location of said hearing shall be published in a newspaper of general circulation. Ten (10) days notice by registered mail shall also be provided to the appellant, such notice to be sent to the address provided by the appellant on the notice of appeal. The decision of the board shall be final. (Ord. #2005-28, Nov. 2005, as amended by Ord. #2007-18, June 2006)

14-807. Appealing decisions of the board. Any alleged violator may appeal a decision of the board pursuant to the provisions of Tennessee Code Annotated, title 27, chapter 8. (Ord. #2005-28, Nov. 2005)