

ORDINANCE 2017-41

TO BE ENTITLED: “AN ORDINANCE TO AMEND TITLE 23 OF THE CITY OF FRANKLIN MUNICIPAL CODE TO REVISE DEFINITIONS, CLARIFY REQUIREMENTS, AND TO CORRECT GRAMMATICAL AND TYPOGRAPHICAL ERRORS.”

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

WHEREAS, the Board of Mayor and Alderman desires to prescribe regulations and standards to manage Stormwater runoff within the City in order to comply with the National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges from Small Municipal Separate Storm Sewer Systems (MS4) and the Tennessee Water Quality Control Act of 1977 as amended; and

WHEREAS, the City of Franklin’s stormwater program meets the minimum standards of the General NPDES Permit for Discharges of Stormwater Associated with Construction Activities; and

WHEREAS, The State of Tennessee has approved the City to participate as a Qualified Local Program allowing the City to administer the General NPDES Permit for Discharges of Stormwater Associated with Construction Activities; and

WHEREAS, the Board of Mayor and Aldermen desire to clarify certain subsections of this Title and correct grammatical and typographical errors.

NOW, THEREFORE:

SECTION I: BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, Tennessee, that Title 23 – Stormwater Management Ordinance of the Franklin Municipal Code is hereby amended to read as follows:

TITLE 23 - STORMWATER MANAGEMENT

CHAPTER 1. - STORMWATER MANAGEMENT ORDINANCE

Sec. 23-101. - Title and purpose.

This title shall be known as the "Stormwater Management Ordinance" for the City of Franklin, Tennessee.

It is the purpose of this chapter to:

- (a) Protect, maintain, and enhance the environment of the City of Franklin, Tennessee and the public health, safety and the general welfare of the citizens, by controlling discharges of *Pollutants* to the City's stormwater system and to maintain and improve the quality of the receiving waters into which the stormwater outfalls flow, including, without limitation, lakes, rivers, streams, ponds, wetlands and groundwater of the City.
- (b) Enable the City of Franklin, Tennessee to comply with the NPDES Permit and applicable regulations for Stormwater discharges.
- (c) Manage the manner in which stormwater is addressed in areas of new development, and redevelopment through the course of construction and post-construction to maintain or benefit water quantity, water quality and the effects on the quality of life and character of the City of Franklin, Tennessee. This ordinance sets general policy, minimum requirements and standards, and Stormwater management program direction and is supported and enforced through other more detailed regulations, design criteria, and other accepted materials

Sec. 23-102. - Jurisdiction.

- (1) The stormwater management ordinance (title 23) shall govern all properties within the corporate limits of the City of Franklin, Tennessee.
- (2) Exemptions:
 - (a) Agricultural land management activities shall be exempt from the provisions of this article [title].
 - (b) Any development or redevelopment which meets all of the following conditions, shall be exempt from having to obtain a stormwater permit and grading permit and shall be exempt from having to comply with riparian buffer, peak runoff control and green infrastructure - runoff reduction requirements of this article [title] unless otherwise determined by the city engineer. All other requirements set forth in Title 23 shall apply:
 - (i) Involves less than 10,000 square feet of land disturbance.
 - (ii) Involves less than 5,000 square feet of additional or modified existing impervious surface.
 - (iii) Development that is not part of a larger common development or contiguous properties that may have been subdivided.
 - (c) Lots classified as critical lots as defined in the city's zoning ordinance and development in critical areas are not exempt from the requirements of this article [title].

Sec. 23-103. - Definitions.

For the purpose of this title, unless specifically defined below, words or phrases shall be interpreted so as to give them the meaning they have in common usage and to give this article [title] its most effective application. Words in the singular shall include the plural, and words in the plural shall include the singular. Words used in the present tense shall include the future tense. The word "shall" connotes mandatory and not discretionary; the word "may" is permissive. The following definitions shall apply in the interpretation of this Title and in any regulations promulgated hereunder, unless specifically stated otherwise:

- (1) *Active construction sites*. Any site that has a permit for grading, stormwater or other activities (even if actual construction is not proceeding) and any site where construction is occurring regardless of permits required.
- (2) *Agriculture*. means:
 - (a) The land, buldings and machinery used in the commercial production of farm products and nursery stock.
 - (b) The activity carried on in connection with the commercial production of farm products and nursery stock.
 - (c) Recreational and educational activities on land used for the commercial production of farm products and nursery stock.

- (i) As used in this definition of Agriculture, the term “farm products” means forage and sod crops; grains and feed crop; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing; fruits; vegetables; flowers; seeds; grasses; forestry products; fish and other aquatic animals used for food; bees; equine; and all other plants and animals that produce food, feed, fiber or fur.
- (ii) As used in this definition of Agriculture, the term “nursery stock” means all trees, shrubs, or other plants, grown or kept for, or capable of, propagation, distribution or sale on a commercial basis.(3)
Appeal. A request for a review of the city engineer's interpretation of any provision of these regulations.
- (4) *Best management practice* or *BMP* . Practices or a combination of practices that are the most effective and practicable (including technological, economic, and institutional considerations) means of controlling pollutants at levels compatible with environmental quality goals. This includes schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce pollution of water resources. BMPs also include treatment requirements, operating procedures, and practices to control runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage.
- (5) *Bridge.* A manmade structure spanning and providing passage over a waterway to allow for the conveyance of stormwater flows. Spans of 10 feet or more are considered a bridge.
- (6) *Buffer management plan.* A written integrated plan outlining the utilitarian, ecological and aesthetic objectives for a specific landscape, and the landscape management practices and products that will be employed.
- (7) *Building.* Any structure built for support, shelter, or enclosure for any occupancy or storage.
- (8) *Channel.* A natural or artificial watercourse of perceptible extent, with definite bed and banks to confine and conduct continuously or periodically flowing water. Channel flow is that water which is flowing within the limits of the defined channel.
- (9) *City.* The City of Franklin, Tennessee.
- (10) *City engineer.* Refers to the City of Franklin, City Engineer who has the authority to delegate to designated staff.
- (11) *Climax successional vegetation.* The native plant community that would become established on a Site if all successional sequences were completed without interferences by man under the present environmental conditions. Natural disturbances are inherent in its development.
- (12) *Compensatory cut.* Excavated volume of material below the floodplain elevation required to offset fill in the floodplain.
- (13) *Culvert.* A manmade conveyance of stormwater flows. This may include a pipe or other constructed conveyance of less than 20 feet.
- (14) *Cross-drain.* A culvert used to convey flow under a road or other obstruction between channels or surface flow.
- (15) *Critical area.* A site subject to erosion or sedimentation as a result of cutting, filling, grading, or other disturbance of the soil; a site difficult to stabilize due to exposed subsoil, steep slope, extent of exposure, and other conditions.
- (16) *Critical service roads.* Designated city evacuation routes, or other access to facilitate police, fire, emergency medical services to all existing and proposed structures..
- (17) *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.
- (18) *Detention.* The temporary delay of storm runoff prior to discharge into receiving waters.
- (19) *Developer.* Any individual, firm, corporation, association, partnership, trust, or authorized agents involved in commencing proceedings to effect development of land for him/her or others.

- (20) *Development*. Any manmade change to improved or unimproved real estate, including but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or permanent storage of materials (as defined as materials of like nature stored in whole or in part for more than six months).
- (21) *Drainage well*. A bored, drilled, driven, dug, or naturally occurring shaft or hole with a depth greater than the largest surface dimension, used to drain surface fluid, primarily storm runoff, into a subsurface or karst formation. Also known as "dry well" or "sinkhole."
- (22) *Ecological integrity*. The quality of a natural unmanaged or managed ecosystem in which the natural ecological processes are sustained, with genetic species diversity and ecosystem diversity assured for the future.
- (23) *Engineer or professional engineer*. An engineer duly registered, licensed or otherwise authorized by the State of Tennessee to practice in the field of civil engineering.
- (24) *EP&SC*. Erosion prevention and sediment control; see "Erosion prevention" and "Sediment control."
- (25) *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 human activities or effects.
- (26) *Erosion prevention*. Practices implemented to prevent, through shielding, binding or other mechanism(s), the suspension of soil particles, often associated with erosion prevention and sedimentation control.
- (27) *Excavation*. See "Cut."
- (28) *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.
- (29) *Flood or flooding*. Water from a river, stream, watercourse, lake, or other body of standing water that temporarily overflows and inundates adjacent lands and which may affect other lands and activities through increased surface water levels and/or increased groundwater level.
- (30) *Floodplain*. The relatively flat or lowland area adjoining a river, stream, watercourse, lake, or other body of standing water, which has been or may be covered temporarily by floodwater. For purposes of this title, the floodplain is defined as the 100-year floodplain having a one-percent chance of being equaled or exceeded in any given year.
- (31) *Floodway*. That portion of the stream channel and adjacent floodplain required for the passage or conveyance of a 100-year flood discharge. The floodway boundaries are placed to limit encroachment in the floodplain so that a discharge can be conveyed through the floodplain without materially increasing (less than one foot) the water surface elevation at any point and without producing hazardous velocities or conditions. This is the area of significant depths and velocities and due consideration should be given to effects of fill, loss of cross sectional flow area, and resulting increased water surface elevations.
- (32) *Functionally dependent facility*. A facility that cannot be used for its intended purpose unless it is located or carried out in proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.
- (33) *Grading*. Any operation or occurrence by which the existing site elevations are changed; or where any ground cover, natural, or manmade, is removed; or any watercourse or body of water, either natural or manmade, is relocated on any site, thereby creating an unprotected area. This includes stripping, cutting, filling, stockpiling, or any combination thereof, and shall apply to the land in its cut or filled condition. Grading activities may only be performed with a stormwater management permit and grading permit.

- (34) *Green infrastructure*. The interconnected network of natural areas and other open spaces that conserves natural ecosystem values and functions, sustains clean air and water, and provides environmental and community benefits.
- (35) *Green infrastructure practices*. Management measures that are designed, built and maintained to infiltrate, evapotranspire, harvest and/or use rainwater through the use of natural hydrologic features.
- (36) *Greenways*. Linear undeveloped areas linking various types of development by such facilities as bicycle paths, footpaths, and bridle paths. Greenways are usually kept in their natural state except for the pathway and areas immediately adjacent to the pathway.
- (37) *Hot spot*. An area where land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in stormwater. Examples include, but are not limited to, operations producing concrete or asphalt, auto repair shops, auto supply shops, large commercial parking areas and restaurants.
- (38) *Illicit connections*. Any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the MS4, including, but not limited to, any conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the MS4 and any connections to the MS4 from indoor drains and sinks. Any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps, or equivalent records and approved by the city.
- (39) *Illicit discharge*. Any discharge that is not entirely composed of stormwater, except discharges authorized under an NDPES permit (other than the NPDES permit for discharges from the MS4) and discharges resulting from firefighting activities.
- (40) *Impaired waters*. Any segment of surface waters that has been identified by the Tennessee Department of Environment and Conservation (TDEC) as failing to support classified uses. The TDEC periodically compiles a list of such waters known as the "303(d) List".
- (41) *Impervious surface*. A term applied to any ground or structural surface that water cannot penetrate or through which water penetrates with great difficulty.
- (42) *Invasive exotic plants*. Plants that have been introduced from other regions and compete so successfully against natives plants that they can crowd out their competitors, thus providing a monoculture that discourages the growth of native plant species.
- (43) *Land disturbance*. Any tilling, digging, grading, excavating, turning, or removal of soil, grubbing, cutting, clearing, or other removal of vegetation shall also be considered land disturbance.
- (44) *Land surveyor*. A land surveyor duly registered, licensed or otherwise authorized by the State of Tennessee to practice in the field of land surveying.
- (45) *Limited areas*. Areas as defined by the city engineer that stormwater practices may be applied in which there are no other feasible opportunities or areas of application.
- (46) *Long-term maintenance agreement or 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.
- (47) *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.
- (48) *Master plan*. Any study or plan prepared by or accepted by the City of Franklin that identifies solutions to water quantity or quality problems. Also known as basin study or plan, flood management study or plan or water quality management study or plan.

- (49) **Modified Existing Impervious Area.** Any existing impervious area, which is included with a sites limits of disturbance as part of a newly proposed development or redevelopment, in which land disturbance is intended to occur.
- (50) ***Municipal separate storm sewer system (MS4).*** A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) that are:
- Owned or operated by a state, city, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the Clean Water Act (CWA) that discharges to waters of the state;
 - Designed or used for collecting or conveying stormwater;
 - Which is not a combined sewer;
 - Which is not part of a publicly owned treatment works (POTW) as defined at 40 CFR 122.2.
- (51) ***Native vegetation.*** The normal vegetation that grows or would reestablish normally after a disturbance. This does not include invasive exotic plants.
- (52) ***New construction.*** Structures for which the "start of construction" commenced on or after the effective date of these regulations. The term also includes any subsequent improvements to such structures.
- (53) ***National Pollution Discharge Elimination System (NPDES) MS4 Phase II program.*** A comprehensive program to manage the quality of stormwater discharged from the MS4 of small communities.
- (54) ***Notice of Coverage or NOC.*** Notice from the City to the initial site-wide primary permittee informing the applicant that the NOI, the SWPPP and application fee were received and accepted, and stormwater discharges from a specified area of a construction activity have been approved under the State of Tennessee's General NPDES Permit for Discharges of Stormwater associated with construction activity.
- (55) ***Notice of Intent.*** A notice given to the City's engineering department to obtain coverage by the State of Tennessee's General NPDES Permit for discharges of stormwater associated with construction activities.
- (56) ***Notice of Termination.*** A notice given to the City's engineering department to terminate a stormwater and *Grading* permit and terminate coverage by the State of Tennessee's General NPDES Permit for discharges of stormwater associated with construction activities.
- (57) ***One hundred-year flood or 100 year flood event.*** A flood that has an average frequency of occurrence of once in 100 years, determined from an analysis of floods on a particular watercourse and other watercourses in the same general region. Statistically, it has a one-percent chance of occurring in any given year.
- (58) ***Operator.*** As used in this title, operator shall be as defined by the State of Tennessee's Construction General Permit.
- (59) ***Passive recreation.*** Recreation activities that require limited physical exertion on behalf of the participant. Examples of passive recreation activities include bird watching, walking or photography.
- (60) ***Peak runoff.*** The maximum instantaneous rate of flow of water at a particular point resulting from a storm event.

- (61) *Pollutant*. Anything which causes or contributes to pollution. Pollutants may include, but are not limited to, paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded and abandoned objects, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes, wastes and residues that result from constructing a building or structure; sediment; and noxious or offensive matter of any kind.
- (62) *Permittee*. Any person, firm, or any other legal entity to which a site disturbance, grading, stormwater, building or other related permit is issued in accordance with City of Franklin regulations.
- (63) *Qualified hydrologic professional or QHP*. A person who is duly registered, licensed or otherwise authorized by the State of Tennessee to perform hydrologic determinations and is certified as a Tennessee Qualified Hydrologic Professional.
- (81) *Qualified local program or QLP*. A stormwater management program for discharges associated with construction activity that has been formally approved by the State of Tennessee as having met specific minimum program requirements, including those identified in 40 CFR § 122.44(s). The intent of the QLP is to establish a streamlined and efficient process for managing discharges of stormwater associated with construction activities by eliminating duplication of the effort between the permittee and the State. (64) *Redevelopment*. The alteration of developed land that adds 5,000 square feet of impervious surface area or more, or offers a new opportunity for stormwater controls. Demolition and reconstruction is considered development and not redevelopment. Note: Redevelopment is not intended to include such activities as exterior remodeling, which would not be expected to cause adverse stormwater quality impacts.
- (65) *Regional stormwater management facility*. A device or management practice, typically but not always a detention or retention pond, with a tributary area with more than one development site. This may be multiple homogeneous land use areas or an area of various land uses.
- (66) *Retention*. The prevention of storm runoff from direct discharge into receiving waters. Examples include systems which discharge through percolation, exfiltration, filtered bleed-down and evaporation processes.
- (67) *Riparian buffer*. An undisturbed area, measured from top of bank of the water resource, which consists of a riparian zone comprised of native vegetation, original or re-established, bordering streams, seeps, springs, wetlands, sinkholes, lakes and other water resources.
- (68) *Riparian zone*. Areas adjacent to water resources with a differing density, diversity, and productivity of plant and animal species relative to nearby uplands. This area provides a transition from an aquatic ecosystem to a terrestrial ecosystem.
- (69) *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, or gravity as a product of erosion.
- (70) *Sediment control (SC)*. Practices implemented to manage through filtering, settling or other mechanism(s) to remove suspended particles (soil, organic or mineral) from water, often associated with erosion prevention and sedimentation control.
- (71) *Sensitive areas*. Areas that supply critical habitat in supporting aquatic or semi-aquatic life such as streams, sinkholes, springs, wetlands, ponds, etc.
- (72) *Site*. All contiguous land and bodies of water in one ownership, graded, proposed for grading or development as a unit, although not necessarily at one time.
- (73) *Slope*. Degree of deviation of a surface from the horizontal, usually expressed in percent or ratio.

- (74) *Soil*. All unconsolidated mineral and organic material of any origin that overlies bedrock and that can be readily excavated.
- (75) *Stabilization*. The measures, vegetative and/or structural, taken that will prevent erosion from occurring.
- (76) *Stop work order*. An order directing the developer and/or permittee responsible for the development to cease and desist all or any portion of the work which violates the provisions of this title.
- (77) *Stormwater*. Storm event runoff, snowmelt runoff, and surface runoff and drainage.
- (78) *Stormwater management plan*. A document that is submitted to the city engineer, in accordance with concept plans, regulating plans, and/or site plans which shows, in detail, that a site meets the standards set forth in this title and allows the city to evaluate the environmental characteristics of the site, the potential impacts of all proposed development of the site, both present and future, on the water resources and the effectiveness and acceptability of the measures proposed for managing stormwater generated at the site.
- (79) *Stormwater management permit*. A permit issued by the city engineer that allows stormwater discharge into the City of Franklin's MS4 in accordance with this title.
- (80) *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. It must be prepared and approved before construction begins. In order to effectively reduce erosion and sedimentation impacts, best management practices (BMPs) must be designed, installed and maintained during land-disturbing activities. The SWPPP shall be prepared in accordance with the Tennessee Erosion and Sediment Control Handbook or local BMP manual, whichever is more stringent and protective of waters of the state. The handbook is designed to provide information to planners, developers, engineers, and contractors on the proper selection, installation, and maintenance of BMPs. The handbook is intended for use during the design and construction of projects that require erosion and sediment controls to protect waters of the state. It also aids in the development of SWPPPs and other reports, plans, or specifications required when participating in the State of Tennessee's water quality regulations.
- (81) *Stream*. Surface water that is not a wet-weather conveyance as determined by a qualified hydrological professional and approved by the city engineer.
- (82) *Stripping*. Any activity that removes or significantly disturbs the vegetative surface cover, including clearing and grubbing operations.
- (83) *Structure*. Anything constructed or erected, the use of which requires a permanent location on or in the ground. Such construction includes but is not limited to objects such as buildings, towers, smokestacks, carports, and walls.
- (84) *Top of bank*. The ordinary high water level and break in slope for a water resource.
- (85) *Tributary area*. The area upstream of a specified point including all overland flow that directly or indirectly connects down-slope to the specified point.
- (86) *View corridors*. Areas associated with formal trail systems closer than the required buffer width approved by the city engineer with an approved buffer management plan.
- (87) *Water resources*. Streams, seeps, springs, wetlands, sinkholes, or lakes as determined by the city engineer. This includes waters of the State as determined by the Tennessee Department of Environment and Conservation.
- (88) *Waters of the state*. Any and all water, public or private, on or beneath the surface of the ground, which are contained within, flow through or border upon Tennessee or any portion thereof except those bodies of water confined to and retained within the limits of private property in single ownership which do not combine or affect a junction with natural surface or underground waters.

- (89) *Water quality buffer*. See "Riparian buffer."
- (90) *Watershed*. All the land area that contributes runoff to a particular point along a water resource.
- (91) Waters with unavailable parameters. Means any segment of surface water that has been identified by the Tennessee Department of Environment and Conservation as failing to support one or more classified uses. The Tennessee Department of Environment and Conservation periodically compiles a list of such waters known as the "303(d) List".
- (92) *Wet weather conveyance*. Manmade or natural watercourses, including natural watercourses that have been modified by channelization, that flow only in direct response to precipitation runoff in their immediate locality, whose channels are above the groundwater table and which do not support fish and aquatic life and are not suitable for drinking water supplies, and in which hydrological and biological analysis indicate that, under normal weather conditions, due to naturally occurring ephemeral or low flow there is not sufficient water to support fish, or multiple populations of obligate lotic aquatic organisms whose life cycle includes an aquatic phase of at least two months.
- (93) *Wetland*. Those areas that are inundated or saturated by surface or ground water at a frequency or duration sufficient to support, and under normal circumstances do support a prevalence of vegetation typical to life in saturated soil conditions. Wetlands generally include, but are not limited to, swamps, marshes, bogs and similar areas. Wetlands are designated by federal or state organizations with this responsibility.

Sec. 23-104. - Authority.

- (1) *Authority of departments*. The city administrator may provide authority in part or whole to various departments for the implementation of activities pursuant to this title. This authority may include but is not limited to plan review, incentives negotiation, plan approval and stormwater facilities maintenance. The city engineer shall have the authority of administration and enforcement of the provisions established pursuant to this title, including, but not limited to, the issuance of civil penalties.
- (2) *Right-of-entry*.
 - (a) Designated city staff shall have right of entry on or upon the property of any person subject to this title and any permit/document issued hereunder. The city staff shall be provided ready easy access to all parts of the premises for the purposes of inspection, monitoring, sampling, inventory, records examination and copying, and the performance of any duties necessary to determine compliance with this title.
 - (b) Where a property, site or facility has security measures in force which 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 designated city staff will be permitted to enter without delay for the purposes of performing specific responsibilities.
 - (c) Designated city staff shall have the right to set up on the person's property such devices as are necessary to conduct sampling and/or monitoring of the person's stormwater operations or discharges.
 - (d) 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 staff. The costs of clearing such access shall be borne by the person.
 - (e) The city engineer, or his designee, may inspect the facilities of any user in order to ensure compliance with this title. Such inspection shall be made with the consent of the owner, manager, or signatory official. If such consent is refused, denied or not promptly addressed, the designated city staff may seek issuance of an administrative search warrant.
 - (f) The city has the right to determine and impose inspection schedules necessary to enforce the provisions of this article [title]. Inspections may include, but are not limited to, the following:

- (i) An initial inspection prior to stormwater management plan approval;
- (ii) A bury inspection prior to burial of any underground drainage structure;
- (iii) Erosion control inspections as necessary to ensure effective control of erosion and sedimentation; and
- (iv) A finish inspection when all work, including installation of storm management facilities, has been completed.
- (v) Regular or random follow-up inspections to ensure the storm management facilities remain in compliance.

Sec. 23-105. - Appeals.

Appeals of this section shall be pursuant to Franklin Municipal Code section 23-301 et seq.

Sec. 23-106. - Objectives and policy.

- (1) *Objectives.* The objectives of this title are pursuant to the small MS4 permit issued by the state to the city and are as follows:
 - (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's 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 homebuyers 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 sanitary sewer lines; and streets and bridges located in floodplains.
 - (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's water resources and their impacts on the community character and quality of life.
- (2) *Implementation.* To implement the objectives presented above, the following standards and general policy statements shall be enforced:
 - (a) *Permits.* All new development and redevelopment under the jurisdiction of this title shall obtain a stormwater management and/or grading permit. If site disturbance is over 1 acre, is part of a larger common plan of development, or required to have lot level coverage, the applicant shall obtain a notice of coverage through the City's qualified local program process.
 - (i) The city engineer shall issue a grading and stormwater management permit for stormwater management plans that meet the guidelines of this title and any other provision given

authority under section 23-110 of this title. Application for a permit shall be accompanied by a fee as specified in appendix A, comprehensive fees and penalties.

- (ii) Technical, administrative, or procedural matters may be modified as needed to meet the objectives and policies defined in this title, so long as such modifications as to technical, administrative, or procedural matters are not contrary or beyond the intent of the objectives and policies of this title.
 - (iii) Approved permits shall be displayed in a conspicuous location on all active construction sites.
 - (iv) A pre-construction meeting with the city engineer shall be held with construction site operators prior to the issuance of a grading and/or stormwater permit.
 - (v) All site permittees and/or operators shall apply for a notice of termination to the city's engineering department stating that all areas have been stabilized and vegetated and all construction activities have been completed related to that sections or sites corresponding stormwater and grading permit and notice of coverage. This shall be completed prior to the release of all performance sureties.
 - (vi) Site owner or developer and/or contractor that wish to transfer stormwater and grading permit coverage to a new owner or developer and/or contractor shall do so by applying for a notice of transfer request in the city's engineering department. The site owner or developer shall also be required to transfer performance sureties to the new site owner or developer prior to the City of Franklin approving the notice of transfer.
 - (vii) The permittee(s) shall be responsible for all *EP&SC* measures and maintenance located within the sites or sections defined in the permit regardless of individual lot ownership until a notice of transfer or notice of termination is issued by the city's engineering department.
- (b) *Stormwater plan submittal requirements.* All new development and redevelopment under the jurisdiction of this title shall be required to submit and have approval of all construction plans, NOI and SWPPP prior to issuance of stormwater and/or grading permit approval.
- (i) An engineer shall stamp all proposed plans for construction in the city. This shall include all proposed improvements or modifications to the existing or new stormwater infrastructure, erosion prevention and sediment control practices, and other related improvements or modifications.
- (c) *Stormwater master plan.* Each individual project shall be evaluated for consistency with the master stormwater management plan for the major watershed or watersheds within which the project site is located. The individual project evaluation will determine if stormwater quantity and quality management practices can adequately serve the property and limit impacts to downstream public and private properties. The presence of a regional facility(s) will be considered in determining the extent to which quantity and/or quality controls will be necessary.
- (i) In the absence of such a stormwater quantity and/or quality master plan, a system of uniform requirements shall be applied to each individual project site. In general, these uniform requirements will be based on the criteria that post-development stormwater peak runoff, volume over the critical design-storm period and water quality must not differ significantly from pre-development conditions. These criteria shall be included in the stormwater management plan for the site.
- (d) *Peak runoff control.* Peak runoff control facilities for new development and redevelopment shall be designed to address the rate at which flow is released over the entire runoff discharge period and the volume of discharge over the critical design-storm period. This shall be applied for two-, five-, 10-, 25-, 50- and 100-year 24-hour storm peak discharge rate not to exceed the pre-development (or undisturbed natural conditions) discharge rate.
- (i) *Calculation of peak runoff flow.* Acceptable methodologies for computing pre and post-development conditions shall include:

- A. The rational method (used when the drainage area is 25 acres or less.)
 - B. The peak discharge method as described in USDA Technical Release Number 55 (TR-55) (drainage area is 2,000 acres or less).
- (ii) Peak runoff flow requirements. If the total land disturbance area is less than 50 percent of the property, then peak runoff control shall be required for the disturbed area only. If the total land disturbance area is greater than 50 percent of the property, then peak runoff control shall be required for the entire site area.
- (iii) Redevelopment of property without existing detention shall be evaluated using one of the following methods unless otherwise determined by the city engineer:
 - A. Rational method shall evaluate pre-development conditions utilizing the appropriate turf meadows runoff coefficient or as existing conditions. The more stringent conditions shall govern.
 - B. USDA Technical Release Number 55 (TR-55) shall evaluate the pre-development conditions as either grassland conditions or as existing conditions. The more stringent conditions shall govern.
- (iv) No more than 5% of a site can bypass water quality requirements unless otherwise approved by the City Engineer.
- (e) *Stormwater design requirements.* New development shall meet a stormwater quantity level of service defined by:
 - (i) Designing road catch basins and connecting culverts to convey the ten-year design-storm runoff.
 - (ii) Designing bridges, culverts, channels and cross drains to pass the 50-year design-storm runoff.
 - (iii) Providing emergency bypass of the *100 year flood event*.
 - (iv) New roadway, existing roadways and *critical service roads* are not inundated by more than three inches of water over one-half the roadway width under a *100 year flood event*. A long-term maintenance plan and maintenance agreement shall be submitted for review and approval by the city engineer for all devices or facilities in new development and redevelopment that require more than general maintenance (i.e., mowing, weeding, etc.). The plan shall address schedules and techniques for inspections and maintenance of the facilities and devices. Documentation of the inspection schedule, times of inspection, remedial actions taken to repair, modify or reconstruct the system and the state of control measures shall be submitted to the city engineer on or before July 1 of each year.
- (f) *Easements.*
 - (i) All new development and redevelopment shall be designed and graded in such a way as to forbid stormwater from discharging onto adjacent property where not supported by adequate public infrastructure, easements and right-of-way.
 - (ii) All new development and redevelopment shall be designed and graded so that a minimum ten-foot drainage easement and stormwater conveyance exist between each property.
 - (iii) All new development and redevelopment shall be designed to provide a minimum 20-foot drainage easement on all stormwater infrastructure, including channels, serving more than two properties.
- (g) *Erosion prevention and sediment control.* All construction sites regardless of size or disturbed area shall follow proper *EP&SC* practices to control unwarranted sediment from leaving a site. All construction sites receiving grading or stormwater permits from the City of Franklin shall be subject to the requirements outlined in the State of Tennessee's Construction General Permit,

EP&SC Handbook, the City Stormwater BMP Manual and this title (whichever is more stringent) including the following:

- (i) Construction shall only be permitted after temporary or permanent EP&SC management practices have been placed or constructed and are operational to the city's satisfaction, and a grading and/or stormwater permit has been issued and signed by the city stormwater inspector.
 - (ii) The design-storm for EP&SC practices shall be as described in the City of Franklin Stormwater BMP Manual or the Tennessee EP&SC Handbook and consistent with the Tennessee Construction General Permit.
 - (iii) The city may require more stringent EP&SC practices on properties adjacent to waters with unavailable parameters, or within watersheds with waters with unavailable parameters, watersheds with TMDLs, or sites in close proximity to water resources. This may include measures that limit or eliminate, with a greater safety factor, the potential for sediment or other forms of water pollution from entering sensitive areas as designated by TDEC or the city engineer.
 - (iv) Unwarranted acceleration of erosion or sedimentation, or transport of other pollutants or forms of pollution, due to various land development activities shall be controlled.
 - (v) If deemed appropriate, the city may require the addition, removal or modification of EP&SC measures and/or EP&SC locations at any time during the construction process to ensure proper EP&SC performance.
 - (vi) The city may impose enforcement actions outlined in section 23-111 of this title if any site, development, or construction is found to be in violation of this title or the States of Tennessee's Construction General Permit in order to achieve EP&SC compliance.
 - (vii) The design-storm for erosion prevention and sediment control practices shall be as described in the City of Franklin Stormwater BMP Manual and consistent with the Tennessee General Construction Permit.
 - (viii) inlet protection shall be specified on all construction plans to include an overflow protection device. Other measures may be approved on a case by case basis by the City Engineer.
- (h) *Floodplain alterations.*
- (i) Floodplain alterations or filling shall not cause a net decrease in flood storage capacity below the projected 100-year flood elevation unless it is shown that the proposed alteration or filling will not cause an increase in the high water level, increase velocities, or aggravate flooding on other properties and will not unduly restrict flood flows. Compensatory cut shall at least be applied to 150 percent (1.5:1) for all fill in floodplains. Floodplain may be used for application of water quality devices. This may only be permitted provided EP&SC, water quality, and cut-fill policies are adequately addressed as determined by the city according to the provisions in section 23-110 of this title. Detention/retention volumes in the floodplain shall count as fill if applied in a manner where floodplain storage is lost.
- (i) *General stormwater regulations.*
- (i) The city encourages regional stormwater management practices, serving 40 to 300 acres of tributary area, which may be consistently and efficiently managed and maintained. These types of practices will be encouraged in order to replace or reduce the implementation of on-site stormwater management practices redevelopment of properties containing on-site stormwater management practices may be permitted, at the discretion of the city engineer, provided the property and downstream public and private properties, infrastructure or waters of the state are adequately protected by a regional facility(s) from stormwater quantity or quality impacts.

- (ii) No construction, whether by private or public action, shall be performed in a manner that will negatively impact stormwater quantity or quality in its vicinity or in other areas whether by flow restrictions, increased runoff, or by diminishing channel or floodplain storage capacity.
 - (iii) New construction shall not aggravate upstream or downstream flooding. Existing downstream or upstream problems may be required to be corrected in conjunction with new development or redevelopment.
 - (iv) In no instance shall new development or redevelopment cause or have the potential to cause water quality degradation to immediate or downstream water resources.
 - (v) The construction and financing of any required off-site drainage improvement necessitated by private development within the same watershed shall be the responsibility of the developer.
 - (vi) Under no circumstances shall a site be graded or drained in such a way as to increase surface runoff to sinkholes, dry wells or drainage wells.
 - (vii) Soil bioengineering, "green" and other "soft" slope and stream bank stabilization methods shall receive preference over riprap, concrete and other hard armoring techniques. "Hard" alternatives shall only be permitted when their necessity can be demonstrated given site-specific conditions.
 - (viii) The city may require maintenance or modification of stormwater management practices that are not operating within the guidelines established by this title, as determined by the city engineer.
 - (ix) The city encourages the use of greenway rights-of-way for appropriate properties.
 - (x) As new development construction is completed, an "as-built" plan, certified by an engineer and/or land surveyor as appropriate, must be submitted upon completion of the stormwater management facilities included in the stormwater management plan. The licensed professional shall certify that: the facilities have been constructed as shown on the "as-built" plan, and facilities meet the approved stormwater management plan and specifications, or achieve the function for which they were designed. Coordinate data shall be presented in the State of Tennessee Plane System with the North American Datum 1983 (NAD83) and North American Vertical Datum (NAVD) of 1988. (as added by Ord. No. 2001-53, 2002).
- (j) *Maintenance responsibility.*
- (i) Any stormwater management facility or BMP which services individual property owners or subdivisions shall be privately owned with general routine maintenance (controlling vegetative growth and removing debris) provided for by the owner(s). The owner shall maintain a perpetual, non-exclusive easement, which allows for access for inspection and other maintenance by the city.
 - (ii) Any stormwater management facility or BMP which services an individual subdivision in which the facility or BMP is within designated open areas or an amenity with an established homeowners association shall be privately owned and maintained consistent with provisions of this title. The owner shall maintain a perpetual, nonexclusive easement, which allows for access for inspection and emergency maintenance by the city.
 - (iii) Any stormwater management facility or BMP which services commercial and industrial development shall be privately owned and maintained consistent with the provisions of this title. The city has the right, but not the duty to enter premises for emergency repairs through a perpetual nonexclusive easement.
 - (iv) All regional stormwater management facilities proposed by the owners, if accepted by the city engineer and approved by the board of mayor and aldermen for dedication as a public regional facility shall be publicly owned and maintained.

- (v) All other stormwater management control facilities and BMP's shall be publicly owned and/or maintained only if accepted for maintenance by the city through a formal agreement recorded at the Williamson County, Tennessee Register of Deeds. Existing or proposed drainage easements shall not constitute a formal agreement.
 - (vi) The city engineer may require dedication of privately owned stormwater facilities, which discharge to the city's stormwater system.
 - (vii) All stormwater BMP's shall be required to place maintenance signs approximately 9"x12" on or near BMP's in order to ensure identification and proper maintenance of features.
- (3) *Green infrastructure—Runoff reduction requirements.* This section shall be effective for all development and redevelopment under the jurisdiction of this title submitted for plan review on or after January 1, 2014.
- (a) All new development and redevelopment shall utilize site design standards that reduce stormwater runoff volume through the use of green infrastructure practices which are designed to infiltrate, evapotranspire, and/or reuse rainwater. The green infrastructure practices shall be designed to reduce the volume of stormwater runoff using the runoff reduction method (RRM) as defined in the current City of Franklin Stormwater Best Management Practices (BMP) Manual.
 - (b) All green infrastructure practices shall be located in open space lots on residential developments requiring plats. All other development shall be required to locate green infrastructure practices in an exclusive public drainage and green infrastructure easement.
 - (c) The city engineer may approve alternative practices in lieu of runoff reduction/green infrastructure when site limitations exist. Criteria to determine the circumstances under which alternatives are available shall not be based solely on the difficulty or cost of implementing practices. The determination shall be based on one or more of the following site limitations:
 - (i) Where the potential for introducing pollutants into groundwater exists, unless pretreatment is provided;
 - (ii) Where pre-existing soil contamination is present in areas subject to having contact with infiltrated runoff;
 - (iii) Where sinkholes or other karst features are present on the site (stamped geotechnical report shall be submitted to the city engineer);
 - (iv) Where the site has a historic or archaeological significance that cannot be disturbed as determined by the State Historic Preservation Office;
 - (v) Where utility conflicts preclude the use of green infrastructure practices;
 - (vi) Where steep slopes are present and slope failure may occur (stamped geotechnical report shall be submitted to the city engineer); and
 - (vii) Other site limitations as determined by the city engineer.
 - (viii) Cost and difficulty of implementing green infrastructure/runoff reduction measures shall not be considered a limitation.
- (4) *Pollutant removal.* New development and redevelopment will be required to minimize the impact to stormwater quality by applying structural and/or nonstructural management practices selected to address site-specific conditions. New development and redevelopment that cannot meet 100 percent of the RRM must implement pollutant removal BMPs that are designed and constructed in accordance with the site design standards, criteria and specifications for pollutant removal BMPs that are provided in the current City of Franklin Stormwater BMP Manual. The water quality treatment for the runoff resulting from a rainfall depth of 1.1 inches shall be a minimum of 80 percent total suspended solids (TSS) removal through appropriate use of BMP controls as detailed in the current City of Franklin BMP Manual.

Sec. 23-107. - Riparian resources buffer requirements.

- (1) A riparian buffer shall be applied to all water resources located in, or adjacent to, new construction, development or redevelopment. There shall be no mowing, clearing, grading, construction, storage, or disturbance of vegetation except as permitted by the city engineer, or his designee. Final determination shall be made by the city engineer regarding riparian buffer delineation, top of bank, areas where the riparian buffer shall apply and riparian buffer width requirements.
- (2) Riparian buffer zones. The riparian buffer shall be applied in two zones: riparian zone 1 and riparian zone 2: all uses, other than those allowable in each zone, shall be prohibited.
 - (a) *Riparian zone 1*. The riparian zone 1 shall begin at the top of bank of the water resource and extend a minimum of 30 linear feet perpendicular for water resources that have tributary area less than one square mile. This distance shall be 60 linear feet perpendicular from top of bank for water resources that drain one square mile or greater.
 - (i) Allowable uses within zone 1.
 - (A) Utility crossings according to subsection 23-107(5)(b) of this title.
 - (B) Passive recreation, pervious footpaths, canoe launches, and boardwalks placed perpendicular to the top of bank and the riparian zone to approach the water resource as approved by the city engineer.
 - (C) Stabilization practices to prevent channelization and erosion in the riparian buffer from stormwater runoff adjacent to the water resource.
 - (D) Landscaping to allow for climax successional vegetation through the removal of invasive exotic plants and the establishment of native vegetation, and/or other practices that restore the ecological integrity of the riparian buffer.
 - (E) Removal of individual trees within the riparian buffer which are in danger of falling, causing damage to dwellings or other structures, or causing blockage of the water resource.
 - (ii) *Riparian zone 1—Special conditions*. Riparian zone 1 widths shall vary depending on the tributary area of the water resource, location of water pollution hazards, or steep slopes. The following riparian zone 1 widths shall apply:
 - (A) For certain land uses and/or activities designated as potential water pollution hazards:
 1. Drain fields from onsite sewage disposal and treatment systems (i.e., septic systems) require 100 feet.
 2. Land application of biosolids requires 100 feet.
 3. Subsurface discharge from a wastewater treatment plant requires 100 feet.
 4. Above ground or underground petroleum storage or storage of hazardous substance facilities requires 150 feet.
 5. Raised septic systems require 250 feet.
 6. Solid waste landfills or junkyards require 300 feet.
 - (B) For areas containing steep slopes:
 1. Where the average slope of the land within the riparian zone 1 is between 15 percent and 25 percent, an additional 20 feet shall be added to the minimum riparian buffer width.
 2. Where the average slope of the land within the riparian zone 1 is greater than 25 percent, an additional 50 feet shall be added to the minimum riparian buffer width.
 - (b) *Riparian zone 2*. A riparian zone 2 shall be applied to water resources that drain less than one square mile. The riparian zone 2 shall begin at the edge of the riparian zone 1 (which includes

any additional width as specified above in "riparian zone 1—special conditions") and extend 30 linear feet perpendicular to riparian zone 1.

(i) Allowable uses within riparian zone 2.

(A) Those uses allowed in riparian zone 1.

(B) Biking or hiking paths and greenways. View corridors shall be allowed along greenways as approved by the city engineer. Paths and greenways shall be designed to prevent the channelization of stormwater runoff. The water resource buffer width shall be increased by the width of impact associated with the path, greenway, or trail.

(C) Limited passive recreation.

(D) Changes to existing stormwater channels.

(E)

(3) *Riparian buffer enhancement.* Evaluation of the current riparian buffer conditions shall be required in zone 1 and zone 2 areas of the riparian buffer on all water resources. This is to ensure the preservation and propagation of the riparian buffer areas and to provide the necessary conditions to ensure proper stream function. If the riparian areas are found to be in any other vegetative state than that outlined below, then the riparian buffers shall be enhanced. Reference the Tennessee Urban Riparian Buffer handbook for guidance and more information.

(a) Vegetative state.

(i) The riparian buffer shall be enhanced to allow for climax successional vegetation through the establishment of native vegetation and the removal of exotic invasive vegetation. The native vegetation established shall be consistent with that of an undisturbed forest ecosystem with all classes of vegetation equally represented.

(ii) The riparian buffer shall consist of native vegetation along both sides of a water resource measured linearly perpendicular from top of bank.

(iii) Riparian buffers shall be maintained perpetually on all properties in a manner that allows for growth of climax successional vegetation.

(iv) No clearing of existing native vegetation in the riparian zones shall be allowed, except as permitted in subsection 23-107(3) of this title.

(b) Buffer management plans—Proposals for enhancement to restore the ecological integrity of the riparian buffer shall be submitted as a buffer management plan or landscape plan to the city engineer during the site plan review process, and any pertinent local, state, or federal permits shall be obtained. The city engineer shall approve the specific requirements of such plan prior to the issuance of a grading and stormwater permit or grading permit.

(4) *Stream relocations.* Stream relocations shall only be permitted in rare circumstances where the need to address a highly unstable hydrological condition can be clearly demonstrated by the following:

(a) The applicant shall apply for a variance pursuant to chapter 3 of this title.

(b) The relocation shall create a high quality aquatic habitat, restore natural flow regimes and natural streamside conditions, and shall result in overall water quality improvements.

(c) The applicant shall submit a buffer management plan and long-term maintenance plan as prescribed in the grading and stormwater management permit requirements. A copy of any applicable federal or state permits shall be supplied to the city engineer prior to the commencement of relocation.

(5) *Riparian buffer width averaging, clearing activities, and crossings.*

(a) The riparian buffer zone 2 width may be averaged in limited areas in conjunction with targeted restoration plans that make comparable improvements to both the ecological integrity within the riparian buffer and water quality of the water resource. Restoration plans may include stream

bank restoration, revegetation, habitat improvements, or other bioengineering methods, as approved in a buffer management plan by the city engineer, or his designee. Averaging of the zone 2 riparian buffer width may apply to specific areas of an overall development, and shall be approved on a case-by-case basis in no case shall averaging be allowed in the zone 1 riparian buffer. Averaging request shall demonstrate the same practical difficulty as variance request outlined in [section] 23-304(3)(a).

- (b) Riparian buffer crossings shall be approved by the city engineer, or his designee. Attempts should be made to limit the number and width of road and utility crossings across water resources. Utilities shall be located under pavement where possible. Riparian buffer crossings shall be approved in a buffer management plan by the city engineer, or his designee.
 - (i) Crossing water resources with mainline sanitary sewers shall be minimized, and shall cross with road crossings where possible.
 - (ii) Underground utilities such as sanitary sewer, water mains and above ground utilities shall be located outside of the riparian buffer except for crossings.
 - (iii) The city engineer, or his designee, may approve new driveways or road crossings through or across riparian buffer zones on a case-by-case basis. It shall be demonstrated that access across the riparian buffer is necessary, and that the riparian buffer will not be impacted excessively. In these cases, the driveway or road crossing shall be constructed perpendicular, ± 15 degrees, to the water resource and/or riparian buffer with careful detail to protecting trees and vegetation and minimizing site grades. Crossings shall utilize a spanning open bottom culvert with footings located outside of the stream and embankments. Stream encapsulations shall be prohibited unless approved by a variance request. Note that such crossings may require federal, state, and/or local permits.

(6) *Development plan and construction activity requirements.*

- (a) The parameters of the riparian buffer shall be delineated by the applicant prior to the pre-application phase of a development submittal.
- (b) Riparian buffer boundaries shall be clearly indicated on all plats and plans including development plans, regulating plans, site plans, conservation subdivisions, preliminary plats, final plats, as well as permits and official maps, and shall:
 - (i) Show the extent of any riparian buffer on the subject property and clearly label as "riparian buffer" along with the required width.
 - (ii) Provide a note to reference the riparian buffer, labeled as: "there shall be no clearing, grading, construction, storage, or disturbance of vegetation except as permitted by the city engineer."
 - (iii) Provide a note to reference protective covenants governing all riparian buffer areas, labeled as: "Any riparian buffer is subject to protective covenants recorded in the register of deeds (Williamson County). Disturbance and use of these areas is restricted; severe penalties apply."
- (c) Riparian buffer areas shall be protected during all development activities. Construction layout survey shall include fencing and labeling of the riparian buffer areas. Use of a combination of fencing and flagging to ensure adequate visibility shall be required. Riparian buffer boundaries shall be marked with signs that persist before, during, and after construction to prevent entry of construction equipment, storage and stockpiling.
- (d) Permanent boundary markers, in the form of signage approved by the city engineer, or his designee, shall be installed prior to the issuance of a grading and stormwater permit. Signage shall be posted and clearly observable at the edge of the riparian buffer, each lot line, and at a maximum spacing of 150 feet. Properties with a large amount of riparian buffer frontage may request a reduction in spacing requirements, subject to approval from the city engineer, or his designee. The size of the sign shall be 12 inches by 18 inches rectangle or greater and shall

contain the message, "Water Quality Buffer Do Not Disturb" or other language approved by the city engineer, or his designee.

- (e) All riparian buffers shall be placed in open space lot to be maintained according to section 23-108 of this title. Commercial developments shall be allowed to place riparian buffers in a riparian buffer conservation easement in lieu of open space lots.
- (7) *Enforcement procedures.*
 - (a) Any person violating the provisions of this title shall be subject to the penalties set forth in section 23-111 of this title.
 - (b) Riparian buffers shall be actively managed with periodic buffer surveys. Violators shall be served with civil penalties according to section 23-111(4)(d) of this title and shall be required, at their own expense, to revegetate, according to an approved buffer management plan, and maintain the section of the riparian buffer encroached upon, using only plants from a list of native vegetation provided by the city engineer. Equivalent native plants and trees that were removed shall be replaced on a tree per tree basis or as approved by the city engineer, or his designee. Specimen trees shall be replaced as required by the zoning ordinance of the city.
- (8) *Variance and appeal procedures.* Variance and appeal requests shall be submitted pursuant to section 23-301 et seq. of this title.
- (9) *Other requirements.* If deemed appropriate by the city engineer, or his designee, during the plan review process, each new development shall evaluate water resource conditions and shall be required to address the following:
 - (a) Stabilization and/or restoration within or adjacent to the water resource.
 - (b) Additional water quality protection.
 - (c) Channel erosion.
 - (d) Stream pollution.
 - (e) Habitat degradation.

Sec. 23-108. - Maintenance requirements.

- (1) The maintenance responsibilities for permanent stormwater runoff control facilities shall be determined based upon the type of ownership of the property which is controlled by the facilities.
- (2) Single entity ownership. Where the permanent stormwater runoff control facilities are designed to manage runoff from property in a single entity ownership as defined below, the maintenance responsibility for the stormwater control facilities shall be with the single entity owner.
 - (a) The stated responsibilities of the entity in terms of owning and maintaining the facilities shall be submitted with the stormwater management plan for determination of their adequacy. Approval of the stormwater management plan shall be conditioned upon the approval of these terms. These terms shall be in writing in the form of a maintenance agreement, shall be recorded at the register of deeds office, and shall, in addition to any other terms deemed necessary by the city, contain a provision permitting inspection at any reasonable time by the city engineer, or his designee, of all such facilities deemed critical in the public welfare.
 - (b) A single entity shall be defined as an association, public or private corporation, partnership firm, trust, estate or any other legal entity allowed to own real estate exclusive of an individual lot owner.
 - (c) Upon approval of the stormwater management facilities by the city, the facility owner(s) 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. 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.

- (d) Unless made specifically clear in the preliminary stages of the site design and construction plan review procedure, it will be assumed that all stormwater detention, retention, treatment or storage facilities and/or devices, and riparian buffers shall be owned, operated and maintained by a single entity as defined above.
- (3) *Municipal ownership.* Where the city has accepted an offer of dedication of the permanent stormwater management facilities, the city shall be responsible for maintenance. Dedication of a permanent stormwater management facility shall be through a formal agreement recorded at the Williamson County, Tennessee Register of Deeds. Existing or proposed drainage easements shall not constitute a formal agreement.
- (4) *Construction performance agreement.* The city may require the posting of a performance agreement to secure the structural integrity of said facilities as well as the functioning of said facilities in accordance with the City of Franklin Zoning Ordinance.

Sec. 23-109. - Allowable and illicit discharges.

- (1) No person shall discharge or cause to be discharged into the City's MS4 or water resources any materials, including but not limited to, pollutants or waters containing any pollutants that cause or contribute to violation of applicable water quality standards, other than stormwater and except as permitted by section 23-109(4) of this title.
- (2) Contamination of stormwater runoff from hot spots shall be prohibited and subject to the maximum penalties as specified in section 23-111(4)(d)(iv) of this title.
- (3) Except as hereinafter provided, all non-stormwater discharges into the MS4 shall be prohibited and declared to be unlawful.
- (4) Unless the city engineer has identified them as a source of pollutants to the waters of the state, the following non-stormwater discharges into the MS4 shall be lawful:
 - (a) Discharges from emergency firefighting activities.
 - (b) Diverted screen flows.
 - (c) Rising ground waters.
 - (d) Uncontaminated groundwater infiltration to separate storm sewer systems (as defined by 40 CFR35.2005(20) as may be amended.
 - (e) Uncontaminated pumped ground water.
 - (f) Discharges from potable water sources as required for system maintenance.
 - (g) Drinking water line flushing.
 - (h) Foundation drains and pumps.
 - (i) Air conditioning condensate.
 - (j) Landscape irrigation.
 - (k) Irrigation water.
 - (l) Lawn watering.
 - (m) Uncontaminated springs.
 - (n) Water from crawl space pumps.
 - (o) Uncontaminated footing drains and pumps.
 - (p) Individual residential car washing.
 - (q) Flows from riparian habitats and wetlands.
 - (r) Dechlorinated swimming pool discharges.

- (s) Street wash waters resulting from normal street cleaning operations.
 - (t) Controlled flushing of stormwater conveyances (controlled by appropriate best management practices).
 - (u) Discharges within the constraints of a NPDES permit from the Tennessee Department of Environment and Conservation (TDEC).
 - (v) Discharges approved at the discretion of the city engineer.
- (5) The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. A person is considered to be in violation of this title if the person connects a line conveying sewage to the MS4, or allows such connection to continue.
 - (6) The city may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the state. If the violator fails to comply with a suspension order issued in an emergency, the city may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the state, or to minimize danger to persons.
 - (7) Every person, or such person's lessee or other designee, owning or maintaining property, through which the City's MS4, Public Utility and Drainage Easement, or water resource passes, shall keep that part of the water resource within the property free of trash, debris, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the MS4 or water resource.
 - (8) 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 or may result in illicit discharges or pollutants discharging into the MS4 or waters of the state said 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 said person shall immediately notify emergency response agencies of the occurrence. In the event of a release of non-hazardous materials, said person shall notify the city no later than the next business day.

Sec. 23-110. - Rule-making authority.

- (1) The city engineer shall have authority to implement this title by appropriate regulations, guidance or other related materials. In this regard, technical, administrative, or procedural matters may be modified as needed to meet the objectives and policies defined above, so long as such modifications as to technical, administrative, or procedural matters are not contrary or beyond the intent of the objectives and policies defined above.
- (2) Documents referenced above may be updated periodically to reflect the most current and effective practices and shall be made available to the public. However, the failure to update the manual shall not relieve any applicant from the obligation to comply with the stormwater management ordinance (this title), and shall not prevent the city engineer from imposing the most current and effective practices.
- (3) Regulations, guidance or other related materials that may be given authority by this title may include, but are not limited to BMP manuals, design regulations and requirements, submittal checklists, review checklists, inspection checklists, certifications, stormwater management manuals, stormwater inspection manuals, and operation and maintenance manuals. The document(s) may include information deemed appropriate by the city engineer including guidance and specifications for the preparation of stormwater management plans, selecting environmentally sound practices for managing stormwater, minimum specifications and requirements, more complete definitions and performance standards.

- (4) The above referenced documents shall not in any way require specific commercially available products. However, they may refer to performance specifications, class of devices, construction, or management practice.

Sec. 23-111. - Enforcement.

The city shall have the authority to institute appropriate actions or proceedings at law or equity for the enforcement of this title. Any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions, and other appropriate forms of remedy or relief. Any person unlawfully polluting the waters of the state or violating or failing, neglecting, or refusing to comply with any provisions of this title as it relates to Tenn. Code Ann. § 69-3-101 et seq. (as it may be amended) commits a Class C misdemeanor. Each day of noncompliance is considered a separate offense; and nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation, including application for injunctive relief. Any of the following enforcement remedies and penalties shall be available to the city in response to violations of this title. If the person, property or facility has or is required to have a stormwater discharge permit from the TDEC, the city shall alert the appropriate state authorities of the violation.

- (1) *Notice of violation (NOV)*. Whenever designated city staff find that any person, company or facility owning or occupying a premises has violated or is violating this title or order issued hereunder, the city engineer, or his designee, may serve, by personal service, or by registered or certified mail, upon said person a written NOV. Within 30 days of the receipt of this notice, or shorter period as may be prescribed in the NOV, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, which shall include specific required actions, shall be submitted to the city staff. Submission of this plan shall in no way relieve liabilities for violations occurring before or after receipt of the NOV.
- (2) *Revocation of permit*. The city engineer, or his designee, may revoke and require the return of a permit or certificate by notifying the permit holder in writing, stating the reason for the revocation. Permits or certificates shall be revoked for any substantial departure from the approved application plans, or specifications; refusal or failure to comply with the requirements of state or local law; or for false statements or misrepresentations made in securing the permit or certificate. Any permit or certificate mistakenly issued in violation of any applicable state or local law may also be revoked.
- (3) *Compliance order*. If any person, company or facility shall violate the provisions of this title, the city engineer, or his designee, may give notice to the owner or to any person in possession of the subject property, ordering that all unlawful conditions existing thereupon be abated within a schedule defined from the date of such notice.
 - (a) The city engineer, or his designee, shall have the authority to establish elements of a stormwater pollution prevention plan, and to require any business to adopt and implement such a plan, as may be reasonably necessary to fulfill the purposes of this title. The city engineer, or his designee, may establish the requirements of best management practices for any premises.
 - (b) The notice and order may be given provided, that if, in the opinion of the city engineer, or his designee, the unlawful condition is such that it is of imminent danger or peril to the public, then an authorized city representative may, without notice, proceed to abate the same, and the cost thereof shall be charged against the property. The city, as described further in this subsection, may recover the cost of such actions from the property owner.
- (4) *Civil penalties*. Any person, company or facility who has been found to have been in violation of any provision of this title, may be assessed a civil penalty not to exceed the amount presented in this subsection.
 - (a) The penalty may increase by 25 percent of the previous penalty amount for every subsequent but separate offense made by the same person, company or facility. The penalty shall be additional to other enforcement actions of this section.

- (b) The penalty may be assessed by the city engineer, or his designee, for each day beyond schedules applied in compliance orders or other schedules issued to the property owner or other person responsible for unauthorized activity defined in this title.
- (c) In determining the amount of the penalty the city engineer, or his designee, shall consider the following:
 - (i) The degree and extent of the harm to the natural resources, to the public health, or to the public or private property resulting from the violation;
 - (ii) The duration and gravity of the violation;
 - (iii) The effect on ground or surface water quality;
 - (iv) The cost of rectifying the damage;
 - (v) The amount of money saved by noncompliance;
 - (vi) Whether the violation was committed willfully or intentionally;
 - (vii) The cumulative effect of other enforcement actions applied for the same offense;
 - (viii) The prior record of the violator in complying or failing to comply with the stormwater quality management program; and
 - (ix) The costs of enforcement to the city.
- (d) The maximum civil penalties shall be determined by the city engineer, or his designee, based on the type of offense. This indicates the maximum that may be imposed for a first offense and does not reflect the increases described above for repeat offenses.
 - (i) *Development without permit—\$10,000.00.* To engage in any development, use, construction, remodeling, or other activity of any nature upon land or improvements thereon subject to the jurisdiction of this title without all required permits, certificates, or other forms of authorization as set forth in this title.
 - (ii) *Development inconsistent with permit—\$5,000.00.* To engage in any development, use, construction, remodeling, or other activity of any nature in any way inconsistent with any approved plan, permit, certificate, or other form of authorization granted for such activity.
 - (iii) *Violation by act or omission—\$5,000.00.* To violate, by act or omission, any term, variance, modification, condition, or qualification placed by the city or its agent departments upon any required permit, certificate, or other form of authorization of the use, development, or other activity upon land or improvements thereon.
 - (iv) *Illicit discharge—\$5,000.00.* Any person, company or facility who is found to have improperly disposed of any substance that is not defined in section 23-110 of this title or causes the city to be in noncompliance with any applicable environmental permit.
 - (v) *Household products—\$500.00.* Any person, company, or facility who is found to have improperly disposed of any substance not included in section 23-109 of this title that was purchased over-the-counter for household use, in quantities considered normal for household purposes, which, upon discharge to the MS4 or drainage network, would have an adverse impact on water quality or cause the city to be in noncompliance with any applicable environmental permit.
- (e) In the event there are penalties assessed by TDEC against the city caused by any person, company, or facility, said person, company or facility shall be assessed the equivalent amount of civil penalty. This shall include, but is not limited to, penalties for improper disposal or illegal dumping, or illicit connection into the MS4.
- (5) *Stop work order.* Any person, company or facility who has been found to have been in violation of any provision of this title, may be issued a stop work order. This shall be an order requiring the entity in violation to cease any and all work associated with a grading, building, or stormwater permit issued by

the city. Work to correct or rectify the violation may be allowed. This order is to be in place until all violations have been corrected in their entirety.

- (6) *Order to clean and abate/restore.* Any violator may be required to clean and/or restore land to its condition prior to the violation.
- (7) *Cost recovery.* If corrective action, including maintenance delinquency, is not taken in the time specified or within a reasonable time if no time is specified, the city may take the corrective action, and the cost of the corrective action shall be the responsibility of the owner and the developer. The cost of the abatement and restoration shall be borne by the owner of the property and the cost therefore shall be invoiced to the owner of the property. If the invoice is not paid within 90 days, the city shall have the authority to place a lien upon and against the property. If the lien is not satisfied within 90 days, the city is authorized to take all legal measures as are available to enforce the lien as a judgment, including, without limitation, enforcing the lien in an action brought for a monetary judgment, by delivery to the assessor or a special assessment against the property.
- (8) *Injunctions and/or proceedings at law or in equity.* Any violation of this title or of any condition, order, requirement, or remedy adopted pursuant hereto may be restrained, corrected, abated, mandated, or enjoined by other appropriate proceeding pursuant to state law.
- (9) *Fee or utility credit revocation.* This enforcement tool is intended to be available or used if there are, at any time, provisions for a funding mechanism managed by the city. This enforcement tool permits that credits or other measures to reduce fees or utility charges may be revoked, in full or in part, if any provision of this title, or given authority per section 23-110 of this title, is violated.
- (10) *Civil actions.* In addition to any other remedies provided in this title, any violation of this title may be enforced by civil action brought by the city attorney. Monies recovered under this subsection shall be paid to the city to be used exclusively for costs associated with implementing or enforcing the provisions of this title. In any such action, the city may seek, as appropriate, any or all of the following remedies:
 - (a) A temporary and/or permanent injunction;
 - (b) Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which leads to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection;
 - (c) Costs incurred in removing, correcting, or terminating the adverse effects resulting from the violation;
 - (d) Compensatory damages for loss or destruction to water quality, wildlife, fish and aquatic life.
- (11) *Emergency orders and abatements.* The city engineer, or his designee, may order the abatement of any discharge from any source to the stormwater conveyance system when, in the opinion of the city engineer, or his designee, the discharge causes or threatens to cause a condition which presents an imminent danger to the public health, safety, or welfare, or the environment, or a violation of a NPDES permit. In emergency situations where the property owner or other responsible party is unavailable and time constraints are such that service of a notice and order to abate cannot be effected without presenting an immediate danger to the public health, safety, or welfare, or the environment or a violation of a NPDES permit, the city may perform or cause to be performed such work as shall be necessary to abate said threat or danger. The costs of any such abatement shall be borne by the owner and shall be collectable in accordance with the provisions of this subsection.
- (12) *Appeals.* Upon issuance of a citation or notice of violation of this stormwater management ordinance (this title), it shall be conclusive and final unless the accused violator submits a written notice of appeal to the city engineer within ten days of the violation notice being served. If the city engineer does not issue a decision within ten days of the written notice of appeal then the violation is considered upheld. If the city engineer does not reverse the decision or if the violation is considered upheld, the aggrieved party may appeal to the stormwater appeals board, by filing a written request for hearing within 30 days of the city engineer's decision on the appeal. The request for hearing shall state the specific reasons why the decision of the city engineer is alleged to be in error, and shall be accompanied by a

payment in the amount of \$750.00 to cover the cost of court reporters, transcripts, plan reviews and other administrative costs associated with the appeal. In the event the stormwater appeals board overturns the decision of the city engineer, this payment may be refunded to the appellant.

Sec. 23-112. - Severability.

- (1) Should any article, section, subsection, clause or provision of this comprehensive stormwater management ordinance (this title) be declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the title 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.
- (2) If any provisions of this title 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.

CHAPTER 2. - STORMWATER USER FEE

Sec. 23-201. - 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) *Bonds* means revenue bonds, notes, loans or any other debt obligations issued or incurred to finance the costs of construction.
- (2) *Calendar year* means a 12-month period commencing on the first day of January of any year.
- (3) *City engineer* refers to the City of Franklin City Engineer who has the authority to delegate to designated staff.
- (4) *Costs of construction* means costs reasonably 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 thereof;
 - (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 sub-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.

- (5) *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.
- (6) *Developed property* means real property other than undisturbed property and vacant improved property.
- (7) *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.
- (8) *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.
- (9) *ERU rate* means a utility fee charged on each ERU as established by the board.
- (10) *Exempt property* means public rights-of-way, public streets, public alleys and public sidewalks.
- (11) *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.
- (12) *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.
- (13) *Nonresidential developed property* means developed property that is not utilized for dwelling units within the city.
- (14) *Operating budget* means the annual operating budget adopted by the city for the succeeding fiscal year.
- (15) *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.
- (16) *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.
- (17) *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.
- (18) *Stormwater user fee* means a fee authorized by ordinance(s) established to pay operations and maintenance, extension and replacement and debt service.

- (19) *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.
- (20) *Undisturbed property* means real property which has not been altered from its natural state by dredging, filling, removal of trees and vegetation or other activities which have disturbed or altered the topography or soils on the property.
- (21) *User fee district* means the area or property within the corporate limits of the City of Franklin.
- (22) *Vacant improved property* means vacant property which is, or could reasonably be, served by any subdivision improvements that allow egress.

Sec. 23-202. - Fee established.

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 stormwater 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.

Sec. 23-203. - Stormwater user fee collection.

The stormwater user fee for metered property shall be billed and collected monthly with the monthly city's utility services 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 utilities department. 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 utilities department pertaining to the collection of the stormwater user fees.

Sec. 23-204. - 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:

- (a) The board of mayor and aldermen, upon recommendation of the city engineer, shall, by resolution, establish reasonable rates for the use of the system 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 (ERU).
- (b) 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.
- (c) For all nonresidential properties, that is enterprise, business establishment, building, or other occupancy not covered by subsections (a) and (b) of this section, the ERU rate shall be computed based on the total impervious area of the property divided by the average impervious area of an ERU times the rate established for an ERU. 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.

- (d) Users whose stormwater runoff is not discharged into or through the stormwater and/or flood control facilities of the city shall be exempt from paying the stormwater user fee.
- (e) Users who construct, or have constructed, facilities to retain and control the quantity and/or quality of stormwater runoff from their property may be entitled to a reduction or adjustment of the stormwater user fee due, based upon reasonable criteria developed by the city engineer.
- (f) Any person who disagrees with the calculation of the stormwater user fee's determination by the city engineer or who seeks adjustments or exemption of his stormwater user fee, may appeal such determination to the city engineer. An appeal shall be accompanied by a fee as specified in appendix A—Comprehensive fees and penalties, chapter 23—Stormwater management ordinance, filed in writing and include a written statement of the grounds for the appeal, with reference to the Franklin Stormwater Management Credit and Appeal Manual or other appropriate documents available from the engineering department. The city engineer will review the appeal and render a decision within 30 days. The city engineer's decision shall be in writing and mailed, certified return receipt requested, or hand-delivered to the address of the applicant contained in the appeal. In response to an appeal, the city engineer may adjust the stormwater user fee applicable to a property in conformance with the general purpose and intent of this title.

Sec. 23-205. - Equivalent residential unit (ERU) established.

The equivalent residential unit is hereby established to be 3,350 square feet of impervious area.

Sec. 23-206. - Equivalent residential unit (ERU) rate and tiers established.

- (1) *Intent.* The board of mayor and aldermen intends to establish a base ERU rate and tiers of residential properties so that application of the ERU rate and tiers as established leads to a fair and equitable result and such that the collection of fees shall be proportional to the amount of actual use of the stormwater management system. The fee structure reflects different categories of use and tiers using commonly accepted statistical principles to achieve such equitable results.
- (2) *ERU rate established.* The ERU rate to be charged for the stormwater user fee for each ERU is as specified in appendix A—Comprehensive fees and penalties, chapter 23—Stormwater management ordinance.
 - (a) *Two tier residential ERU established.* Residential properties will be separated into two tiers: residential units smaller than or equal to 3,350 square feet will pay 75 percent of the ERU rate per month and residential units larger than 3,350 square feet will pay 120 percent of the ERU rate per month.
 - (b) *Non-residential properties established.* Non-residential properties will pay monthly the ERU rate times the actual square footage of impervious area divided by the ERU.

Sec. 23-207. - Undisturbed property correction factor established.

The undisturbed property correction factor to be used to calculate the stormwater user fee for each acre of undisturbed property is hereby established to be zero percent.

CHAPTER 3. - STORMWATER APPEALS BOARD

Sec. 23-301. - Established.

There is hereby established a board of seven members to be known as the "stormwater appeals board" (SAB).

Sec. 23-302. - Composition; terms; filling vacancies.

- (1) The seven members of this board shall be appointed by the mayor, subject to the approval of the board of mayor and aldermen. The mayor shall appoint members with the following qualifications: one (1) environmental engineer or environmental scientist, one attorney, one person employed or retired from an industrial or commercial establishment regulated by this article [title], and one person that is a member of an organized neighborhood organization or environmental group. At least one member of the SAB shall be a current member of the board of mayor and aldermen.
- (2) The members shall meet all requirements of the Franklin Municipal Code. All members shall serve until their successor is appointed. In the event of a vacancy, the mayor shall appoint a member to fill the unexpired term subject to approval by the board of mayor and aldermen. The SAB shall select its own chair and vice chair. All officers shall serve for terms of two years.

Sec. 23-303. - General duties of the SAB.

In addition to any other duty or responsibility otherwise conferred upon the SAB by this title, the SAB shall have the duty and power as follows:

- (1) To recommend from time to time to the board of mayor and aldermen that it amend or modify the provisions of this title;
- (2) To hold hearings upon appeals from orders or actions of the city engineer, or his designees, as may be provided under any provision of this title relating to stormwater;
- (3) To hold hearings relating to the suspension, revocation, or modification of a stormwater management and/or grading permit and issue appropriate orders relating thereto;
- (4) To hold hearings relating to an appeal from a user concerning the accuracy of any fees imposed upon a stormwater management system user;
- (5) To hold such other hearings as may be required in the administration of this title and to make such determinations and issue such orders as may be necessary to effectuate the purposes of this title;
- (6) To request assistance from any officer, agent, or employee of the city or the Franklin Municipal Planning Commission and to obtain such information or other assistance as the SAB might need;
- (7) The SAB acting through its chair shall have the power to issue subpoenas requiring attendance and testimony of witnesses and the production of documentary evidence relevant to any matter properly heard by the SAB; and
- (8) The chair, vice chair or chair pro tem shall be authorized to administer oaths to those persons giving testimony before the SAB.

Sec. 23-304. - Variances.

- (1) The SAB may grant a variance from the requirements in this title, provided to do so would not result in the violation of any state or federal law or regulation and if exceptional circumstances applicable to the site exist such that strict adherence to the provisions of this title will result in unnecessary hardship and will not result in a condition contrary to the intent of the title.
- (2) The appellant shall submit a written request containing specific justifications, and any other information necessary to the city engineer for the variance request. The city engineer shall conduct a review of the request for a variance within 25 working days after receipt and may either support the petition or may object to the petition. The city engineer may require additional information or an independent third party study or design analysis. If the city engineer objects to the variance, the reasons therefore shall be stated. If the petition for variance is supported by the city engineer no action shall be required by the SAB. Petitions for variances that are objected to by the city engineer shall be heard by the SAB. Once the city engineer's review is complete or the 25 working days for review have expired, the petition shall be subject to SAB action at the next regularly scheduled meeting or at a special meeting called at the discretion of the chair if needed.

- (3) Variance requests shall be reviewed by the city engineer and/or SAB and may be granted using the following criteria:
- (a) Those projects or activities where it can be demonstrated that strict compliance with the ordinance would result in practical difficulty. Each of the following criteria must be satisfied to show practical difficulty:
 - i. The problem is not self-created.
 - ii. The situation of the landowner is due to the unique conditions of the property. A unique condition is a condition that is peculiar to the subject property that relates to a physical aspect of the subject property.
 - iii. Compliance with the strict letter of the restrictions governing physical requirements such as lot area, setbacks, and lot coverage unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
 - (b) Those projects or activities serving a public need where no feasible alternative is available.
 - (c) The repair and maintenance of public improvements where avoidance and minimization of adverse impacts to water resources have been addressed.
 - (d) Other considerations, such as:
 - i. The proximity of the facility to a waterfront location, in the case of a functionally dependent facility.
 - ii. The relationship of the proposed use to the Franklin Zoning Ordinance, comprehensive land use plan, and master drainage plans for that area.
 - iii. The safety of access to the property in times of flood for ordinary and emergency vehicles.
 - iv. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
 - v. Whether issuance of a variance is the minimum necessary so as not to destroy the character and design of a historic building or feature.
 - (e) In approving a variance, the city engineer and/or SAB may impose conditions on the approval. The conditions shall be identified in the variance approval.
 - (f) The decisions of the SAB shall be final and conclusive.
- (4) Effect of a variance. The issuance of a variance shall authorize only the particular variation that is approved. A variance, including any conditions, shall run with the land and shall not be affected by a change in ownership.
- (5) Subsequent development. Development authorized by the variance shall not be carried out until the applicant has secured all other approvals required by this title or any other applicable local, state or federal law or regulation. A variance shall not ensure that the development feature approved as a variance shall receive subsequent approval for other applications for development approval unless the relevant and applicable portions of this title's other applicable provisions are met.
- (6) Time limit. Unless otherwise specified in the variance, an application for a stormwater and/or grading permit shall be applied for and approved within one year of the date of the variance approval; the city engineer shall have the authority to extend this time limit for one year as long as significant changes have not occurred in site design or water quality impacts. Following the expiration of these dates the variance shall become invalid. Permitted time frames do not change with successive owners.

Sec. 23-305. - Meetings; quorum.

- (1) The SAB shall hold regular monthly meetings as needed, but no less than twice per calendar year, and such special meetings as the SAB may find necessary.
- (2) Four members of the SAB shall constitute a quorum. A concurring vote of a majority of the voting members present shall be necessary to deny or grant any appeal or variance.
- (3) The SAB meetings, deliberations, and records shall be open to the public. The SAB may elect to provide for public comment on relevant issues.

Sec. 23-306. - Hearing procedure; judicial review.

- (1) *When to be held.* The SAB shall schedule an adjudicatory hearing to resolve disputed questions of fact and law whenever provided by any provision of this title or regulations.
- (2) *Record of hearing.* At any such hearing, all testimony presented shall be under oath or upon solemn affirmation in lieu of oath. The SAB shall make a record of such hearing, but the same need not be a verbatim record. Any party coming before the SAB shall have the right to have such hearing recorded stenographically, but in such event the record need not be transcribed unless any party seeks judicial review of the order or action of the SAB by common law writ of certiorari, and in such event the parties seeking such judicial review shall pay for the transcription and provide the SAB with the original of the transcript so that it may be certified to court.
- (3) *Subpoenas.* The chair may issue subpoenas requiring attendance and testimony of witnesses or the production of evidence, or both. A request for issuance of a subpoena shall be made by lodging with the chair at least ten days prior to the scheduled hearing date a written request for a subpoena setting forth the name and address of the party to be subpoenaed and identifying any evidence to be produced. Upon endorsement of a subpoena by the chair, the same shall be delivered to the chief of police for service by any police officer of the city, if the witness resides within the city. If the witness does not reside in the city, the chair shall issue a written request that the witness attend the hearing.
- (4) *Hearing procedure.* The party at such hearing bearing the affirmative burden of proof shall first call his witnesses, to be followed by witnesses called by other parties, to be followed by witnesses that the SAB may desire to call. Rebuttal witnesses shall be called in the same order. The chair shall rule on any evidentiary questions arising during such hearing and shall make such other rulings as may be necessary or advisable to facilitate an orderly hearing subject to approval of the SAB. The SAB, the city engineer, or his designee, and all parties shall have the right to examine the witness. The SAB shall not be bound by or limited to rules of evidence applicable to legal procedures.
- (5) *Appeal to city engineer's order.* Any person aggrieved by any order or determination of the city engineer may appeal said order or determination to the SAB and have such order or determination reviewed by the SAB under the provisions of this title. The appellant shall have 30 days to petition the SAB in order to appeal the city engineer's decision. A written notice of appeal shall be filed with the city engineer, and such notice shall set forth with particularity the action or inaction of the city engineer complained of and the relief sought by the person filing said appeal. A payment of \$750.00 shall accompany this appeal, and the payment shall cover the cost of court reporters, transcripts, plan reviews and other administrative costs associated with the appeal, and may be refunded to the appellant by the SAB in the event the decision of the city engineer is overturned. A special meeting of the SAB may be called by the chair upon the filing of such appeal, and the SAB may in its discretion suspend the operation of the order or determination of the city engineer until such time as the SAB has acted upon the appeal.
- (6) *Absence of chair.* The vice-chair or the chair pro tem shall possess all the authority delegated to the chair by this section when action in his/her absence or in his/her stead is required.
- (7) *Review of SAB's decision.* Any person aggrieved by any final order of determination of the SAB hereunder shall have judicial review by common law writ of certiorari.

SECTION II. BE IT FINALLY ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, Tennessee, that this Ordinance shall take effect from and after its passage on second and final reading, the health, safety, and welfare of the citizens requiring it.

ATTEST:

CITY OF FRANKLIN, TENNESSEE:

BY: _____
ERIC S. STUCKEY
City Administrator/Recorder

BY: _____
DR. KEN MOORE
Mayor

PASSED FIRST READING:

PUBLIC HEARING:

PASSED SECOND READING:

Approved as to Form;

Shauna R. Billingsley, City Attorney