

## Ordinance No. 08-2

### An Ordinance Adopting Standards for Post-Construction Water Quality Management

WHEREAS, the City of Bristol is required by state and federal law to adopt standards for post-construction water quality management; and

WHEREAS, such standards will protect, maintain and enhance the environment of the City by controlling the discharge of pollutants to the public stormwater system; and

WHEREAS, the City desires to exercise the powers conferred by Tennessee Code Annotated Section 68-221-1105.

NOW, THEREFORE, BE IT ORDAINED by the City of Bristol, Tennessee as follows:

That Chapter 74 of the Code of Ordinances is hereby amended to add the following as a new article which will be designated as Article VII, Post-Construction Water Quality Management:

#### Division 1. Generally

##### Sec. 74-401. Definitions.

As used in this article:

*Best management practices (BMPs)* means various practices, procedures and devices designed to prevent or reduce the pollution of waters as set forth in the Water Quality BMP Manual.

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

*City* means the City of Bristol, Tennessee.

*City manager* means the city manager of the city or his designee.

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

*Covenant for permanent maintenance* means a legally enforceable and recorded covenant by a property owner or a homeowner's association containing provisions for the perpetual maintenance of required facilities on the property.

*Development* means any man-made change to improved or unimproved land that alters its hydrologic or hydraulic conditions. This term includes, but is not limited to, providing access to a site, clearing of vegetation, grading, earth moving, providing utilities, roads and other services such as parking facilities, water quality management and erosion control systems, potable water and wastewater systems, altering land forms, or construction or demolition of a structure on the land.

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

*Owner* means the legal owner of land as reflected on the official land records of the county where the land is located.

*Recorded* means recorded or registered in the official land records of the county where the land is located.

*Redevelopment* means the improvement of land that has been previously developed.

*Required facilities* means those water quality management facilities, BMPs, vegetated buffers, water quality reduction areas and other devices and practices which are required by this article, or are required by an approved water quality management plan or the Water Quality BMP Manual.

*Stormwater, stormwater runoff or runoff* means surface water resulting from rain, snow or other form of precipitation, which is not absorbed into the soil and results in surface water flow and drainage.

*Stream* means a linear surface water conveyance with either perennial or ephemeral base flow and (a) is regulated by the city as a Special Flood Hazard Area (SFHA), or (b) has been identified as a stream by the city, the United States Army Corps of Engineers or the Tennessee Department of Environment and Conservation.

*Structure* means anything that is constructed or erected such that its use requires a permanent location on or in the ground.

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

*Vegetated buffer* means a use-restricted vegetated area located along the perimeter of streams, ponds, lakes or wetlands which contains natural vegetation and grasses, or enhanced or restored vegetation.

*Water Quality BMP Manual* means a manual adopted by the city which contains policies, design standards and criteria, technical specifications and guidelines, maintenance guidelines, and other documentation to be used for implementation of this article.

*Water quality management facilities* means structures and constructed features designed to prevent or reduce the discharge of pollution in stormwater runoff from a development or redevelopment.

*Water quality management plan* means an engineering plan for the design of water quality management facilities and best management practices within a proposed development or redevelopment.

*Water quality volume reduction* means a decrease in the water quality volume for one or more areas of a proposed development which is obtained only for specific site development features or approaches that can reduce or eliminate the discharge of pollutants in stormwater runoff.

*Water quality volume reduction areas* means areas within the proposed development or redevelopment for which a water quality volume reduction can be obtained.

*Wetland* means an area that has been designated as such by the United States Army Corps of Engineers, the Tennessee Department of Environment and Conservation or the Natural Resources Conservation Service.

**Sec. 74-402. Administration.**

(a) The city manager shall administer the provisions of this article.

(b) The city manager is authorized to establish and adopt policies, criteria, specifications and standards for the proper implementation of this article in a Water Quality BMP Manual.

**Division 2. Requirements and Standards**

**Sec. 74-411. Applicability.**

(a) Prior to undertaking any development or redevelopment activity which is not exempt under Section 74-412, the owner shall submit to the city a water quality management plan and receive approval thereof.

(b) All federal and state permits that may be necessary for construction in and around streams and wetlands shall be obtained prior to submission of the water quality management plan.

**Sec. 74-412. Exemptions from plan submittal.**

Unless the city manager has determined that treatment of stormwater runoff for water quality is needed to comply with other applicable water quality regulations, the following shall not require submittal and approval of a water quality management plan:

(a) Developments or redevelopments that disturb less than one (1) acre of land unless such is part of a larger common plan that would disturb at least one (1) acre and the stormwater runoff therefrom is not treated for water quality in a manner that meets the requirements of this article;

(b) Gardens (at residential premises only), landscaping, repairs or maintenance work;

(c) Installation of utility service connections, unless such is in conjunction with the clearing, grading, excavating, transporting, or filling of a lot or lots for which a water quality management plan would otherwise be required;

(d) Installation, maintenance or repair of septic tank lines or drainage fields, unless such is carried in conjunction with the clearing, grading, excavating, transporting, or filling of a lot or lots for which a water quality management plan would otherwise be required;

(e) Farming and agricultural activities; and

(f) Emergency work to protect life, limb or property, and emergency repairs.

**Sec. 74-413. Requirements of plan.**

(a) The water quality management plan shall be prepared in accordance with the Water Quality BMP Manual. The city manager may authorize the use of other methods when he determines such will meet or exceed the standards provided in the Water Quality BMP Manual.

(b) A listing of any legally protected state or federally listed threatened or endangered species or critical habitat located in the area of land disturbing activities, and a description of the measures that will be used to protect them during and after grading and construction, shall be included in the water quality management plan.

(c) The city manager may require the water quality management plan to include any additional items and information which he deems necessary.

(d) The water quality management plan shall be prepared and stamped by an engineer or landscape architect licensed to practice in the State of Tennessee. Those portions of the plan that require hydraulic or hydrologic calculations and design shall be prepared and stamped by a professional engineer or landscape architect competent in civil and site design and licensed to practice in the State of Tennessee.

**Sec. 74-414. Adherence to plan.**

(a) Required facilities shall be designed, constructed and maintained in accordance with the approved water quality management plan.

(b) All grading and construction activity shall be conducted in accordance with the approved water quality management plan.

(c) All required facilities shall be located within a permanent water quality easement that is identified on a recorded instrument.

(d) There shall be no deviation from the approved water quality management plan in the absence of an amendment to the plan approved by the city manager.

(e) If there are material changes in the conditions of the development site after the water quality management plan is approved, the city manager may require that the plan be amended to address those conditions.

**Sec. 74-415. Covenant for permanent maintenance.**

(a) The owner shall provide a protective covenant for the permanent maintenance of the required facilities in accordance with the Water Quality BMP Manual which covenant shall be recorded.

(b) A right-of-way or easement for maintenance of the required facilities, having a minimum width of twenty (20) feet shall be provided in the protective covenant or by such other recorded instrument as may be approved by the city manager.

(c) The protective covenant shall be recorded promptly upon its approval by the city manager.

**Sec. 74-416. Waiver and modification.**

The city manager may waive or modify any of the requirements for the water quality management plan if adequate water quality treatment and channel protection are provided by a downstream or shared off-site water quality management facility, or if engineering studies determine that installing the required water quality management facilities or BMPs would actually cause adverse impact to water quality or cause increased channel erosion or downstream flooding, or for other good cause.

**Sec. 74-417. Stricter standard.**

Where the provisions of this article and another regulation conflict or overlap, the provision which is more restrictive or imposes higher standards or requirements shall control.

**Sec. 74-418. Performance bond.**

(a) The city manager may require a performance bond which guarantees satisfactory completion of work related to required facilities.

(b) The performance bond shall name the city as its beneficiary and shall be guaranteed in the form of a surety bond, cashier's check or letter of credit from an approved financial institution or insurance company.

The bond shall be in a form and an amount determined by the city manager based on submission of plans and estimated installation or potential maintenance and remediation expenses.

(c) The city manager may reject a surety on the bond based on past performance, ratings of the financial institution, or other appropriate reason.

(d) Prior to the release of a performance bond the following shall be submitted to and approved by the city manager:

(1) "As built" drawings, prepared by a licensed professional showing the required facilities and certifying they were constructed in accordance with the approved water quality management plan together with such other information as may be required by the city manager;

(2) A copy of the recorded covenant for permanent maintenance; and

(3) A copy of a recorded plat showing the location of all required facilities and associated easements;

**Sec. 74-419. Special pollution abatement.**

(a) A special pollution abatement plan shall be required for the following land uses, which are considered pollutant hotspots:

(1) Motor vehicle or equipment maintenance, fueling, washing or storage areas, including but not limited to, automotive dealerships, automotive repair shops and vehicle wash facilities;

(2) Recycling or salvage yard facilities;

(3) Restaurants, grocery stores and other food service facilities;

(4) Commercial facilities with outside animal housing areas including animal shelters, fish hatcheries, kennels, livestock stables, veterinary clinics and zoos; and

(5) Any other use which is identified by the city manager as a pollutant hotspot.

(b) A special pollution abatement plan may be required for land uses or activities that are determined by the city manager to have the potential to generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in storm water.

(c) The special pollution abatement plan shall be submitted as part of the water quality management plan and shall be in accordance with the Water Quality BMP Manual.

**Division 3. Compliance**

**Sec. 74-431. Maintenance and integrity.**

(a) The required facilities shall be maintained in accordance with the approved water quality management plan and the Water Quality BMP Manual.

(b) All maintenance shall be documented by the owner, and such documentation shall be maintained for at least three (3) years, and shall be available for inspection by the city manager upon request.

(c) There shall be no alteration, improvement or disturbance to a required facility without the approval of the city manager except as may be necessary to maintain its intended performance.

**Sec. 74-432. Inspections by the city.**

(a) The city manager shall have the right to enter onto private property for the purposes of conducting periodic inspections to verify compliance with the approved plan, to determine whether such a plan is necessary or to perform corrective actions.

(b) The city manager shall have the right to enter onto private property for the purposes of investigating a suspected violation of this article.

(c) Failure on the part of an owner or occupier to allow such inspection by the city manager shall be cause for the issuance of a stop work order, withholding of a certificate of occupancy or the assessment of civil penalties and damages.

**Sec. 74-333. Corrective actions.**

(a) The city manager may order corrective actions as may be necessary to properly maintain the required facilities.

(b) If the owner fails to perform the corrective actions ordered, the city manager may cause such corrective actions to be performed with the cost thereof to be charged to the owner. Should the owner fail to timely reimburse the city for such cost, then the city manager may cause a lien to be recorded against the property as provided in the covenant for protective maintenance, and he may take such other actions as he deems appropriate to collect the same.

**Sec. 74-334. Violations.**

(a) The violation of any provision of this article shall be subject to penalty as provided in section 1-8 of this code.

(b) In addition, any such violation shall be cause for the requiring for corrective action, issuance of a stop work order, withholding of a permit, withholding of a certificate of occupancy and the assessment of civil penalties and damages.

(c) Should the city manager determine that a violation of this ordinance has occurred, or that construction activity does not have a required plan or permit, or that work does not comply with an approved plan or permit, the city manager may issue a notice of violation to the owner, or to any other person or entity having responsibility for such work.

**Sec. 74-335. Civil penalties, damages and expenses; appeals.**

(a) Any person who violates any provision of this article may be assessed an administrative civil penalty by the city manager of not less than fifty dollars (\$50.00) and not more than five thousand dollars (\$5,000.00) for each day of violations in accordance with Tennessee Code Annotated Section §68-221-1106. Each day of violation shall constitute a separate violation.

(b) In assessing a civil penalty, the city manager may consider:

(1) The harm done to the public health or the environment;

(2) Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity;

- (3) The economic benefit gained by the violator;
  - (4) The amount of effort put forth by the violator to remedy the violation;
  - (5) Any unusual or extraordinary enforcement costs incurred by the city;
  - (6) Any amount of penalty established by ordinance or resolution for specific categories of violations; and
  - (7) Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.
- (c) In addition to the civil penalty, the city manager may assess:
- (1) all damages proximately caused by the violator to the city, which may include any reasonable expenses incurred in investigating violations of, and enforcing compliance with, this article, or any other actual damages caused by the violation; and
  - (2) the costs of the city's maintenance of stormwater facilities when the user of such facilities fails to maintain them as required by this ordinance.
- (d) The remedies provided in this section shall be cumulative, and the existence of any other remedy at law or in equity shall not be a defense to any such actions.
- (e) Any person aggrieved by the imposition of a civil penalty or damage assessment as provided by this section may appeal the penalty or damage assessment to the city council. The appeal shall be in writing and filed with the recorder within thirty (30) days after the civil penalty or damage assessment is served in any manner authorized by law. Upon receipt of an appeal, the city council shall hold a public hearing on the appeal within forty-five (45) days unless otherwise agreed by the aggrieved party. At least ten (10) days prior to the hearing, notice of the time, date, and location of the hearing shall be mailed to the aggrieved party at the address provided by the aggrieved party at the time of appeal. The decision of the city council shall be final, and the aggrieved party may appeal therefrom in the manner provided by Tennessee law. If an appeal of a civil penalty or damage assessment is not filed with the city recorder within thirty (30) days as provided herein, the violator shall be deemed to have consented to the civil penalty or damage assessment and it shall become final.

This Ordinance shall take effect seventeen (17) days from and after its final passage, the welfare of the city requiring it.

WHEREUPON, Mayor Shumaker declared the Ordinance adopted, affixed his signature and the date thereto, and directed that the same be recorded.

  
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David Shumaker, Mayor

Date: 3/4/08

Tara E. Musick  
Tara E. Musick, City Recorder

Approved as to Form and Legality  
this 23 day of January, 2008

Jack W. Hyder, Jr.  
Jack W. Hyder, Jr., City Attorney

Passed on 1st Reading: 2-5-08  
Passed on 2nd Reading: 3-4-08