

TITLE 14

ZONING AND LAND USE CONTROL¹

CHAPTER

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CHAPTER 1

ZONING ORDINANCE

SECTION

- 14-101. Land use to be governed by zoning ordinance.
14-102. Violation and penalty.

14-101. Land use to be governed by zoning ordinance. Land use within the Town of Smyrna shall be governed by the ordinance, titled "Zoning Ordinance, Smyrna, Tennessee," and any amendments thereto.

14-102. Violation and penalty. Violations of the zoning ordinance shall subject the offender to a penalty under the general penalty provision of this code. Each day a violation is allowed to continue shall constitute a separate offense.

¹The town's zoning ordinance and amendments thereto have not been included in this code. They are of record in the town clerk's office.

CHAPTER 2

PLANNING DEPARTMENT

SECTION

14-201. Department established; functions.

14-202. Town planner; appointment; responsibilities

14-201. Department established; functions. There is hereby created and established a planning department, which department shall provide planning services; administer the town's zoning, sign, and subdivision ordinances and/or regulations; direct long-range planning activities; provide mapping functions; administer codes enforcement and inspection division; and provide such other services as may be directed by the town manager. (Ord. #02-26, Aug. 2002, modified)

14-202. Town planner; appointment; responsibilities. The town manager shall appoint the planning manager, who shall serve as the head of the planning department and who shall report directly to the town manager. The planning manager shall direct the operations of the planning department and codes enforcement and inspection division and shall perform such other duties as may be assigned by the town manager, or as may be requested by the town council, planning commission and/or board of zoning appeals. (Ord. #02-26, Aug. 2002, modified)

CHAPTER 3

PLANNING COMMISSION¹

SECTION

- 14-301. Creation and membership
- 14-302. Organization, powers, functions and duties.
- 14-303. Continued existence.
- 14-304. Time and place of meetings.
- 14-305. Training and continuing education.

14-301. Creation and membership. Pursuant to the provisions of Tennessee Code Annotated, § 13-4-101, there is hereby created a Smyrna Municipal Planning Commission, hereinafter referred to as the planning commission. The planning commission shall consist of seven (7) members. One (1) of the members shall be the mayor or his or her designee and one (1) of the members shall be a member of the town council selected by the town council. The other five (5) members of the planning commission shall be appointed by the mayor. In making such appointments, the mayor shall strive to ensure that the racial composition of the planning commission is at least proportionately reflective of the Town of Smyrna's racial minority population. The terms of the five (5) members appointed by the mayor shall be for two (2) years each and shall be so arranged such that the term of at least one (1) member will expire each year. The terms of the mayor or his or her designee and the member selected by the town council shall run concurrently with their respective terms of office. Any vacancy in an appointed membership shall be filled for the unexpired term by the mayor, who shall also have the authority to remove any appointed member at his or her pleasure. The planning commission shall serve without compensation. (Ord. #02-28, Aug. 2002, modified)

14-302. Organization, powers, functions and duties. The planning commission shall be organized and shall carry out its powers, functions, and duties in accordance with all applicable provisions of Tennessee Code Annotated, title 13. (Ord. #02-28, Aug. 2002)

14-303. Continued existence. Notwithstanding anything herein to the contrary, the members of the planning commission, as such planning commission exists on the effective date of this chapter, shall continue to serve

¹Municipal code reference
Planning department: title 14, chapter 2.

for the remainder of their respective terms, or until their earlier resignation or removal. (Ord. #02-28, Aug. 2002)

14-304. Time and place of meetings. The commission shall meet on the 1st Thursday of each month at the town hall and at other such times and locations as approved and designated by the planning commission.

14-305. Training and continuing education. Each planning commissioner shall attend training and continuing education as provided in Tennessee Code Annotated, § 13-4-101(c).

CHAPTER 4**SIGN ORDINANCE****SECTION**

14-401. Signage to be governed by sign ordinance.

14-402. Violation and penalty.

14-401. Signage to be governed by sign ordinance. Signage within the Town of Smyrna shall be governed by the "Town of Smyrna Sign Ordinance" and any amendments thereto, as adopted and approved by ordinance of the town council.

14-402. Violation and penalty. Violations of the sign ordinance shall subject the offender to a penalty under the general penalty provision of this code. Each day a violation is allowed to continue shall constitute a separate offense.

CHAPTER 5

STORM WATER ADVISORY COMMITTEE¹**SECTION**

14-501. Creation and purpose.

14-502. Membership.

14-503. Powers and duties.

14-501. Creation and purpose. There is hereby created a storm water advisory committee of the Town of Smyrna. The purpose of the storm water advisory committee is to advise and assist the Town of Smyrna in implementing a program for reducing pollutants discharged into creeks, ditches, streams and rivers, and to advance specific elements of the program, including, but not limited to, the following: public education and outreach programs; identification of sources and causes of pollution from runoff and discharges; and development of appropriate ordinances and regulations for town council consideration to govern activities that contribute to stream pollution. (Ord. #03-29, Sept. 2003)

14-502. Membership. (1) Composition. The committee shall consist of seven (7) members. Members of the committee shall serve without pay and shall be appointed by a majority vote of the town council. In addition, the public works director, the town engineer, the town planner, and the storm water management coordinator shall serve as ex officio, non-voting members.

(2) Terms. The terms of the members shall be staggered to provide continuity and experience on the committee. The terms of the members of the committee shall be two (2) years each, beginning on the first day of April of the year in which each such member was appointed; provided; however, that the terms of the initial members of the committee shall be staggered in the following manner. The initial members of the committee shall serve the following terms:

<u>Name</u>	<u>Term</u>
Chuck Boyett	2 years
Kevin Rigsby	2 years
Steve Steele	2 years
Paul Johns	2 years
Jerome Dempsey	1 year

¹Municipal code reference

Storm water management: title 14, chapter 6.

<u>Name</u>	<u>Term</u>
Allen Trumbo	1 year
Ray Lee	1 year

In order to provide continuity and consistency with the appointment of members of other Town of Smyrna committees and commissions, the calculation of the terms of the initial members of the committee shall begin on April 1, 2003.

(3) Vacancies. Vacancies created by causes other than the expiration of a member's term shall be filled for the remainder of such member's term in the same manner as otherwise provided for in this chapter.

(4) Removal. Members of the committee may be removed by the town council for neglect of duty, conflict of interest, malfeasance in office, violation of the ethics ordinance, or other just cause, or for unexcused absence from more than three consecutive meetings or more than five non-consecutive meetings during the member's term of appointment. It is the duty of the Town of Smyrna staff representative to advise the town manager when removal is recommended or necessary based on the provisions herein. The decision of the town council will be final with no appeal. Committee members who are unable to attend regular meetings are expected to tender their resignation. (Ord. #03-29, Sept. 2003, modified)

14-503. Powers and duties. (1) Bylaws and regulations. The committee shall have the power to adopt and revise bylaws, rules, and regulations for the purpose of conducting the business of the committee. The committee, when it deems prudent, may also make recommendations to the town council for amending this chapter.

(2) Committee not empowered to obligate town or incur liability. Notwithstanding anything that may be herein contained or implied to the contrary, the committee shall not be empowered to obligate the town in any way or to expend or incur liability for any sum of money, it being the intent of the town council that the committee shall act in an advisory capacity only and shall serve only to make recommendations to the Town of Smyrna staff, planning commission and town council, as appropriate.

(3) Officers. As soon as practical after their appointment, the members of the committee shall meet and organize by electing a chairperson and a vice-chairperson. Thereafter, officers of the committee shall be elected by the members of the committee's first meeting in April of each year. Each officer shall serve until his or her successor has been elected and qualified. The chairperson will preside at all meetings, preserve order and decorum, enforce the rules and regulations of the committee, sign all letters and documents as authorized by the committee, and will otherwise perform the duties devolving upon a presiding officer. The chairperson may participate in all discussions and shall vote as a member of the committee. The vice-chairperson shall perform

the duties of the chairperson in his or her absence. Should the office of chairperson or vice-chairperson become vacant, the committee shall, at its next meeting, elect a successor for the remainder of the unexpired term of such office, from among its members. The town manager will provide a secretary from staff who will assume charge of all records of the committee and who will keep accurate and complete minutes of all meetings thereof.

(4) Meetings. The committee will determine a regular meeting schedule, provided that at least one (1) meeting of the committee be held in April of each year. The chairperson and/or town manager shall have the authority to call a special meeting of the committee, provided that sufficient public notice is given. All meetings will be open to the public and will be conducted at town hall. Accurate minutes will be kept of all meetings and shall be made available to the public.

(5) Public hearings. The committee is hereby authorized and empowered to schedule and conduct public hearings.

(6) Reports. The committee shall from time to time, and at least annually, submit written reports to the town council, furnishing information regarding the work and activities of the committee. (Ord. #03-29, Sept. 2003, modified)

CHAPTER 6

STORM WATER MANAGEMENT ORDINANCE¹

SECTION

- 14-601. Title and purpose.
- 14-602. Jurisdiction.
- 14-603. Definitions.
- 14-604. Land disturbance permits.
- 14-605. Waivers.
- 14-606. Storm water system design and management standards.
- 14-607. Post construction.
- 14-608. Existing locations and developments.
- 14-609. Illicit discharges.
- 14-610. Enforcement.
- 14-611. Penalties.
- 14-612. Appeals.
- 14-613. Amendments.

14-601. Title and purpose. This ordinance shall be known as the "Storm Water Management Ordinance" for the Town of Smyrna, Tennessee.

(1) Introduction. (a) Inadequate management of storm water runoff from development in a watershed increases flood flows and velocities, erodes and/or silts stream channels altering the integrity and profile of the stream regime, pollutes water, overloads existing drainage facilities with storm water and sediment, undermines floodplain management in downstream communities, reduces groundwater recharge, harms, possibly eliminating, natural fauna and flora, and threatens public health and safety. More specifically, surface water runoff can carry pollutants, including the leading pollutant, sediment, into receiving waters. The potential impacts of these pollutants and the accompanying higher velocities and greater volumes include:

(i) Changing natural ecosystems through sediment and pollutant deposits as well as erosion of stream banks that affect the quantity and quality of water flowing, the destruction of habitats, and the loss of plant and animal life;

(ii) Posing significant health risks through increased bacteria;

¹Municipal code reference

Storm water advisory committee: title 14, chapter 5.

(iii) Accelerating algal growth to the extent of contamination of receiving waters by adding excessive nutrient loads;

(iv) Increasing metal deposits and total suspended solids, thus creating adverse toxicity for aquatic life;

(v) Reducing oxygen levels because of oil, grease, and organic matter;

(vi) Affecting animal and plant life adversely, due to changing temperatures, thus decreasing dissolved oxygen levels of receiving waters.

(b) Uncontrolled storm water can increase the incidence of flooding and the level of floods which occur, altering the integrity and profile of stream regime, endangering roads, public and private property, and human life. Altered land surfaces can change runoff rate and volume as seen in the following:

(i) Erosion and slumping of stream banks and undercutting roots;

(ii) Increased erosion rates; and

(iii) Uniform and shallow streambeds, providing less varied aquatic habitats.

(c) The adverse water quality and quantity consequences described above may result in substantial economic and/or human losses. The potential losses include, but are not limited to, increased wastewater and drinking water treatment costs, diminished property values, increased flood damages and insurance rates, increased stream bank remediation as well as state and federal fines associated with water quality violations. Many future problems can be avoided through proper storm water management, whereby a comprehensive and reasonable program of regulations is fundamental to the public health, safety, and welfare and to the protection of the citizenry and environment.

(2) Purpose. The purpose of this storm water management ordinance is to:

(a) Protect, maintain, and enhance the environment of the Town of Smyrna and the public health, safety, and the general welfare of the citizens of the town, by controlling discharges of pollutants to the Town of Smyrna's storm water system and to maintain and improve the quality of the receiving waters into which the storm water outfalls flow, including, without limitation, lakes, rivers, streams, ponds, wetlands, and groundwater of the Town of Smyrna;

(b) Enable the Town of Smyrna to comply with the National Pollutant Discharge Elimination System (NPDES) Permit and applicable regulations, 40 CFR Section 122.26 for storm water discharges; and

(c) Allow the Town of Smyrna to exercise the powers granted in Tennessee Code Annotated, § 68-221-1105, which provides that,

among other powers municipalities have with respect to storm water facilities, is the power by ordinance or resolution to:

(i) Exercise general regulation over the planning, location, construction, and operation and maintenance of storm water facilities in the Town of Smyrna, whether or not owned and operated by the Town of Smyrna government;

(ii) Adopt any rules and regulations deemed necessary to accomplish the purposes of this statute, including the adoption of a system of fees for services and permits;

(iii) Establish standards to regulate the quantity of storm water discharged and to regulate storm water contaminants as may be necessary to protect water quality;

(iv) Review and approve plans and plats for storm water management in proposed subdivisions or commercial developments;

(v) Issue permits for storm water discharges, or for the construction, alteration, extension, or repair of storm water facilities;

(vi) Suspend or revoke permits when it is decided that the permittee has violated any applicable ordinance, resolution, or condition;

(vii) Regulate and prohibit discharges into storm water facilities of sanitary, industrial, or commercial sewage or waters that have otherwise been contaminated; and

(viii) Expend funds to remediate or mitigate the detrimental effects of contaminated land or other sources of storm water contamination, whether public or private.

(3) Administering entity. The Town of Smyrna engineering department, under the direction and supervision of the town manager, shall administer the provisions of this storm water management ordinance.

(4) Fees. In order to fund the costs of stormwater management and of administering the provisions of this ordinance, each applicant for land disturbance permit, at the time of submitting such application therefore, shall pay a fee in the amount established by a fee schedule adopted as a part of the budget ordinance. The Town Council of the Town of Smyrna specifically reserves the right to amend this ordinance from time to time to change the amounts and/or calculation of such fees and/or to implement a different system of fees and charges to fund the costs of stormwater management and of administering the provisions of this ordinance. Notwithstanding anything herein to the contrary, the fees established by this subsection shall not become effective until sixty (60) days following the effective date of Ord. #05-07. (Ord. #04-48, Jan. 2005, as amended by Ord #05-07, March 2005, and Ord. #05-19, May 2005)

14-602. Jurisdiction. The storm water management ordinance shall govern all properties within the corporate limits of the Town of Smyrna. (Ord. #04-48, Jan. 2005)

14-603. Definitions. For the purpose of this section, the following definitions shall apply: Words used in the singular shall include the plural, and the plural shall include the singular; words used in the present tense shall include the future tense. The word "shall" is mandatory and not discretionary. The word "may" is permissive. Words not defined in this section shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary.

(1) "Active construction site." Any site that has a permit for grading or other related activities (even if actual construction is not proceeding) and any site where construction is occurring regardless of permits acquired.

(2) "Appeal." A request for a review of the Town of Smyrna Engineer's interpretation of any provisions of these regulations.

(3) "Base flood." The flood having a one percent chance of being equaled or exceeded in any given year. While this statistical event may occur more frequently, it may also be known as the "100-year flood event."

(4) "Blue line streams." Streams that are represented on the United States Department of the Interior, Geological Survey (USGS) 1:24,000 topographic quadrangle maps.

(5) "Best management practices" or "BMPs." The physical, structural, and/or managerial practices that, when used singly or in combination, prevent or reduce pollution of water, that have been approved by the Town of Smyrna, and that have been incorporated by reference into this ordinance as if fully set out therein.¹

(6) "BMP treatment train." A technique for progressively selecting various storm water management practices to address water quality, by which groups of practices may be used to achieve a treatment goal while optimizing effectiveness, maintenance needs, and space.

(7) "Borrow pit." An excavated area where material has been dug for use as fill at another location.

(8) "Bridge." A man-made conveyance over storm water flows.

(9) "Building." Any structure built for support, shelter, or enclosure for any occupancy or storage.

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

(11) "Community water." Any rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wetlands, wells, and other bodies

¹See § 14-606(1) for recommended BMP manual.

of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of the Town of Smyrna.

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

(13) "Culvert." A man-made conveyance of storm water flows, including a pipe or other constructed conveyance .

(14) "Critical design-storm period." Refers to the time in which detention volume must be controlled with the pre-development flow volume as a maximum limit.

(15) "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.

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

(17) "Discharge." Dispose, deposit, spill, pour, inject, seep, dump, leak, or place by any means, or that which is disposed, deposited, spilled, poured, injected, seeped, dumped, leaked, or placed by any means including any direct or indirect entry of any solid or liquid matter into the municipal separate storm sewer system.

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

(19) "Erosion." The removal of soil particles by the action of water, wind, ice, gravity, or other geological agents, whether naturally occurring or acting in conjunction with or promoted by man-made activities or effects.

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

(21) "Hotspot"("priority area"). An area where land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in storm water.

(22) "Illicit connections." Illegal and/or unauthorized connections to the Town of Smyrna separate storm water system whether or not such connections result in discharges into that system.

(23) "Illicit discharge." Any discharge to the municipal separate storm sewer system that is not composed entirely of storm water and not specifically exempted under §4(3).

(24) "Land disturbing activity." Any activity on property that results in a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, development, re-development, demolition, construction, reconstruction, grading, filling, and excavation. Land disturbing activity does not include clearing and grubbing, unless such clearing and grubbing is within

fifty (50) feet of a drainage way, wetland, stream bank, or body of water and in such instance prior to approval from the department of public works is required.

(25) "Maintenance." Any activity that is necessary to keep a storm water facility in good working order so as to function as designed. Maintenance shall include complete reconstruction of a storm water 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 storm water facility.

(26) "Maintenance agreement." A document recorded in the land records that acts as a property deed restriction, and which provides for long-term maintenance of storm water management practices and facilities.

(27) "Municipal Separate Storm Sewer System (MS4)." The conveyances owned or operated by the Town of Smyrna for the collection and transportation of storm water, including the roads and streets and their drainage systems, catch basins, curbs, gutters, ditches, manmade channels, and storm drains.

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

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

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

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

(33) "Person." Any and all persons, natural or artificial, including any individual, firm or association, and any county or private corporation organized or existing under the laws of this or any other state or country.

(34) "Priority area"--See "Hot spot." (§ 14-603(21) of this chapter).

(35) "Runoff." That portion of the precipitation on a drainage area that is discharged from the area into the Town of Smyrna separate storm water system.

(36) "Sediment." Solid material, both mineral and organic, that is in suspension, or in bed load, is being transported, or has been moved from its site of origin by water, wind, ice, or gravity and has come to rest on the earth's surface either above or below sea level.

(37) "Sedimentation." The action of soil particles suspended in storm water that settle in streambeds and can disrupt the natural flow of the stream and suffocate biota.

(38) "Soils report." A study of soils on a subject property with the primary purpose of characterizing and describing the soils. The soils report shall be prepared by a qualified soils engineer or scientist, who shall be directly

involved in the soil characterization either by performing the investigation or by directly supervising employees.

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

(40) "Storm water." Storm water runoff, snow melt runoff, surface runoff, infiltration, and drainage.

(41) "Storm water management." The programs to maintain quality and quantity of storm water runoff to pre-development levels.

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

(43) "Storm water management plan." The set of drawings and other documents that comprise all the information and specifications for the programs, drainage systems, structures, BMPs, concepts, and techniques intended to maintain or restore quality and quantity of storm water runoff to pre-development levels.

(44) "Storm water utility." The storm water utility created by ordinance of the Town of Smyrna or other entity designated by the Town of Smyrna, to administer the storm water management ordinance, and other storm water rules and regulations adopted by the Town of Smyrna.

(45) "Structural BMPs." Devices that are constructed to provide control of storm water runoff.

(46) "Surface water." Waters upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other watercourses, lakes, wetlands, marshes, and sinkholes.

(47) "TDEC." The Tennessee Department of Environment and Conservation .

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

(49) "Watershed." All land area that contributes runoff to a particular point in a stream. (Ord. #04-48, Jan. 2005, modified)

14-604. Land disturbance permits. (1) Requirements. (a) Every person shall be required to obtain a land disturbance permit from the State of Tennessee which will be utilized as the permit required by the Town of Smyrna Engineering Department in the following cases:

(i) Land disturbing activity disturbs one (1) or more acres of land, unless exempted under Section 4(3);

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

(iii) Land disturbing activity of less than one (1) acre of land, if, at the discretion of the Town of Smyrna engineering department, such activity poses a unique threat to water, public health, or safety; and

(iv) The creation and use of borrow pits.

(2) Wetlands permit. No grading or building permit shall be issued until the applicant has obtained the appropriate wetlands permits from the U.S. Army Corps of Engineers and TDEC.

(3) Aquatic resource alteration program permit. No grading or building permit shall be issued until the applicant has obtained the appropriate Aquatic Resource Alteration Program (ARAP) permit from TDEC.

(4) Grading or building permits. No grading or building permit shall be issued until the applicant has obtained a land disturbance permit where the same is required by this ordinance.

(5) Exemptions. The following activities are exempt from the permit requirement:

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

(b) Existing nursery and agricultural operations conducted as a permitted main or accessory use;

(c) Any logging or farming activity that complies with conservation practices or timber management practices prepared or approved by the Rutherford County Soil Conservation District or University of Tennessee Agricultural Extension Service;

(d) Additions or modifications to existing single family structures.

(6) Application for land disturbance permit. (a) Each application shall include the following:

(i) Name of applicant;

(ii) Business or residence address of applicant;

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

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

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

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

(vii) Where the property includes a sinkhole, the applicant shall obtain the appropriate permits from TDEC, Division of Water Supply;

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

(b) Each application shall be accompanied by:

(i) An erosion and sediment control plan as described in § 14-606(5); and

(ii) A storm water management plan as described in § 14-606(4), providing for storm water management during the land disturbing activity and after the activity has been completed.

(7) Review and approval of application. (a) The Town of Smyrna Engineering Department will review each application for a land disturbance permit to determine its conformance with the provisions of this ordinance. Within fourteen (14) working days after receiving an application, the engineering department shall provide one of the following responses in writing:

(i) Approval of the permit application;

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

(iii) Denial of the permit application, indicating the reason(s).

(b) If the engineering department has granted conditional approval of the permit, the applicant shall submit a revised plan that conforms to the conditions established by the department. However, the applicant shall be allowed to proceed with his land disturbing activity so long as it conforms to conditions established by the department. The revised plan shall be submitted to the engineering department within ten (10) working days from the date of conditional approval.

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

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

(9) Notice of construction. The applicant must notify the Town of Smyrna Engineering Department in writing ten (10) working days in advance

of the commencement of construction. The department shall conduct regular inspections of the storm water management system construction. All inspections shall be documented and written reports prepared that contain the following information:

- (a) The date and location of the inspection;
 - (b) Whether construction is in compliance with the approved storm water management plan;
 - (c) Variations from the approved construction specifications;
- and
- (d) Any violations that may exist.

(10) Performance agreement/letter of credit. (a) The Town of Smyrna Engineering Department may, at its discretion, require the submittal of a performance agreement/letter of credit prior to issuance of a permit in order to ensure that the storm water practices are installed by the permit holder as required by the approved storm water management plan. The amount of the installation performance agreement/letter of credit shall be the total estimated construction cost of the structural BMPs approved under the permit plus any reasonably foreseeable additional related costs, e.g., for damages or enforcement. The performance agreement/letter of credit shall contain forfeiture provisions for failure to complete work specified in the storm water management plan. The applicant shall provide an itemized construction cost estimate complete with unit prices, which shall be subject to acceptance, amendment, or rejection by the engineering department. Alternatively, the engineering department shall have the right to calculate the construction cost estimates.

(b) The performance agreement/letter of credit shall be released in full only upon submission of as-built plans and written certification by a registered professional engineer licensed to practice in the State of Tennessee that the structural BMP has been installed in accordance with the approved plan and other applicable provisions of this ordinance. The Town of Smyrna Engineering Department will make a final inspection of the Structural BMP to ensure that it is in compliance with the approved plan and the provisions of this ordinance. Provisions for a partial pro-rata reduction of the performance agreement/letter of credit based on the completion of various development stages can be made at the discretion of the engineering department. (Ord. #04-48, Jan. 2005)

14-605. Waivers. (1) General. Every applicant shall provide for storm water management as required by this ordinance, unless a written request is filed to waive this requirement. Requests to waive these requirements shall be submitted to the Town of Smyrna Engineering Department for approval.

(2) Conditions for waiver. The minimum requirements for storm water management may be waived in whole or in part upon written request of the applicant, provided that at least one of the following conditions applies:

(a) It can be demonstrated that the proposed development is not likely to impair attainment of the objectives of this ordinance;

(b) Alternative minimum requirements for on-site management of storm water discharges have been established in a storm water management plan that has been approved by the engineering department; or

(c) Provisions are made to manage storm water by an off-site facility. The off-site facility shall be in place and designed to provide the level of storm water control that is equal to or greater than that which would be afforded by on-site practices. Further, the facility must be operated and maintained by an entity that is legally obligated to continue the operation and maintenance of the facility.

(3) Downstream damage prohibited. In order to receive a waiver, the applicant shall demonstrate, to the satisfaction of the engineering department, the waiver will not lead to any of the following conditions downstream:

(a) Deterioration of existing culverts, bridges, dams, and other structures;

(b) Degradation of biological functions or habitat;

(c) Accelerated stream bank or streambed erosion or siltation;

or

(d) Increased threat of flood damage to public health, life, or property.

(4) Land disturbance permit not issued where waiver requested. No land disturbance permit shall be issued where a waiver has been requested until the waiver is granted. If no waiver is granted, the plans shall be resubmitted with a storm water management plan. (Ord. #04-48, Jan. 2005)

14-606. Storm water system design and management standards. (1) Storm water design or BMP manual. (a) Adoption. The Town of Smyrna adopts as its storm water design and BMP manual the following publications (as such publications may hereafter be amended and/or restated from time to time), which are incorporated by reference in this ordinance as is fully set out herein:

(i) Town of Smyrna Subdivision Regulations (as adopted and/or amended from time to time by the Smyrna Municipal Planning Commission).

(ii) TDEC Erosion and Sediment Control Manual.

(b) These manuals include policies for dry detention basin design and water quality buffer zones and a list of acceptable BMPs, including the specific design performance criteria and operation and maintenance requirements for each storm water practice. The Storm Water Design and BMP Manual may be updated and expanded from time to time, at the discretion of the Smyrna Town Council, upon the recommendation of the Town of Smyrna Engineering Department, based

on improvements in engineering, science, monitoring, and local maintenance experience. Storm water facilities that are designed, constructed, and maintained in accordance with these BMP criteria will be presumed to meet the minimum water quality performance standards.

(2) General performance criteria for storm water management. Unless granted a waiver or judged by the engineering department to be exempt, the following performance criteria shall be addressed for storm water management at all sites:

(a) All site designs shall control the peak flow rates of storm water discharge associated with design storms specified in this ordinance or in the Town of Smyrna Subdivision Regulations and reduce the generation of post-construction storm water runoff to a minimum of pre-construction levels. These practices should seek to utilize pervious areas for storm water treatment and to infiltrate storm water runoff from driveways, sidewalks, rooftops, parking lots, and landscaped areas to the maximum extent practical to provide treatment for both water quality and quantity;

(b) To protect stream channels from degradation, specific channel protection criteria shall be provided as prescribed in the BMP manual;

(c) Storm water discharges to critical areas with sensitive resources (i.e., cold water fisheries, shellfish beds, swimming beaches, recharge areas, and water supply reservoirs and intakes) may be subject to additional performance criteria, or may need to utilize or restrict certain storm water management practices;

(d) Storm water discharges from hot spots may require the application of specific Structural BMPs and pollution prevention practice;

(e) Prior to or during the site design process, applicants for land disturbance permits shall consult with the engineering department to determine if they are subject to additional storm water design requirements; and

(f) The calculations for determining peak flows as found in the Town of Smyrna Subdivision Regulations shall be used for sizing all storm water facilities.

(3) Minimum control requirements. (a) Storm water designs shall meet the multi-stage storm frequency storage requirements as identified in the Town of Smyrna Subdivision Regulations unless the engineering department has granted the applicant a full or partial waiver for a particular regulation under § 14-605.

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

(4) Storm water management plan requirements. The storm water management plan shall include sufficient information to allow the engineering department to evaluate the environmental characteristics of the project site, the potential impacts of all proposed development of the site, both present and future, on the water resources, and the effectiveness and acceptability of the measures proposed for managing storm water generated at the project site. To accomplish this goal the storm water management plan shall include the following:

(a) Topographic Base Map: A 1" = 200' topographic base map of the site which extends a minimum of 500 feet beyond the limits of the proposed development and indicates:

(i) Existing surface water drainage including streams, ponds, culverts, ditches, sinkholes, wetlands; and the type, size, elevation, etc., of nearest upstream and downstream drainage structures;

(ii) Current land use, including all existing structures, locations of utilities, roads, and easements;

(iii) All other existing significant natural and artificial features;

(iv) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses; drainage patterns; locations of utilities, roads and easements; and the limits of clearing and grading;

(v) Proposed Structural BMPs; and

(vi) A written description of the site plan and justification of proposed changes in natural conditions may also be required.

(b) Calculations. Hydrologic and hydraulic design calculations for the predevelopment and post-development conditions for the design storms specified in the Town of Smyrna Subdivision Regulations. These calculations shall show that the proposed storm water management measures are capable of controlling runoff from the site in compliance with this ordinance and the guidelines of the Town of Smyrna Subdivision Regulations. Such calculations shall include:

(i) A description of the design storm frequency, duration, and intensity where applicable;

(ii) Time of concentration;

(iii) Soil curve numbers or runoff coefficients, including assumed soil moisture conditions;

(iv) Peak runoff rates and total runoff volumes for each watershed area;

(v) Infiltration rates, where applicable;

(vi) Culvert, storm water sewer, ditch, and/or other storm water conveyance capacities;

(vii) Flow velocities;

(viii) Data on the increase in rate and volume of runoff for the design storms referenced in the Town of Smyrna Subdivision Regulations; and

(ix) Documentation of sources for all computation methods and field test results.

(c) Soils Information. If a storm water management control measure depends on the hydrologic properties of soils (e.g., infiltration basins), then a soils report shall be submitted. The soils report shall be based on on-site boring logs or soil pit profiles and soil survey reports. The number and location of required soil borings or soil pits shall be determined based on what is needed to determine the suitability and distribution of soil types present at the location of the control measure.

(d) Maintenance and repair plan. The design and planning of all storm water management facilities shall include detailed maintenance and repair procedures to ensure their continued performance. These plans will identify the parts or components of a storm water management facility that need to be maintained and the equipment and skills or training necessary. Provisions for the periodic review and evaluation of the effectiveness of the maintenance program and the need for revisions or additional maintenance procedures shall be included in the plan. A permanent elevation benchmark shall be identified in the plans to assist in the inspection of the facility.

(e) Landscaping plan. The applicant shall present a detailed plan for management of vegetation at the site after construction is finished, including who will be responsible for the maintenance of vegetation at the site and what practices will be employed to ensure that adequate vegetative cover is preserved. Where it is required by the BMP, this plan must be prepared by a registered landscape architect licensed in the State of Tennessee.

(f) Maintenance easements. The applicant shall ensure access to the site for the purpose of inspection and repair by securing all the maintenance easements needed. These easements shall be binding on the current property owner and all subsequent owners of the property and shall be properly recorded with the Rutherford County Register of Deeds in perpetuity.

(g) Maintenance Agreement. (i) The owner of property to be served by an on-site storm water management facility shall execute an inspection and maintenance agreement that shall operate as a deed restriction binding on the current property owner and all subsequent property owners.

(ii) The maintenance agreement shall:

(A) Assign responsibility for the maintenance and repair of the storm water facility to the owner of the

property upon which the facility is located and be recorded as such on the plat for the property by appropriate notation;

(B) Provide for a periodic inspection by the property owner for the purpose of documenting maintenance and repair needs and ensure compliance with the purpose and requirements of this ordinance. The property owner will arrange for this inspection to be conducted by a person certified by TDEC through the Tennessee Erosion Prevention and Sediment Control Training and Certification Program who will submit a sealed report of the inspection to the engineering department. It shall also grant permission to the Town of Smyrna to enter the property at reasonable times and to inspect the storm water facility to ensure that it is being properly maintained;

(C) Provide that the minimum maintenance and repair needs include, but are not limited to: the removal of silt, litter, and other debris, the cutting of grass, grass cuttings and vegetation removal, and the replacement of landscape vegetation, in detention and retention basins, and inlets and drainage pipes and any other storm water facilities. It shall also provide that the property owner shall be responsible for additional maintenance and repair needs consistent with the needs and standards outlined in the BMP manual;

(D) Provide that maintenance needs shall be addressed in a timely manner, on a schedule to be determined by the engineering department; and

(E) Provide that if the property is not maintained or repaired within the prescribed schedule, the engineering department shall perform the maintenance and repair at its expense, and bill the same to the property owner. The maintenance agreement shall also provide that the engineering department's cost of performing the maintenance shall be a lien against the property.

(iii) The Town of Smyrna shall have the discretion to accept the dedication of any existing or future storm water management facility, provided such facility meets the requirements of this ordinance, and includes adequate and perpetual access and sufficient areas, by easement or otherwise, for inspection and regular maintenance. Any storm water facility accepted by the Town of Smyrna must also meet the town's construction standards and any other standards and specifications that apply to the particular storm water facility in question.

(h) Erosion and sediment control plans. The applicant shall prepare an erosion and sediment control plan for all construction activities that complies with the following, § 14-606(5).

(5) Erosion and sediment control plan requirements. The erosion and sediment control plan shall accurately describe the potential for soil erosion and sedimentation problems resulting from land disturbing activity and shall explain and illustrate the measures that are to be taken to control these problems. The length and complexity of the plan is to be commensurate with the size of the project, severity of the site condition, and potential for offsite damage. A registered professional engineer licensed in the State of Tennessee shall seal the plan. The plan shall also conform to the requirements found in the BMP manual, and shall include, at a minimum, the following:

(a) Project description. Briefly describe the intended project and proposed land disturbing activity, including number of units and structures to be constructed and infrastructure required;

(b) A topographic map with contour intervals of five (5) feet or less showing present conditions and proposed contours resulting from land disturbing activity;

(c) All existing drainage ways, including intermittent and wet weather, or sinkholes. Include any designated floodways or flood plains;

(d) A general description of existing land cover. Individual trees and shrubs do not need to be identified;

(e) Stands of existing trees as they are to be preserved upon project completion, specifying their general location on the property. Differentiation shall be made between existing trees to be preserved, trees to be removed, and proposed planted trees. Tree protection measures must be identified, and the diameter of the area involved shall also be identified on the plan and shown to scale. Information shall be supplied concerning the proposed destruction of exceptional and historic trees in setbacks and buffer strips, where they exist. Complete landscape plans may be submitted separately. The plan shall include the order of implementation for tree protection efforts;

(f) Approximate limits of proposed clearing, grading, and filling;

(g) Approximate flows of existing storm water leaving any portion of the site;

(h) A general description of existing soil types and characteristics and any anticipated soil erosion and sedimentation problems resulting from existing characteristics;

(i) Location, size, and layout of proposed storm water and sedimentation control improvements;

(j) Proposed drainage network;

(k) Proposed drain tile or waterway sizes;

(l) Approximate flows leaving site after construction and incorporating water runoff mitigation measures. The evaluation shall

include projected effects on property adjoining the site and on existing drainage facilities and systems. The plan shall address the adequacy of outfalls from the development: when water is concentrated, what is the capacity of waterways, if any, accepting storm water offsite; and what measures, including infiltration, sheeting into buffers, etc., will be used to prevent the scouring of waterways and drainage areas off-site, etc.;

(m) The projected sequence of work represented by the grading, drainage, and erosion and sedimentation control plans as related to other major items of construction, beginning with the initiation of excavation and including the construction of any sediment basins, detention or retention facilities, or any other structural BMPs;

(n) Specific remediation measures to prevent erosion and sedimentation runoff. Plans shall include detailed drawings of all control measures used; stabilization measures including vegetation and non-vegetation measures, both temporary and permanent, shall be detailed. Detailed construction notes and a maintenance schedule shall be included for all control measures in the plan;

(o) Specific details for: the construction of rock pads, wash down pads, and settling basins for controlling erosion; road access points; eliminating or keeping soil, sediment, and debris on streets and public ways at a level acceptable to the engineering department. Soil, sediment, and debris brought onto streets and public ways shall be removed by the end of the workday by machine, broom, or shovel to the satisfaction of the engineering department. Failure to remove the sediment, soil, or debris shall be deemed a violation of this ordinance;

(p) Proposed structures, location (to the extent possible) and identification of any proposed additional buildings, structures, or development on the site; and

(q) A description of on-site measures to be taken to recharge surface water into the groundwater system through infiltration. (Ord. #04-48, Jan. 2005)

14-607. Post construction. (1) As-built plans. All applicants are required to submit actual as-built plans for any structures located on-site after final construction is completed. The plan shall show the final design specifications for all storm water management facilities and shall be sealed by a registered professional engineer licensed to practice in the State of Tennessee. A final inspection by the engineering department is required before any performance agreement/letter of credit will be released. The engineering department shall have the discretion to adopt provisions for a partial pro-rata reduction of the performance agreement/letter of credit on the completion of various stages of development. In addition, occupation permits shall not be granted until corrections to all BMPs have been made and accepted by the engineering department.

(2) Landscaping and stabilization requirements. (a) Any area of land from which the natural vegetative cover has been either partially or wholly cleared by development activities shall be revegetated according to a schedule approved by the Town of Smyrna Engineering Department. The following criteria shall apply to revegetation efforts:

(i) Reseeding shall be done with an annual or perennial cover crop accompanied by placement of straw mulch or its equivalent of sufficient coverage to control erosion until such time as the cover crop is established;

(ii) Placement of straw mulch or its equivalent of sufficient coverage to control erosion until the plantings are established and are capable of controlling erosion shall accompany replanting with native woody and herbaceous vegetation;

(iii) Any area of re-vegetation must exhibit survival of a minimum of seventy-five percent (75%) of the cover crop throughout the year immediately following re-vegetation or exhibit no erosion based on engineering department field review. Re-vegetation shall be repeated in successive years until the aforementioned criteria are achieved. If erosion should occur anywhere on-site it should be repaired to the satisfaction of the engineering department.

(b) In addition to the above requirements, a landscaping plan shall be submitted with the final design describing the vegetative stabilization and management techniques to be used at a site after construction is completed. This plan will explain not only how the site will be stabilized after construction, but who will be responsible for the maintenance of vegetation at the site and what practices will be employed to ensure that adequate vegetative cover is preserved.

(3) Inspection of storm water management facilities. Periodic inspections of facilities shall be performed as provided for in § 14-506(4)(g)(ii)(B) of this chapter.

(4) Records of installation and maintenance activities. Parties responsible for the operation and maintenance of a storm water management facility shall make records of the installation of the storm water facility, and of all maintenance and repairs to the facility, and shall retain the records for at least five (5) years.

(5) Failure to meet or maintain design or maintenance standards. If a responsible party fails or refuses to meet the design or maintenance standards required for storm water facilities under this ordinance, the engineering department, after reasonable notice, may correct a violation of the design standards or maintenance needs by performing all necessary work to place the facility in proper working condition. In the event that the storm water management facility becomes a danger to public safety or public health, the engineering department shall notify in writing the party responsible for

maintenance of the storm water management facility. Upon receipt of that notice the responsible party shall have twenty-one (21) calendar days to effect maintenance and repair of the facility in an approved manner. In the event that corrective action is not undertaken within that time, the engineering department may take necessary corrective action. The cost of any action by the engineering department under this section shall be charged to the responsible party. (Ord. #04-48, Jan. 2005)

14-608. Existing locations and developments. (1) Requirements for existing locations and developments. The following requirements shall apply to all locations and development at which land disturbing activities have occurred previous to the enactment of this ordinance:

(a) Denuded areas shall be vegetated or covered under the standards and guidelines specified in the BMP manual and on a schedule acceptable to the engineering department;

(b) Cuts and slopes shall be properly covered with appropriate vegetation and/or retaining walls constructed;

(c) Drainage ways shall be properly covered in vegetation or secured with rip-rap, channel lining, etc., to prevent erosion;

(d) Trash, junk, rubbish, etc. shall be cleared from drainage ways; and

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

(i) Ponds:

(A) Detention pond;

(B) Extended detention pond;

(C) Wet pond; and

(D) Alternative storage measures.

(ii) Constructed wetlands.

(iii) Infiltration systems:

(A) Infiltration/percolation trench;

(B) Infiltration basin;

(C) Drainage (recharge) well; and

(D) Porous pavement.

(iv) Filtering systems:

(A) Catch basin inserts/media filter;

(B) Sand filter;

(C) Filter/absorption bed; and

(D) Filter and buffer strips.

(v) Open channel:

(A) Swale.

(2) Requirements for existing problem locations. Upon approval by the town manager, the engineering department shall, in writing, notify the owners

of existing locations and developments of specific drainage, erosion, or sediment problem affecting such locations and developments, and the specific actions required to correct those problems. The notice shall also specify a reasonable time for compliance.

(3) Inspection of existing facilities. The engineering department may, to the extent authorized by state and federal law, establish inspection programs to verify that all storm water management facilities, including those built before as well as after the adoption of this ordinance, are functioning within design limits. These inspection programs may be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of the Town of Smyrna's NPDES storm water permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to:

- (a) Reviewing maintenance and repair records;
- (b) Sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and
- (c) Evaluating the condition of drainage control facilities and other BMPs.

(4) Corrections of problems subject to appeal. Corrective measures imposed by the Town of Smyrna Engineering Department under this section are subject to appeal under § 14-612 of this chapter. (Ord. #04-48, Jan. 2005)

14-609. Illicit discharges. (1) Scope. This section shall apply to all water generated on developed or undeveloped land entering the Town of Smyrna's separate storm sewer system.

(2) Prohibition of illicit discharges. No person shall introduce or cause to be introduced into the Town of Smyrna separate storm sewer system any discharge that is not composed entirely of storm water. The commencement, conduct, or continuance of any non-storm water discharge to the Town of Smyrna's separate storm sewer system is prohibited except as described as follows:

- (a) Uncontaminated discharges from the following sources:
 - (i) Water line flushing or other potable water sources;
 - (ii) Landscape irrigation or lawn watering with potable water;
 - (iii) Diverted stream flows;
 - (iv) Rising groundwater; i.e. storm drain infiltration
 - (v) Pumped groundwater;
 - (vi) Foundation or footing drains;

- (vii) Crawl space pumps;
- (viii) Air conditioning condensation;
- (ix) Springs;
- (x) Non-commercial washing of vehicles;
- (xi) Natural riparian habitat or wetland flows;
- (xii) Swimming pools [if dechlorinated - typically less than one part per million (ppm) chlorine];
- (xiii) Fire fighting activities; and
- (xiv) Any other uncontaminated water source.

(b) Discharges specified in writing by the engineering department as being necessary to protect public health and safety.

(c) Dye testing is an allowable discharge if the engineering department has so specified in writing.

(3) Prohibition of illicit connections. (a) The construction, use, maintenance, or continued existence of illicit connections to the Town of Smyrna separate storm sewer system is prohibited.

(b) 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.

(4) Reduction of storm water pollutants by use of BMPs. Any person responsible for a property or premises, which is, or may be, the source of an illicit discharge, may be required to implement, at the person's expense, the BMPs necessary to prevent the further discharge of pollutants to the Town of Smyrna separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed in compliance with the provisions of this section.

(5) Notification of spills. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of materials which are resulting in, or may result in, illicit discharges or pollutants discharging into storm water, the Town of Smyrna separate storm sewer system, the person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials, the person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, the person shall notify the engineering department in person or by telephone or facsimile no later than the next business day. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the engineering department within three (3) business days of the telephone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of

the discharge and actions taken to prevent recurrences. Records shall be retained for at least five (5) years. (Ord. #04-48, Jan. 2005)

14-610. Enforcement. (1) Enforcement authority. The town manager, or his or her designee, hereinafter called the "director," shall have the authority to issue notices of violation (NOV) and citations, and to impose the civil penalties provided in this section.

(2) Notification of violation. (a) Written notice. Whenever the director finds that any permittee or any other person discharging storm water has violated or is violating this ordinance or a permit or order issued hereunder, the Director may serve upon such person a written NOV. Within ten (10) working days of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted to the director. Submission of this plan in no way relieves the discharger of liability for any violations occurring before or after receipt of the NOV.

(b) Consent orders. The director is empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person responsible for the noncompliance. Such orders will include specific action to be taken by the person to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as administrative orders issued pursuant to the following subsections (d) and (e).

(c) Show cause hearing. The director may order any person who violates this ordinance or permit or order issued hereunder, to show cause why a proposed enforcement action should not be taken. Notice shall be served on the person specifying the time and place for the meeting, the proposed enforcement action and the reasons for such action, and a request that the violator show cause why this proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt required) at least ten (10) working days prior to the hearing.

(d) Compliance order. When the director finds that any person has violated or continues to violate this ordinance or a permit or order issued there under, he/she may issue an order to the violator directing that, following a specific time period, adequate structures and/or devices be installed or procedures implemented and properly operated. Orders may also contain such other requirements as might be reasonably necessary and appropriate to address the noncompliance, including the construction of appropriate structures, installation of devices, self-monitoring, and BMPs.

(e) Cease and desist orders. When the director finds that any person has violated or continues to violate this ordinance or any permit

or order issued hereunder, the director may issue an order to cease and desist all such violations and direct those persons in noncompliance to:

- (i) Comply forthwith; or
- (ii) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and terminating the discharge.

(3) Conflicting standards. Whenever there is a conflict between any standard contained in this ordinance and in the BMP manual adopted by the Town of Smyrna under this ordinance, the strictest standard shall prevail. (Ord. #04-48, Jan. 2005)

14-611. Penalties. (1) Violations. Any person who shall commit any act declared unlawful under this ordinance, who violates any provision of this ordinance, who violates the provisions of any permit issued pursuant to this ordinance, or who fails or refuses to comply with any lawful communication, order, or notice to abate or take corrective action issued by either the Town of Smyrna Engineering Department or the director, shall be guilty of a civil offense.

(2) Penalties. Under the authority provided in Tennessee Code Annotated, § 68-221-1106, the Town of Smyrna declares that any person violating the provisions of this ordinance may be assessed a civil penalty by the director of not less than fifty dollars (\$50.00) or more than five thousand dollars (\$5,000.00) per day for each day of violation. Each day of violation shall constitute a separate violation. The Town of Smyrna shall give the violator reasonable notice of the assessment of any penalty.

(3) Measuring civil penalties. In assessing a civil penalty, the director may consider:

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

(4) Recovery of damages and costs. In addition to the civil penalty in the prior subsection (2), the Town of Smyrna may recover, but is not limited to recover, the following:

(a) All damages proximately caused by the violator to the Town of Smyrna, which may include any reasonable expenses incurred in investigating violations of, and enforcing compliance with, this ordinance, or any other actual damages caused by the violation; and

(b) The costs of the Town of Smyrna's maintenance of storm water facilities when the user of such facilities fails to maintain them as required by this ordinance.

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

(6) Remedies cumulative. The remedies set forth in this section shall be cumulative, not exclusive, and it shall not be a defense to any action, civil or criminal, that one (1) or more of the remedies set forth herein has been sought or granted. (Ord. #04-48, Jan. 2005)

14-612. Appeals. Pursuant to Tennessee Code Annotated, § 68-221-1106(d), any person aggrieved by the imposition of a civil penalty or damage assessment as provided by this ordinance may appeal said penalty or damage assessment to the town council.

(1) Written appeals. The appeal shall be in writing and filed with the town clerk within thirty (30) days after the civil penalty and/or damage assessment is served in any manner authorized by law. If a petition for review is not filed within such time, the violator shall be deemed to have consented to the damage assessment and/or civil penalty and it shall become final.

(2) Public hearing. The town council shall hold a public hearing not less than thirty (30), and not more than sixty (60), days after receipt of a petition for review. At least ten (10) days advance written notice, by registered mail, shall be provided to the aggrieved party, such notice to be sent to the address provided by the aggrieved party at the time of appeal.

(3) Appealing decisions. Any alleged violator may appeal a decision of the Town Council pursuant to the provisions of Tennessee Code Annotated, title 27, chapter 8. (Ord. #04-48, Jan. 2005)

14-613. Amendments. The town council shall have the authority to enact amendments to this ordinance from time to time. (Ord. #04-48, Jan. 2005)

CHAPTER 7

DEVELOPMENT AGREEMENT

SECTION

- 14-701. Development agreement to be used.
- 14-702. Model development agreement.
- 14-703. Authority to execute on behalf of town.
- 14-704. Execution of developer agreement.
- 14-705. Failure to execute developer's agreement.
- 14-706. Failure to abide by the developer's agreement.
- 14-707. Violation and penalty.

14-701. Development agreement to be used. In any instance in which there is to be a subdivision of land or any development on a parcel of land, a development agreement shall be entered into by the developer with the Town of Smyrna. For purposes of this chapter, subdivision shall have the same meaning as in the Subdivision Regulations for Smyrna, Tennessee. Additionally, in any instance in which upon request of a developer or as required by any law, ordinance, or regulation, the town will consider plans for the installation of mainline water and/or sanitary sewer, roads, and/or storm water facilities, a development agreement shall be entered into by the developer with the town.

As used in this chapter, "developer" shall mean any person(s) or business, owning real property or seeking develop to real property for which site plan approval by the planning commission is necessary, for which a subdivision of property will occur, or for which it will be necessary to obtain approval to install a mainline water and/or sanitary sewer, roads, and/or storm water facilities.

As used in this chapter, "development" shall mean any activity upon any parcel of land for which a building or grading permit must issue and shall include the installation of mainline water and/or sanitary sewer, roads, and/or storm water facilities.

14-702. Model development agreement. The model development agreement to be used by the town is on file in the clerk's office and may be changed from time to time and as necessary in order to address specific concerns of each development.

14-703. Authority to execute on behalf of town. The development agreement shall be executed on behalf of the town by the town manager or his designee, if such designee is designated in writing.

14-704. Execution of developer agreement. The development agreement shall be executed on behalf of the developer or builder prior to any permits being

issued and prior to any construction beginning on the property, including construction of any mainline water and/or sanitary sewer lines, roads, and/or storm water facilities.

14-705. Failure to execute developer's agreement. No permits, inspections, or certificates of occupancy may be granted for any development after the effective date of this ordinance unless a development agreement is on file. Failure to execute a developer agreement may result in a "stop work" order being issued and may include legal action, including but not limited, injunctive relief to enforce a cessation of activity on the site to be developed.

14-706. Failure to abide by the developer's agreement. No permits, inspections, or certificates of occupancy may be granted if the developer fails to abide by the development agreement as determined by the town manager or his designee. Failure to abide by the terms of the developer agreement may result in a "stop work" order being issued and may include legal action, including but not limited, injunctive relief to enforce a cessation of activity on the site to be developed.

14-707. Violations and penalty. Notwithstanding the provisions in §§ 14-605 and 14-606, and in addition to the remedies provided in §§ 14-605, 14-606, and the development agreement itself, violations of this chapter shall subject the offender to a penalty under the general penalty provision of this code. Each day a violation is allowed to continue shall constitute a separate offense.

Violators of this chapter are subject to the termination of town utility services to the site subject to a development agreement or to which a development agreement should be executed.

A developer in violation of any provisions of this chapter shall not be eligible for and may not obtain approval for any other site plans, any other subdivision requiring approval of the town, or obtain approval from the department of public works or the utilities department, as applicable, for plans for any other installation of a mainline water and/or sanitary sewer, roads, and/or storm water facilities unless and until all violations of this chapter related to that developer are resolved.