

TITLE 18

WATER AND SEWERS¹

CHAPTER

1. SEWERS AND SEWAGE DISPOSAL.
2. CROSS-CONNECTIONS, ETC.
3. MS4 PHASE II STORMWATER MANAGEMENT PROGRAM.
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CHAPTER 1

SEWERS AND SEWAGE DISPOSAL²

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18-101. Purpose and policy. The purpose of this chapter is to set uniform requirements for users of the city's wastewater collection system and treatment works to enable the city to comply with the provisions of the Clean Water Act and other applicable federal and state law and regulations, and to provide for the public health and welfare by regulating the quality of wastewater discharged into the city's wastewater collection system and

¹Municipal code references
 Building and utility codes: title 12.
 Refuse disposal: title 17.

²Municipal code reference
 Plumbing code: title 12, chapter 6.

treatment works. This chapter establishes conditions for connection to the sanitary sewer system and requires a permit. Certain acts which may be detrimental to the sewer system are prohibited. This chapter provides a means for determining wastewater volumes, constituents and characteristics, the setting of charges and fees, and the issuance of permits to certain users. This chapter establishes effluent limitations and other discharge criteria and provides that certain users shall pretreat waste to prevent the introduction of pollutants into the Publicly Owned Treatment Works (POTW) which will interfere with due operation of the POTW, may cause environmental damage, interfere with the use or disposal of sewage sludge; and to prevent the introduction of pollutants into the POTW which will pass through the treatment works into the receiving waters or the atmosphere, or otherwise be incompatible with the treatment works; and to improve the opportunities to recycle and reclaim wastewaters and the sludges resulting from wastewater treatment. This chapter provides measures for the enforcement of its provisions and abatement of violations thereof. (Ord. of Sept. 1994, as replaced by Ord. #2012-19, Sept. 2012, and Ord. #2014-33, Oct. 2014)

18-102. Definitions. (1) For purposes of this chapter, the following phrases and words shall have the meaning assigned below, except in those instances where the content clearly indicates a different meaning:

(a) "Best management practices." Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in § 18-106.

(b) "Clean Water Act (CWA)," "Act," or "the Act." The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 United States Code (U.S.C.) 1251, *et seq.*

(c) "Approved Publicly Owned Treatment Works (POTW) Pretreatment Program" or "Program" or "POTW pretreatment program." A program administered by a publicly owned treatment works that meets the criteria established in chapter 40 of the Code of Federal Regulations (40 CFR) §§ 403.8 and 403.9, and which has been approved by a regional administrator or state director in accordance with 40 CFR § 403.11.

(d) "Board." Cleveland Utilities Board.

(e) "Building drain." That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, another drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet (5') outside the inner face of the building wall.

(f) "Building sewer." A sewer conveying wastewater from the building drain to a community sanitary sewer or other place of disposal.

(g) "Bypass." The intentional diversion of wastestreams from any portion of an industrial user's treatment facility.

(h) "Categorical standards." National pretreatment standards established by the Environmental Protection Agency (hereinafter EPA) for specific industrial user Standard Industrial Classification (SIC) code categories.

(i) "Centralized Waste Treatment Facility (CWT)." A commercial centralized waste treatment facility (other than a landfill or an incinerator) which treats or stores aqueous wastes generated by facilities not located on the CWT site and which disposes of these wastes by introducing them to the POTW.

(j) "City." City of Cleveland, Tennessee.

(k) "Cleveland Utilities." The department of the City of Cleveland charged with the responsibility for operation, maintenance, and financial management of the electric distribution system; the water treatment and distribution system; wastewater collection, treatment, and disposal system; and all facilities to perform the necessary services provided by these utilities under the direction of the Cleveland Utilities Board.

(l) "Combined sewer." A sewer which has been designed to carry both sanitary sewage and stormwater runoff.

(m) "Community sewer." A sanitary sewer to which all owners of abutting properties have equal rights and which is owned by the utility.

(n) "Conventional pollutant." Biochemical Oxygen Demand (BOD), Total Suspended Solids (TSS), pH, fecal coliform bacteria, and oil and grease.

(o) "Direct discharge." The discharge of treated or untreated wastewater directly to the waters of the State of Tennessee.

(p) "Discharge monitoring report." A report submitted by an industrial user to the utility pursuant to this chapter containing information relating to the nature and concentration of pollutants and flow characteristics of a discharge from the industrial user to the POTW using standard methods approved by the utility.

(q) "Environmental Protection Agency (EPA)." An agency of the United States or the administrator or other duly authorized official of said agency.

(r) "Grab sample." A sample taken from a waste stream without regard to the flow in the waste stream and over a period of time not to exceed fifteen (15) minutes.

(s) "Holding tank waste." Any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump tank trucks. This specifically includes wastewater from industrial users conveyed to the POTW by any means other than by a standard connection to a sanitary combined sewer.

(t) "Indirect discharge." The discharge or the introduction of pollutants from any source regulated under section 307(b), (c), or (d) of the Act (33 U.S.C. 1317) into the POTW (including holding tank waste discharged into the system) for treatment before direct discharge to state waters.

(u) "Industrial user." A source of indirect discharge which does not constitute a "discharge of pollutants" under regulations issued pursuant to section 402 of the Act. For the purposes of this chapter, an industrial user is a source of nondomestic wastes from industrial processes.

(v) "Infiltration." Water other than wastewater that enters a sewer system (including sewer service connections) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

(w) "Inflow." Water other than wastewater that enters a sewer system (including sewer service connections) from sources such as roof leaders, cellar drains, yard drains, area drains, fountain drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, stormwaters, surface runoff, street wash waters, and drainage. Inflow does not include, and is distinguished from, infiltration.

(x) "Interference." A discharge which, alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal or exceeds the design capacity of the treatment works or the collection system.

(y) "Mass emission rate." The weight of material discharged to the community sewer system during a given time interval. Unless otherwise specified, the mass emission rate shall mean pounds per day of the particular constituent or combination of constituents.

(z) "Maximum concentration." The maximum amount of a specified pollutant in a volume of water or wastewater.

(aa) "National Pretreatment Standard." Any regulations containing pollutant discharge limits promulgated by the EPA in accordance with sections 307(b) and (c) of the Act (33 U.S.C. 1347) which applies to industrial users. These terms also include prohibited discharges promulgated in 40 CFR 403.5 and local limits adopted as part of the city's approved pretreatment program.

(bb) "New source." (i) Any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under section 307(c) of the Act which will be applicable to such source if such

standards are thereafter promulgated in accordance with that section, provided that one (1) of the following criteria is applicable:

(A) The building, structure, facility, or installation is constructed at a site at which no other source is located.

(B) The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source.

(C) The production or wastewater generated processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

(ii) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of paragraphs (i)(B) or (C) of this subsection but otherwise alters, replaces, or adds to existing process or production equipment.

(iii) Construction of a new source as defined under this paragraph has commenced if the owner or operator has taken one (1) of the following actions:

(A) Begun or caused to begin as part of a continuous on-site construction program:

- Any placement, assembly, or installation of facilities or equipment.

- Significant site preparation work, including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment.

(B) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

(cc) "National Pollution Discharge Elimination System (NPDES) Permit." A permit issued pursuant to Section 402 of the Act (33 U.S.C. 1342).

(dd) "Normal wastewater." Effluent which contains constituents and characteristics similar to effluent from a domestic premise, and specifically for the purposes of this chapter, does not contain BOD₅, COD, or TSS in concentrations in excess of the following:

BOD₅ - 300 milligrams per liter
COD - 600 milligrams per liter
TSS - 400 milligrams per liter

(ee) "Pass through." A discharge which exits the POTW into waters of the United States in the quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation). In the case of POTW receiving discharges from CWTs as defined above, pass through also means the failure of the CWT and the POTW to reduce pollutant discharges from the POTW to the degree required under section 301(b)(2) of the CWA if the CWA discharged directly to surface waters.

(ff) "Person." Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. The masculine gender shall include the feminine; the singular shall include the plural where indicated by the context.

(gg) "Pollution." The man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.

(hh) "Premises." A parcel of real estate or portion thereof, including any improvements thereon which is determined by the utility to be a single user for purposes of receiving, using, and paying for services.

(ii) "Pretreatment." The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical, or biological processes; process changes or by other means, except as prohibited by 40 CFR § 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 CFR § 403.6(e).

(jj) "Pretreatment requirements." Any substantive or procedural requirement related to pretreatment other than a national pretreatment standard imposed on an industrial user.

(kk) "Publicly Owned Treatment Works (POTW)." A treatment works as defined by section 212 of the Act (33 U.S.C. 1292). This definition includes any sewers that convey wastewater to such a treatment works and any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or liquid industrial waste, but does include pipes, sewers, or other conveyances not connected to a facility providing treatment.

(ll) "Reclaimed water." Water which, as a result of the treatment of waste, is suitable for direct beneficial or controlled use that would not occur otherwise.

(mm) "Sanitary sewer" A sewer which carries wastewater and from which storm, surface, and ground waters are intentionally excluded.

(nn) "Severe property damage." Substantial physical damage to property, damage to pretreatment facilities rendering them inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(oo) "Significant industrial user." (i) All dischargers subject to categorical pretreatment standards under 40 CFR 403.6 and 40 CFR chapter I, subchapter N.

(ii) Any other industrial user that: discharges an average of twenty-five thousand (25,000) gallons per day or more of process wastewater to the WWF (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process waste stream which makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the WWF treatment plant.

(iii) All non-categorical dischargers that, in the opinion of the utility, have a reasonable potential to adversely affect the POTW's operation or for violating any pretreatment standard or requirement. This may include, but not be limited to all centralized waste treatment discharges, all tank and drum cleaning facilities, and all paint manufacturing facilities.

(iv) All non-categorical discharges that contain more than one hundred (100) pounds per day of combined BOD₅ and TSS load above that level found in normal wastewater, or that contain more than one thousand (1,000) pounds in a month of combined BOD and TSS load above that level found in normal wastewater.

(pp) "Standard industrial classification." A classification pursuant to the Standard Industrial Classification Manual issued by the

Executive Office of the President, Office of Management and Budget, 1972.

(qq) "Toxic pollutant." Any pollutant or combination of pollutants listed as toxic in 40 CFR part 401 promulgated by the administrator of the EPA under the provisions of 33 U.S.C. 1317.

(rr) "Treatment works." Any devices and systems used in the storage, treatment, recycling, and reclamation of domestic sewage of liquid industrial wastes, including interceptor sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment and appurtenances; extensions, improvements, remodeling, additions and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including land, that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; and including combined stormwater and sanitary sewer systems.

(ss) "Twenty-four-hour, flow-proportional composite sample." A sample consisting of several effluent portions collected during a twenty-four (24) hour period in which the portions of sample are proportionate to the flow and combined to form a representative sample.

(tt) "Unpolluted water." Water to which no constituent has been added, either intentionally or accidentally, which would render such water unacceptable to the State of Tennessee or the EPA having jurisdiction thereof for disposal to storm or natural drainage or directly to surface waters.

(uu) "User." Any person, firm, corporation, or governmental entity that discharges, causes, or permits the discharge of wastewater into a community sewer.

(vv) "Utility." The president/CEO of Cleveland Utilities, superintendents, engineers, technicians, or other employees of Cleveland Utilities, designated by the president/CEO to act on behalf of the general manager and report directly to the president/CEO.

(ww) "Utility board." Cleveland Utilities Board, a department of the City of Cleveland.

(xx) "Waste." Sewage and other waste substances (liquid, solid, gaseous, or radioactive) associated with human habitation or of human or animal origin, or from any producing, manufacturing, or processing operation, including such waste placed within containers of whatever nature prior to, and for purposes of, disposal.

(yy) "Wastewater." Wastewater and water, whether treated or untreated, discharged into or permitted to enter a community sewer.

(zz) "Wastewater constituents and characteristics." The individual chemical, physical, bacteriological and radiological parameter including toxicity, volume, and flow rate and such other parameters that

serve to define, classify, or measure the contents, quality, quantity, and strength of wastewater.

(aaa) "Waters of the State of Tennessee." Any water, surface or underground, within the boundaries of the state.

(2) The following abbreviations shall have the following meanings:

- (a) BAT - Best Available Technology.
- (b) BMP - Best Management Practices
- (c) BPT - Best Practical Technology.
- (d) BOD₅ - Biochemical Oxygen Demand (5-day).
- (e) CFR - Code of Federal Regulations.
- (f) COD - Chemical Oxygen Demand.
- (g) CWA - Clean Water Act.
- (h) CWT - Centralized Waste Treatment Facility.
- (i) EPA - Environmental Protection Agency.
- (j) GMP - Good Management Practices.
- (k) MBAS - Methylene-blue-active substances.
- (l) mg/L - Milligrams per liter.
- (m) NPDES - National Pollutant Discharge Elimination System.
- (n) POTW - Publicly Owned Treatment Works.
- (o) RCRA - Resource Conservation and Recovery Act.
- (p) SIC - Standard Industrial Classification.
- (q) SIU - Significant Industrial User
- (r) SWDA - Solid Waste Disposal Act, 42 U.S.C. 6901, *et seq.*
- (s) TDEC - Tennessee Department of Environment and

Conservation.

(t) TSS - Total Suspended Non-filterable Solids.

(u) U.S.C. - United States Code. (Ord. of Sept. 1994, as replaced by Ord. #2012-19, Sept. 2012, and Ord. #2014-33, Oct. 2014)

18-103. Use of public sewers. (1) Connection with sanitary sewer required. (a) Sewer connection required. Every building having plumbing fixtures installed and intended for human habitation, occupancy, or use on premises abutting a street, alley, or easement in which there is a sanitary sewer segment adjacent to the property line of the parcel containing the building shall be considered as being served by the utility's sanitary sewer system. The utility shall make any decision as to the availability of sewer service to a premise. All premises served by the utility sanitary sewer are subject to sewer user charges as described in § 18-112(5) whether connected to the utility's sewer or not. All new buildings hereafter constructed on property which is served by the utility's sewer system shall not be occupied until the connection has been made. Septic tanks shall not be used for new buildings where sanitary sewers are available. All existing buildings shall be connected to the utility's sanitary sewer system within ninety (90) days after date of

official notice that sewer service is available to the property except as provided in § 18-103(b).

(b) Unconnected sewer service lines prohibited where connection is available. Except for discharge to a properly functioning septic tank system approved by the Tennessee Department of Environment and Conservation (hereinafter TDEC) or discharges permitted by a National Pollutant Discharge Elimination System permit (hereinafter NPDES) issued by TDEC, the discharge of sewage into places other than the utility's sewer system is prohibited. The owner or occupant of each lot or parcel of land which is now served or which may hereafter be served by the utility's sewer system shall cease to use any other method for the disposal of sewage except as approved for direct discharge by TDEC or by discharge to a properly functioning and approved septic tank system.

(c) Insufficient capacity, connection moratorium. In those parts of the utility sewer collection system where no additional dry weather flow capacity exists or no additional treatment capacity is available at the treatment works, no new or additional sewer connections shall be permitted. Connection permits issued prior to the date of the moratorium and other connections that have received prior legal authorization may be made. No permits shall be issued for new sewer connections in a moratorium area after the effective date of the moratorium nor shall any new line extensions be made in that area that have not received prior legal approval. A moratorium shall continue in effect until the capacity restriction has been corrected.

(d) Illegal connections. No person shall make or permit connection of roof downspouts, exterior foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer. If evidence of such illegal connections is discovered by the utility, the owner will be notified in writing and directed to eliminate the illegal connection and/or repair the building sewer, as appropriate.

(2) Adequate and minimum fixtures. (a) Minimum number of fixtures. All new dwellings shall have at least one commode, one (1) bathtub or shower, one (1) lavatory, one (1) kitchen-type sink, and an adequate source of hot water for each family unit to meet minimum basic requirements for health, sanitation, and personal hygiene. All other buildings, structures, or premises intended for human occupancy or use shall be provided with adequate sanitary facilities as may be required by any other law or regulation, but not less than one (1) commode and one (1) hand-washing lavatory.

(b) Adequate water for disposal of waste required. It shall be unlawful for any person in possession of premises into which a pipe or

other connection with the city sanitary sewers and drains have been laid to permit the same to remain without adequate fixtures attached to allow a sufficient quantity of water to be so applied as properly to carry off all waste matter and keep the same unobstructed.

(3) Right to enter, inspect connection. The utility, the plumbing inspector, or other designated employees of the city shall have free and unobstructed access to any part of the premises where house drains or other drains connected with or draining into the utility's sewer are laid for the purpose of examining the construction, condition, and method of use of the same, upon cause or reasonable suspicion that there may be inadequate plumbing, that the facilities present may not be properly functioning, or that there is an improper discharge, or for a period systematic inspection of a particular drainage basin or other large segment of the system at any time of the day between the hours of 7:00 A.M. and 6:00 P.M. or any other time in the event of an emergency. If such entry is refused, the sewer service may be disconnected upon reasonable notice and an opportunity for a hearing. The service may be suspended immediately in the event of an emergency if there is reasonable cause to suspect that the discharge will endanger the public health or the environment, shall have the potential to interrupt the treatment process, or shall damage the utility's lines or facilities, and a hearing shall thereafter be afforded the user as soon as possible.

(4) Demolished buildings. When a building is demolished or relocated, it shall be the responsibility of the owner to have the sewer service line plugged securely so that extraneous water will not enter the sewer. The owner of the premises or his agent shall notify the plumbing inspector of such a plug and allow same to be inspected prior to covering of any work. If such line is to be reused, it must first undergo inspection by the plumbing inspector and be in conformity with current standards for building sewers.

(5) Locations on point of discharge; temporary facilities. No person shall discharge any substance directly into a manhole or other opening in a utility sanitary sewer other than through an approved building sewer unless he has been issued a temporary permit by the utility. Permission may be granted at the discretion of the utility to provide for discharges from portable sanitary facilities for festivals or public shows or for other reasonable purposes. The utility shall incorporate in such a temporary permit such conditions as he deems reasonably necessary to ensure compliance with the provisions of this chapter. Any discharge other than through an approved building sewer shall be unlawful.

(6) Vehicle wash racks. All new gasoline filling stations, garages, self-service automobile washers, and other public wash racks where vehicles are washed shall install catch basins in conformity with the plumbing code in accordance with a permit obtained from the plumbing official. In the event any existing premises does not have a catch basin and the sewer line servicing the facility stops up due to grit or slime in the sewer lines, then the owner or operator of such premises shall be required to modify these facilities to construct

a catch basin as a condition of continuing use of the system. If such users are industrial users as defined in § 18-102, a permit as specified therein will be required. No stormwater shall be diverted to these catch basins.

(7) Grease traps, grit traps, oil traps, and lint traps. All new and existing restaurants, laundries, wash racks, vehicle service stations, private multi-user systems, engine or machinery repair shops, and other facilities that produce, grease, grit, oil, lint, or other materials which accumulate and cause or threaten to cause stoppages or impair the efficiency of the utility's sewers or threaten the safety of its employees, shall install and maintain a grease trap, grit trap, lint trap, oil interceptor, or other appropriate device of standard design and construction to prevent excess discharges of such materials. The design and construction of any such device shall be subject to prior approval of the utility and constructed in accordance with applicable building codes.

(8) Multi-user private sewer systems. Excluding those industrial waste facilities with a permit issued pursuant to § 18-108 the owner or operator of a private sewer system such as, but not limited to, multi-tenant buildings, building complexes, and shopping centers shall be responsible for the quality of wastewater discharged at the point of connection to the utility's sanitary sewer system and shall be responsible for any violations of the provisions of this chapter, including liability for the damage or injury caused to the utility's system as a result of any discharge through the private system. (Ord. of Sept. 1994, as amended by Ord. #2005-40, Oct. 2005, and replaced by Ord. #2012-19, Sept. 2012, and Ord. #2014-33, Oct. 2014)

18-104. Building sewers, connections, and permits. (1) Installation, maintenance, repair of sewer service lines; charge; exception. (a) Definition. A standard sanitary sewer service line is a four or six inch (4" or 6") pipe extending from the sewer main or trunk location in a street, alley, or easement to the property served by the main or trunk.

(b) Installation of sewer service lines. The construction and installation of all building sewers shall be in accordance with the requirements of the latest edition of the Standard Plumbing Code published by the Southern Building Code Congress International, Inc.¹ The utility may establish additional requirements and/or standards for materials and methods of installation in accordance with good engineering practice.

Four inch (4") building sewers shall be laid on a grade of at least one percent (1%). Larger building sewers shall be laid on a grade that will produce a velocity when flowing full of a least two feet (2') per second. The slope and alignment of all building sewers shall be neat and regular

¹The Southern Building Code Congress International, Inc. was replaced by the International Code Council.

and shall be bedded in material suitable to achieve proper slope and alignment.

A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another as an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer.

Building sewers shall be constructed only one (1) of the following approved materials:

- (i) Cast iron soil pipe using rubber compression joints of approved type;
- (ii) Polyvinyl chloride pipe with rubber compression joints;
- (iii) ABS composite sewer pipe with solvent-welded or rubber compression joints of approved type; or
- (iv) Similar materials of equal or superior quality following utility approval. Under no circumstances will cement mortar joints be acceptable.

Each connection to the sewer system must be made at a tee or stubbed-out service line, or in the absence of any other provision, by means of a saddle of a type approved by the utility, attached to the sewer. No connection may be made by breaking into an existing sewer and inserting the service line.

The building sewer may be brought into the building below the basement floor when gravity flow from the building to the sewer is at a grade of one percent (1%) or more where possible. In cases where basement or floors are lower than the ground elevation at the point of connection to the sewer, adequate precautions through the installation of check valves or other backflow prevention devices to protect against flooding shall be provided by the owner. In all buildings in which any building drain is too low to permit gravity flow to the sewer, wastes carried by such building drain shall be lifted by an approved means and discharged into the utility's sewer.

(c) Standard sewer stub-outs. Hereafter, as a part of sanitary sewer projects, the utility shall install, or cause to be installed, standard sanitary sewer service stub-outs from mains or trunks located in a street, alley, or easement to the property line of each lot or residence on the street being sewerred. In the case of sewers being constructed in undeveloped subdivisions located within a designated sewer project, the standard sanitary sewer service stub-out may be constructed to each lot as shown by the developer on the plat of the subdivision as filed in the Register's Office of Bradley County, Tennessee. Sewer service stub-outs may not be constructed at the expense of the utility in a street where the

property is unsubdivided and undeveloped. In such cases, a fee shall be charged upon connection to the sewer line as provided in § 18-112.

(d) Sewer service stub-out charge. A sewer connection charge shall be paid by property owners at the time that application is made to the utility for permission to tie on to the sanitary sewer line. The collection of such payments shall be the responsibility of the utility. This service connection charge shall be in addition to any required fees for inspection, street cuts, or other fees.

(e) Title and maintenance. When a property owner ties into a sanitary sewer stub-out installed pursuant to paragraph (c) of this section and pays the sewer service line charge levied in paragraph (d) of this section, thereafter, all repairs and maintenance of the sanitary sewer service due shall be the responsibility of the property owner or user of the sewer.

(f) Location of sewer stub-outs and tees. The plumbing contractor is responsible for locating sewer service line stub-outs and tees. Pursuant to payment of fees levied in paragraph (d) of this section, utility personnel will provide whatever information is available for this purpose. If a manhole needed for locating a service line has been lost, then the utility shall be responsible for locating the manhole.

(g) Taps on utility sewers. Where a sewer service line stub-out has not been provided, the utility shall provide one. All taps made directly into the utility's sewer lines shall be made by utility personnel.

(h) Manhole required. A new manhole will be required whenever a sewer service line larger than six inches (6") is needed to tie into the utility's sewer. The utility's personnel shall install the manhole. The cost of the manhole, including labor and materials, shall be included in the connection fee.

(i) Maintenance of sewer service lines. All repairs and maintenance of the sanitary sewer service line to include correction of excessive inflow or infiltration shall be the responsibility of the property owner or user of the sewer. The utility shall be responsible for the maintenance of collector lines only up to the point where the owner's sewer service line connects to the utility's stub-out.

If, upon smoke testing or visual inspection by the utility, roof downspout connections, exterior foundation drains, area drains, basement drains, building sewer leaks or other sources of rainwater, surface runoff or groundwater enter into the utility sewer system are identified on building sewers on private property, the superintendent may take any of the following actions.

(i) Notify the property owner in writing of the nature of the problem(s) identified on the property owner's building sewer and the specific steps required to bring the building sewer within the requirements of this chapter. All steps necessary to comply

with this chapter must be complete within sixty (60) days from the date of the written notice and are entirely at the expense of the property owner. The inspection requirements of § 18-104(2) of this chapter apply.

(ii) Notify the property owner in writing of the nature of the problem(s) identified on the property owner's building sewer and inform the property owner that the utility will provide all labor, equipment and materials necessary to make the repairs required to bring the building sewer within the requirements of this chapter. The work on private property will be performed at the utility's convenience and the cost of all labor, equipment and materials used will be charged to the property owner. The utility will be responsible for bringing any excavations back to original grade, replacing topsoil and hand raking all disturbed areas; however, the property owner shall be responsible for final landscaping, including but not limited to seeding, fertilizing, watering, mulching, sodding and replacing any shrubbery or trees displaced or damaged by the utility during the execution of the work.

(j) Cost of building sewers. All costs and expenses incidental to the installation and connection of the building sewer to the system sewer shall be borne by the owner. All costs and expenses associated with the installation and operation of pumping equipment necessary to lift sewage to the level of the system sewer shall be borne by the owner. The owner shall indemnify Cleveland Utilities from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

(k) Service lines to enter sanitary sewers at junction; exception. No service lines shall enter a sanitary sewer at any point except where a junction has been made and left therefore unless by special permission of the utility. In all cases where such permission is given, the work shall be done by the utility's personnel and at the risk and expense of the party requesting the connection.

(2) Permit required to make connection. (a) Before the owner of any property connects such property into the utility sewer, the owner or owner's agent shall make application to and be issued permits by both the city and the utility. The work shall be performed only by a plumber approved by the city and utility who has also signed the permits. All connections shall be inspected and approved by both the City of Cleveland Plumbing Inspector and the utility.

(b) In order to secure the required connection permits, the owner or owner's agent shall:

(i) Make application for a plumbing permit to the City of Cleveland Plumbing Inspector's Office. The permit application

shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the plumbing inspector. A permit and inspection fee shall be paid to the City of Cleveland at the time the application for permit is filed.

(ii) Take the plumbing permit to Cleveland Utilities and make application for service and pay the appropriate connection charge and inspection fee.

(c) Connections made without an approved application may be severed by order of the utility. Such unapproved connection may be allowed to remain active if inspected and accepted; however, the owner shall be required to pay an alternative fee in lieu of the permit application fee in an amount double the current regular fee.

(d) No permit for a connection which may be used for discharge of industrial process wastes or other non-domestic waste regulated by § 18-106 shall be issued except upon separate application to the utility and approval of the discharge under the provisions of § 18-108.

(3) Sewer construction; acceptance of work. All sewer construction involving sanitary sewer lines, pump stations, metering stations, and appurtenances which are to become a part of the utility's sewer system shall not be constructed until the plans are approved and the construction inspected and approved by the utility. Any construction work where utility sewers are opened, uncovered, or undercut must have the prior approval of the utility. Any construction must be done by a contractor approved by the utility. (Ord. of Sept. 1994, as replaced by Ord. #2012-19, Sept. 2012, and Ord. #2014-33, Oct. 2014)

18-105. Private domestic wastewater disposal. (1) Availability. When a public sanitary sewer is not available under the provisions of § 18-103(1), the building sewer shall be connected to a private wastewater disposal system complying with the provisions of this chapter.

(2) Requirements. (a) A private domestic wastewater disposal system may not be constructed within the sewer service area unless and until a written statement is obtained from the utility stating that a public sewer is not accessible to the property and no such sewer is proposed for construction in the immediate future. No written statement shall be issued for any private domestic wastewater disposal system employing subsurface soil absorption facilities where the area of the lot is less than that specified by zoning regulations and TDEC.

(b) Before commencement of construction of a private sewage disposal system, the owner shall first obtain written permission from TDEC. The owner shall supply any plans, specifications, and other information as are deemed necessary by TDEC.

(c) A private sewage disposal system shall not be placed in operation until the installation is completed to the satisfaction of TDEC. They shall be allowed to inspect the work at any stage of construction

and, in any event, the owner shall notify TDEC when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within a reasonable period of time after the receipt of notice by TDEC.

(d) The type, capacity, location, and layout of a private sewage disposal system shall comply with all recommendations of TDEC. No septic tank or cesspool shall be permitted to discharge to any natural outlet.

(e) The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times at no expense to the utility.

(f) No statement contained in this chapter shall be construed to interfere with any additional requirements that may be imposed by TDEC. (Ord. of Sept. 1994, as replaced by Ord. #2012-19, Sept. 2012, and Ord. #2014-33, Oct. 2014)

18-106. Prohibitions and limitations on discharges. (1) Purpose and policy. This section establishes limitations and prohibitions on the quantity and quality of wastewater which may be legally discharged into the POTW. Pretreatment of some wastewater discharges will be required to achieve the goals established by this chapter and the Clean Water Act. The specific limitations set forth in § 18-106(10) hereof, and other prohibitions and limitations of this chapter, are subject to change as necessary to enable the utility to provide efficient wastewater treatment, to protect the public health and environment, and to enable the utility to meet requirements contained in its NPDES permit. The utility shall review said limitations from time to time to ensure that they are sufficient to protect the health and safety of sewer system personnel, and the operation of the treatment works to enable the facility to comply with its NPDES permit, provide for a cost-effective means of operating the treatment works, and protect the public health and the environment. The utility shall recommend changes or modifications as necessary.

(2) Prohibited pollutants. No person shall introduce into the POTW any pollutant(s) which cause pass-through or interference. Additionally, the following specific prohibitions apply:

(a) Pollutants which create a fire or explosion hazard in the POTW, including but not limited to, pollutants with a closed-cup flashpoint of less than one hundred forty degrees (140°) Fahrenheit sixty degrees (60°) Centigrade, as determined by a Pensky-Martens closed-cup tester, using the test method specified in the American Society for Testing and Materials (ASTM) D-93-79 or D-93-80k, or a Setaflash closed-cup tester, using the test method specified in ASTM D-3278-78, or pollutants which cause an exceedance of ten percent (10%) of the Lower Explosive Limit (LEL) at any point within the POTW.

(b) Pollutants which cause corrosive structural damage to the POTW, but in no case discharges with a pH lower than 5.0 or higher than 10.5.

(c) Solid or viscous pollutants in amounts which cause obstruction to the flow of the sewers, or other interference with the operation of or which cause injury to the POTW, including waxy or other materials which tend to coat and clog a sewer line or other appurtenances thereto.

(d) Any pollutant, including oxygen demanding pollutants (BOD, etc.), released in a discharge (slug) of such volume or strength as to cause interference in the POTW or individual unit operations or cause adverse effects on its workers or the environment.

(e) Heat in amounts which will inhibit biological activity in the POTW resulting in interference, but in no case heat in such quantities that the temperature at the treatment works influent exceeds forty degrees (40°) Centigrade (one hundred four degrees (104°) Fahrenheit). Unless, upon approval by the approval authority, a higher temperature is allowed in the user's wastewater discharge permit, no user shall discharge into any sewer line or other appurtenance of the POTW wastewater with a temperature exceeding sixty-five point five degrees (65.5°) Centigrade (one hundred fifty degrees (150°) Fahrenheit).

(f) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker's health and safety problems.

(g) Any trucked or hauled pollutants, except at discharge points designated by the POTW.

(h) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that cause interference or pass-through.

(3) Affirmative defenses. A user shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions established in § 18-106(2) and the specific prohibitions in paragraphs (c), (d), (e), (f), and (h) of that section where the user can demonstrate one of the following:

(a) A local limit designed to prevent pass-through and/or interference, as the case may be, was developed pursuant to § 18-106(10) and (11) for each pollutant in the user's discharge that caused pass-through or interference and the user was in compliance with each such local limit directly prior to and during the pass-through or interference.

(b) If a local limit designed to prevent pass-through and/or interference, as the case may be, has not been developed for the pollutant(s) that caused the pass-through or interference and the user's discharge directly prior to and during the pass-through or interference did not change substantially in nature of constituents from the user's prior discharge activity when the POTW was regularly in compliance

with the POTW's NPDES permit requirements and, in the case of interference, applicable requirements for sewage sludge use or disposal.

(4) Wastewater constituent evaluation. The wastewater of every industrial user shall be evaluated using the following criteria:

(a) Wastewater containing any element or compound which is known to be an environmental hazard and which is not adequately removed by the treatment works.

(b) Wastewater causing a pass-through, discoloration, foam, floating oil and grease, or any other condition in the quality of the utility's treatment work effluent such that receiving water quality requirements established by law cannot be met.

(c) Wastewater causing conditions at or near the utility's treatment works which violate any statute, rule, or regulation of any public agency of Tennessee or the United States.

(d) Wastewater containing any element or compound known to act as a lacrimator, known to cause nausea, or known to cause odors constituting a public nuisance.

(e) Wastewater causing interference with the effluent or another product of the treatment process, residues, sludges, or scums causing them to be unsuitable for reclamation, reuse, causing interference with the reclamation process, or causing them to be unsuitable for disposal.

(f) Wastewater discharged at a point in the collection system that is upstream of any overflow, bypass, or combined sewer overflow and which may thereby cause special environmental problems or specific discharge limitations.

(g) Wastewater having constituents and concentrations in excess of those listed in § 18-106(10) or cause a violation of the limits in § 18-106(11).

(h) The capacity of existing sewer lines to carry the anticipated wastewater flow, particularly with respect to any problems, overflows, or overloads caused by heavy rain infiltration. The utility shall establish reasonable limitations, prohibitions, or monitoring requirements in addition to the limits established pursuant to § 18-106(5) and (10) in the wastewater discharge permit of any industrial user that discharges wastewater violating any of the above criteria or that has processes that generate wastewater that could violate any of the above criteria prior to pretreatment as shall be reasonably necessary to achieve the purpose and policy of this chapter.

(5) National pretreatment standards. Certain industrial users are now or hereafter shall become subject to national pretreatment standards promulgated by the EPA specifying quantities or concentrations of pollutants or pollutant properties which may be discharged into the POTW. All industrial users subject to such standard shall comply with all requirements and with any

additional or more stringent limitations contained in this chapter. Compliance with national pretreatment standards for existing sources subject to such standards or for existing sources which hereafter become subject to such standards shall be within three (3) years following promulgation of the standards unless a shorter compliance time is specified. Compliance for new sources shall be required upon promulgation. New sources shall have in operating condition and shall start up all pollution control equipment required to meet applicable pretreatment standards before beginning to discharge. Within the shortest feasible time (not to exceed ninety (90) days), new sources must meet all applicable pretreatment standards.

(6) Dilution. Except where expressly authorized by an applicable national pretreatment standard, no industrial user shall increase the use of process water or in any way attempt to dilute a discharge as a partial or complete substitution for adequate treatment to achieve compliance with such standard.

(7) Limitation on radioactive waste. No person shall discharge or permit to be discharged any radioactive waste into a community sewer, except as follows:

(a) When the person is authorized to use radioactive materials by TDEC or the Nuclear Regulatory Commission (NRC).

(b) When the waste is discharged in strict conformity with applicable laws and regulations of the agencies having jurisdiction.

(c) When a copy of permits received from said regulatory agencies has been filed with the utility.

(8) Septic tank pumping, hauling, and discharge. No person owning vacuum or cesspool pump trucks or other liquid waste transport trucks shall discharge sewage directly or indirectly into the POTW, unless that person first receives from the utility a septic tank truck discharge permit for each vehicle used in this manner. All applicants for a septic tank truck discharge permit shall complete the forms required by the utility, pay appropriate fees, and agree in writing to abide by the provisions of this chapter and any special conditions or regulations established by the utility.

(a) The owners of such vehicles shall affix and display the permit number in four inch (4") block figures on the side of each vehicle used for such purposes.

(b) The permit shall be valid for a period of one (1) year from date of issuance, provided that the permit should be subject to suspension or revocation by the utility for violation of any provisions of this code, regulations as established by the utility, or other applicable laws and regulations. A revocation or suspension of the permit shall be for a period not to exceed five (5) years. Such revocation or suspension shall bind the permittee, any member of the immediate family of the permittee, or any person who has purchased the business or a substantial amount of the assets of the permittee who paid less than fair market value for such

business or assets. Users found operating in violation of a permit issued under this subsection and whose permit is therefore revoked by the utility, shall be notified of the violation by certified mail or by a notice personally delivered to the user.

(c) Septic tank discharge permits are not automatically renewed. Application for renewal must be made to the utility.

(d) Such permits shall be limited to the discharge of domestic sewage waste containing no industrial waste. All other hauled wastes shall be governed by § 18-106(9). Any user transporting, collecting, or discharging non-domestic industrial process wastewaters or a mixture of such wastewaters with domestic wastewater shall obtain a holding tank discharge permit in accordance with § 18-106(9).

(e) The utility shall designate the locations and times where such trucks may be discharged and may refuse to accept any truckload of waste at his absolute discretion where it appears that the waste could interfere with the effective operation of the treatment works or any sewer line or appurtenance thereto, or where it appears that a truckload of waste contains industrial process waste or a mixture of domestic sewage and industrial process waste.

(f) The utility shall have authority to investigate the source of any hauled waste and to require testing of the waste at the expense of the discharger prior to discharge.

(9) Other holding tank waste. No user shall discharge any other holding tank wastes, including hauled industrial waste, into the POTW unless he has been issued a holding tank discharge permit by the utility. Unless otherwise allowed under the terms and conditions of the permit, a separate permit must be secured for each separate discharge. All applicants for a holding tank discharge permit shall complete forms required by the utility, pay appropriate fees, and agree in writing to abide by the provisions of this chapter and any special conditions or regulations established by the utility. All such dischargers and transporters must show that they have complied with federal manifest and other regulations under RCRA. The permit shall state the specific location of the discharge, the time of day the discharge is to occur, the volume of the discharge, and the source and character of the waste, and shall limit the wastewater constituents and characteristics of the discharge. The user shall pay any applicable charges or fees and shall comply with the conditions of the permit. However, the utility may waive at his discretion the application and the fees for discharge of domestic waste from a recreational vehicle holding tank.

(10) Limitations on wastewater strength (local limits). No user shall discharge wastewater with pollutant concentrations in excess of the concentration set forth in Table 1 below unless:

(a) An exception has been granted the user under the provisions of § 18-107(8) or

(b) The user's wastewater discharge permit provides as a special permit condition temporarily allowing a higher interim concentration level in conjunction with a requirement that the user construct a pretreatment facility or institute changes in operation and maintenance procedures to reduce the concentration of pollutants to levels not exceeding the standards set forth in the table within a fixed period of time.

TABLE 1

Limitations on Wastewater Strength

| Parameter | Maximum Concentration (24 Hour Composite Sample/Discrete Batch Sample) (mg/L) | Maximum Concentration (Instantaneous Grab Sample) (mg/L) |
|----------------|--|--|
| Arsenic | 0.192 | 0.38 |
| Cadmium | 0.123 | 0.25 |
| Chromium, III | 1,874 | 3,748 |
| Chromium, VI | 7.645 | 15.29 |
| Total Chromium | 2.482 | 4.96 |
| Copper | 4.073 | 8.15 |
| Total Cyanide | ---- | 2.481 |
| Lead | 0.796 | 1.59 |
| Mercury | 0.023 | 0.046 |
| Molybdenum | 0.250 | 0.50 |
| Nickel | 2.327 | 4.65 |
| Selenium | 0.269 | 0.538 |
| Silver | 1.033 | 2.07 |
| Zinc | 5.245 | 10.49 |
| Total Phenols | ---- | 4.176 |

| Parameter | Maximum Concentration (24 Hour Composite Sample/Discrete Batch Sample) (mg/L) | Maximum Concentration (Instantaneous Grab Sample) (mg/L) |
|------------------------------|--|--|
| Benzene | ---- | 0.281 |
| Carbon Tetrachloride | ---- | 0.381 |
| Chloroform | ---- | 4.936 |
| Ethylbenzene | ---- | 0.552 |
| Methylene Chloride | ---- | 2.151 |
| Naphthalene | ---- | 0.072 |
| Total Phthalates* | ---- | 1.016 |
| Tetrachloroethylene | ---- | 2.404 |
| Toluene | ---- | 4.126 |
| Trichloroethylene | ---- | 1.722 |
| 1,1,1 Trichloroethane | ---- | 3.903 |
| 1,2 Transdichloroethylene | ---- | 0.072 |
| pH | | 5.0 -- 10.5 S.U. |

*Total Phthalates is the sum of Bis (2-ethylhexyl) phthalate, Butyl benzyl phthalate, Di-n-butyl phthalate, and Diethyl phthalate.

(11) Criteria to protect the treatment plant influent. The utility shall monitor the treatment works influent for each pollutant in Table 2. Industrial users shall be subject to the reporting and monitoring requirements set forth in § 18-109 as to these pollutants. In the event that the influent at the treatment works reaches or exceeds the established levels, the utility shall initiate technical studies to determine the cause of the influent violation and shall recommend remedial measures as necessary, including but not limited to, the establishment of new or revised pretreatment levels for these pollutants. The utility shall also recommend changes to any of these criteria in the event the POTW effluent standards or applicable laws or regulations are changed, or when changes are necessary for a more effective operation.

TABLE 2
Treatment Plant Protection Criteria

| Parameter | Protection Criteria (mg/l) |
|----------------------|----------------------------|
| Arsenic | 0.0192 |
| Cadmium | 0.0109 |
| Chromium, III | 93.75 |
| Chromium, VI | 0.406 |
| Total Chromium | 0.1337 |
| Copper | 0.2189 |
| Total Cyanide | 0.1461 |
| Lead | 0.0637 |
| Mercury | 0.00135 |
| Molybdenum | 0.0172 |
| Nickel | 0.1259 |
| Selenium | 0.0230 |
| Silver | 0.0612 |
| Zinc | 0.3513 |
| Total Phenols | 0.2617 |
| Benzene | 0.0150 |
| Carbon Tetrachloride | 0.0200 |
| Chloroform | 0.2575 |
| Ethylbenzene | 0.0285 |
| Methylene Chloride | 0.1315 |
| Naphthalene | 0.0045 |
| Total Phthalates* | 0.1697 |
| Tetrachloroethylene | 0.125 |

| Parameter | Protection Criteria (mg/l) |
|---------------------------|-------------------------------|
| Toluene | 0.2142 |
| Trichloroethylene | 0.0909 |
| 1,1,1 Trichloroethane | 0.200 |
| 1,2 Transdichloroethylene | 0.0045 |

*Total Phthalates is the sum of Bis (2-ethylhexyl) phthalate, Butyl benzyl phthalate, Di-n-butyl phthalate, and Diethyl phthalate.

(12) Storm drainage, ground water, unpolluted water, and contaminated stormwater.

(a) No stormwater, ground water, rain water, street drainage, rooftop drainage, basement drainage, subsurface drainage, foundation drainage, yard drainage, swimming pool drainage, process water drainage, cooling water, or other unpolluted or minimally polluted water shall be discharged into the city's sewer unless no other reasonable alternative is available, except with permission from the utility. Reasonable conditions shall be prescribed, and a sewer service charge will be issued based upon the quantity of water discharged as measured by a flowmeter or a reasonable estimate accepted by the utility. All users shall be required to maintain their private sewer lines so as to prevent infiltration of ground or stormwater as a condition of use of the system and shall immediately repair or replace any leaking or damaged lines.

(b) The utility will accept the discharge of contaminated stormwater if the following criteria are met:

(i) All known and available technology will not prevent contamination or treat contaminated water to meet state standards for discharge to receiving waters or will cause unreasonable financial burden;

(ii) The contaminated stormwater meets the utility's discharge limits and all state and federal pretreatment requirements; and

(iii) Adequate containment and storage facilities are available as to allow the discharge to occur at such a time and flow rate approved by the utility. At a minimum, the stormwater discharge will not be allowed until after the hydraulic loading from a storm event has subsided.

(13) Limitations on the use of garbage grinders. No waste from commercial or institutional garbage grinders shall be discharged into the utility's sewers except from private garbage grinders used in an individual residence or upon approval of the utility for preparation of food consumed on

premises, and then only where applicable fees are paid. Installation of any garbage grinder equipped with a three-fourths horsepower (or greater) motor shall require approval. The utility may grant approval when there is inadequate space on the user's premises to properly store food preparation waste between regularly scheduled garbage pickup by a service with in equal or greater frequency of collection. Provided, further, that such grinders shall shred the waste sufficiently that it can be carried freely under normal flow conditions prevailing in the utility's sewer lines. It shall be unlawful for any person to use a garbage grinder connected to the sewer system for the purpose of grinding and discharging plastic, paper products, inert materials, or anything other than the waste products from normal food preparation and consumption.

(14) Hospital or medical waste. It shall be unlawful for any person to dispose of medical waste, surgical operating room waste, or delivery room waste into the utility's sewer.

(15) Obstruction of or damage to sewer lines. It shall be unlawful for any person to deposit or cause to be deposited any waste which may obstruct or damage storm or sanitary sewer lines or which may inhibit, disrupt, or damage either system, including the sewer treatment process and operations. This prohibition includes all substances, whether liquid, solid, gaseous, or radioactive and whether associated with human habitation, of human or animal origin, or from any producing, manufacturing, or processing. It shall be unlawful to block or obstruct any catch basin, sewer line, or other appurtenance; or to break, injure, or remove any portion from any part of a sewer, drain, or catch basin, including plates covering manhole. (Ord. of Sept. 1994, as replaced by Ord. #2012-19, Sept. 2012, and Ord. #2014-33, Oct. 2014, and amended by Ord. #2014-50, Jan. 2015)

18-107. Control of prohibited pollutants. (1) Pretreatment requirements. Industrial users of the POTW shall design, construct, operate, and maintain wastewater pretreatment facilities when necessary to reduce or modify the user's wastewater composition to achieve compliance with the limitations in wastewater strength set forth in § 18-106(10), to meet applicable national pretreatment standards, to prevent slug discharges or to meet another wastewater condition or limitation contained in the industrial user's wastewater discharge permit.

(2) Plans and specifications. Plans and specifications for wastewater monitoring and pretreatment facilities shall be prepared, signed, dated, and sealed by a registered engineer, and be submitted to the utility for review in accordance with accepted engineering practices. The utility shall review the plans, within forty-five (45) days of receipt and recommend to the industrial user any appropriate changes. Prior to beginning construction of a monitoring or pretreatment facility, the user shall submit a set of construction plans and specifications to be maintained by the utility. Prior to beginning construction,

the industrial user shall also secure building, plumbing, and all other required permits.

The industrial user shall construct the pretreatment facility within the time provided in the industrial user's wastewater discharge permit. Following completion of construction, the industrial user shall provide the utility with as-built drawings to be maintained by the utility. The review of such plans and specifications will in no way relieve the user from the responsibility of modifying the facilities as necessary to produce an effluent complying with the provisions of this chapter. Any subsequent changes in the pretreatment facilities or methods of operations shall be reported to and be approved by the utility prior to implementation.

(3) Prevention of accidental discharges. All users shall provide such facilities and institute such procedures as are reasonably necessary to prevent or minimize the potential for accidental discharge into the POTW of waste regulated by this chapter from liquid or raw material storage areas, from truck loading and unloading areas, from in-plant transfer or processing and materials handling areas, and from diked areas or holding ponds of any waste regulated by this chapter. The wastewater discharge permit of any industrial user who has a history of significant leaks, spills, or other accidental discharge of waste regulated by this chapter shall be subject on a case-by-case basis to a special permit condition or requirement for the construction of facilities or establishment of procedures which will prevent or minimize the potential for accidental discharge. Plans, specifications, and operating procedures for special permit conditions shall be developed by the user and submitted to the utility for review under the provisions of § 18-108(5)(k) and (l).

(4) Oil and grease discharge, control program. Disposal of oil by discharge to the sewer system is not permitted. Oils include automotive lubricating oils, transmission and brake fluid, other industrial oils, and vegetable oils used in a restaurant or food processing facility. The utility shall contact all wastewater discharge permit holders, restaurants, service stations, septic tank pumpers, commercial food processors, oil tank firms and transporters, and others as appropriate, by letter as often as needed to advise them of requirements for oil and grease discharge control. These dischargers will also be informed of approved oil and grease disposal options available in the Cleveland vicinity. The dischargers of oil and grease waste shall be required to provide an equivalent of primary treatment based on gravity separation of visible and floating oil and grease and oil and grease sludge from wastewater discharges. Such pretreatment processes shall be subject to the best management practices as required by § 18-107(8)(f) and approval by the utility. Discharges shall also be subject to monitoring, entry, inspection, reporting, and other requirements as determined by the utility at his discretion. These dischargers may be required by the utility to apply for industrial waste discharge permits if the utility determines that the dischargers are a source of prohibited pollutants, toxic pollutants in toxic amounts, or are otherwise

controlled by federal or state regulations. All dischargers of oil and grease as listed above are subject to all enforcement and penalty provisions of this chapter.

(5) Slug control program. (a) Each user including SIUs shall provide protection from slug discharges of restricted materials or other substances regulated by this chapter. A slug is defined as any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge, which has a reasonable potential to cause interference or pass-through, or in any other way violates the utility's regulations, local limits, or permit conditions. No user who commences discharge to the sewerage system after adoption of this chapter shall be permitted to introduce pollutants into the system until the need for slug discharge control plans or procedures has been evaluated by the utility.

(b) Certain users (i.e. SIUs) will be required to prepare Slug Discharge Prevention and Contingency plans (SDPC) showing facilities and operating procedures to provide this protection. These plans shall be submitted to the utility for review and approval. All existing users required to have SDPC plans shall submit such a plan within three (3) months after notification from the utility and complete implementation within six (6) months. Review and approval of such plans and operating procedures shall not relieve the user from the responsibility to modify the user's facility as necessary to meet the requirements of this chapter.

(c) In the case of a slug discharge, it is the responsibility of the user to immediately notify the POTW of the incident by telephone or in person. Information concerning the location of the discharge, type of waste, concentration and volume, and corrective action shall be provided by the user. SIUs must notify the utility immediately of changes that occur by the SIU which may affect the potential for a slug discharge. Within five (5) days following a slug discharge, the user shall submit a detailed written report describing the cause of the discharge and the measures being taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the sewerage system, fish kills, or any other damage to person or property, nor shall notification relieve the user of any penalties, civil penalties, or other liability which may be imposed by this chapter or other applicable law.

(d) A notice shall be permanently posted on the user's premises advising employees of a contact to call in the event of a slug discharge. The user shall ensure that all employees who may cause or allow such slug discharge to occur are advised of the proper emergency notification procedure.

(6) Prohibition of bypass. (a) Except as allowed in paragraph (c) below, bypass is prohibited, and the utility may take enforcement action against an industrial user for a bypass, unless:

(i) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage.

(ii) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance.

(iii) The industrial user submitted notices as required in § 18-109(13).

(b) The utility may approve an anticipated bypass after considering its adverse effect if the utility determines that it will meet the three conditions listed in paragraph (a) of this section.

(c) Bypass not violating applicable pretreatment standards or requirements. An industrial user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the reporting provisions of § 18-109(13).

(7) Centralized waste treatment facilities. The utility shall establish effluent limits for Centralized Waste Treatment facilities (CWT) in order that the level of pollution discharged from the CWT through the POTW to the environment will not exceed the level that would be allowed if the CWT discharged directly to surface waters under section 301(b)(2) of the Act (33 U.S.C. § 1311). Additionally, centralized waste treatment facilities shall maintain records and submit reports as directed by the utility regarding the SIC codes of their customers and the frequency, characteristics, and volume of wastes from the various categories.

(8) Exception to wastewater strength standard. (a) Applicability. This section provides a method for industrial users subject to the limitation on wastewater strength pollutants listed in § 18-106(10) to apply for and receive a temporary exception to the discharge level for one or more pollutants or parameters.

(b) Time of application. Applicants shall apply for a temporary exception when they are required to apply for a wastewater discharge permit or renewal provided that the utility allows applications at any time unless the applicant has submitted the same or substantially similar application within the preceding year that was denied by the board.

(c) Written applications. All applications for an exception shall be in writing and shall contain sufficient information for evaluation of each of the factors to be considered by the utility pursuant to paragraph (d) of this section.

(d) Review by utility. All applications for an exception shall be reviewed by the utility. If the application does not contain sufficient information for complete evaluation, the utility shall notify the applicant of the deficiencies and request additional information. The applicant shall have thirty (30) days following notification by the utility to correct such deficiencies. This thirty (30) day period may be extended by the utility upon application and for just cause shown. Upon receipt of a complete application, the utility shall evaluate it within thirty (30) days and approve or deny the application based upon the following factors:

(i) The utility shall consider if the applicant is subject to a national pretreatment standard containing discharge limitations more stringent than those in § 18-106(10) and grant an exception only if such exception is within the limitations of applicable federal regulations.

(ii) The utility shall consider if the exception would apply to discharge of a substance classified as a toxic substance under regulations promulgated by the EPA under the provisions of section 307(a) of the Act (33 U.S.C. 1317), or similar state regulation, and then grant an exception only if such exception may be granted within the limitations of federal and state regulations.

(iii) The utility shall consider if the exception would create conditions or a hazard to utility personnel that would reduce the effectiveness of the treatment works taking into consideration the concentration of said pollutant in the treatment works' influent and the design capability of the treatment works.

(iv) The utility shall consider the possibility of the exception causing the treatment works to violate its NPDES permit.

(v) The utility shall consider if the exception would cause elements or compounds to be present in the sludge of the treatment works which would prevent sludge use or disposal by the utility or which would cause the utility to violate any regulation promulgated by EPA, under the provisions of section 405 of the Act (33 U.S.C. 1345) or similar state regulatory measure.

(vi) The utility may consider the cost of pretreatment or other types of control techniques which would be necessary for the user to achieve effluent reduction, but prohibitive cost alone shall not be the basis for granting an exception.

(vii) The utility may consider the age of equipment and industrial facilities involved to the extent that such factors affect the quality or quantity of wastewater discharge.

(viii) The utility may consider the process employed by the user and process changes available which would affect the quality or quantity of wastewater discharge.

(ix) The utility may consider the engineering aspects of various types of pretreatment or other control techniques available to the user to improve the quality or quantity of wastewater discharge.

(x) The utility may consider an application for exception based upon the fact that water conservation measures instituted or proposed by the user result in a higher concentration of particular pollutants in the wastewater discharge of the user without increasing the amount of mass of pollutants discharged. To be eligible for an exception under this subparagraph, the applicant must show that except for water conservation measures, the applicant's discharge has been or would be in compliance with the limitations on wastewater strength set forth in § 18-106(10). No such exception shall be granted if the increased concentration of pollutants in the applicant's wastewater would have significant adverse impact upon the operation of the POTW.

(e) Review by utilities board. The board shall review any appeal to a denial by the utility of an application for an exception and shall take into account the same factors considered by the utility. At such hearing, the applicant and the utility shall have the right to present relevant proof by oral or documentary evidence. The procedure set forth in § 18-110(4) shall be applicable to such a hearing. The applicant shall bear the burden of proof in an appeal hearing.

(f) Best management practices required. The utility shall not grant an exception unless the applicant demonstrates to the utility that best management practices (BMP) are being employed to prevent or reduce the contribution of pollutants to the POTW. BMPs include, but are not limited to, preventive operating and maintenance procedures, schedule of activities, process changes, prohibiting activities, and other management practices to reduce the quantity of pollutants discharged and to control plant site runoff, spillage, leaks, and drainage from raw material storage. (Ord. of Sept. 1994, as replaced by Ord. #2012-19, Sept. 2012, and Ord. #2014-33, Oct. 2014)

18-108. Wastewater discharge permits. (1) Applicability. The provisions of this chapter are applicable to all industrial users of the POTW. The utility has an "Approved POTW Pretreatment Program" as that term is defined in 40 CFR, part 403.3(d) and any permits issued hereunder to industrial users

who are subject to or who become subject to a National Categorical Pretreatment Standard as defined in 40 CFR, part 403.3(j) shall be conditioned upon the industrial user also complying with all applicable substantive and procedural requirements promulgated by the EPA or the State of Tennessee regarding such categorical standard unless an exception for the utility's program or for specific industrial categories is authorized.

(2) Application and permit requirements for industrial users. Prior to discharging non-domestic waste into the POTW, all significant industrial users of the POTW shall obtain a wastewater discharge permit. The industrial user shall request that the utility determine if the proposed discharge is significant as defined in § 18-102. If the discharge is determined not to be significant, then the utility may still establish appropriate discharge conditions for the user. Any non-categorical industrial user designated as significant may petition the utility to be deleted from the list of significant industrial users on the grounds that there exists no potential for adverse effect on the POTW's operation or violation of any pretreatment standard or requirement.

All significant industrial users shall obtain an industrial wastewater discharge permit and shall complete such forms as required by the utility, pay appropriate fees, and agree to abide by the provisions of this chapter and any specific conditions or regulations established by the utility. All original applications shall be accompanied by a report containing the information specified in § 18-108(3). All original applications shall also include a site plan, floor plan, and mechanical and plumbing plans with sufficient detail to show all sewers and appurtenances in the user's premises by size and location. The industrial user shall also submit revised plans to the utility when alterations or additions to the user's premises affect said plans.

(3) Report requirement. The report required for all significant industrial users by § 18-108(2) or other provisions of this chapter shall contain in units and terms appropriate for evaluation the information listed in subparagraphs (a) through (e) below. Within either one hundred eighty (180) days after the effective date of a categorical Pretreatment Standard, or the final administrative decision on a category determination under Tennessee Rule 1400-40-14-.06(1)(d), whichever is later, existing categorical industrial users currently discharging to or scheduled to discharge to the POTW shall submit to the utility a report which contains the information listed in subparagraphs (a) through (g), below. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that become categorical industrial users subsequent to the promulgation of an applicable categorical pretreatment standard, shall submit to the utility a report which contains the information listed in subparagraphs (a) through (g), below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical pretreatment standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged. This report is called the Baseline Monitoring Report (BMR).

Additionally, all significant industrial users who are unable to achieve a discharge limit set forth in § 18-106 without improved operation and maintenance procedures or pretreatment shall submit a report which contains the information listed in paragraphs (a) through (g) of this section.

As specified, the report shall contain all applicable portions of the following:

- (a) Identifying information. (i) The name and address of the facility, including the name of the operator and owner;
- (ii) Contact information, description of activities, facilities, and plant production processes on the premises.
- (b) Environmental permits. A list of any environmental control permits held by or for the facility.
- (c) Description of operations. (i) A brief description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production), and standard industrial classifications of the operation(s) carried out by such industrial user. This description should include a schematic process diagram, which indicates points of discharge to the POTW from the regulated processes;
- (ii) Types of wastes generated, and a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;
- (iii) Number and type of employees, hours of operation, and proposed or actual hours of operation;
- (iv) Type and amount of raw materials processed (average and maximum per day);
- (v) Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge;
- (vi) Time and duration of discharges;
- (vii) The location for monitoring all wastes covered by the permit.
- (d) Flow measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula (Tennessee Rule 1400-40-14-.06(5)).
- (e) Measurement of pollutants. (i) The categorical pretreatment standards applicable to each regulated process and any new categorically regulated processes for existing sources.
- (ii) The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the

pretreatment standard or by the utility, of regulated pollutants in the discharge from each regulated process;

(iii) Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported;

(iv) The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in § 18-109(4) of this ordinance. Where the pretreatment standard requires compliance with a BMP or pollution prevention alternative, the industrial user shall submit documentation as required by the utility or the applicable pretreatment standards to determine compliance with the pretreatment standard;

(v) Sampling must be performed in accordance with procedures set out in § 18-109(4) of this ordinance. When pH information is required in the initial report or in regular periodic self-monitoring reports, it shall be provided to the utility as a copy of the chart from a continuous pH recorder or copy of logged PH readings taken at least every hour of operation using a "probe" type PH meter;

(vi) The industrial user shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph;

(vii) Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the industrial user should measure the flows and concentrations necessary to allow use of the combined wastestream formula of 1400-40-14-.06(5) in order to evaluate compliance with the pretreatment standards. Where an alternate concentration or mass limit has been calculated in accordance with 1400-40-14-.06(5) this adjusted limit along with supporting data shall be submitted to the utility;

(viii) The utility may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures;

(ix) The baseline report shall indicate the time, date and place, of sampling, and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.

(f) Certification. A statement that has been reviewed by an authorized representative of the industrial user and certified by a professional engineer indicating if pretreatment standards are being met on a consistent basis and, if not, whether additional operation and

maintenance procedures or additional pretreatment is required for the industrial user to meet the pretreatment standards and requirements.

(g) Compliance schedule. If additional pretreatment or operation and maintenance procedure will be required to meet the pretreatment standards the report shall contain the shortest schedule by which the industrial user will provide the additional pretreatment. The completion date in this schedule shall be no later than the compliance date established for the applicable pretreatment standard.

For purposes of this paragraph when the context so indicates, the phrase "pretreatment standard" shall include either a national pretreatment standard or a pretreatment standard imposed as a result of the industrial user's discharging any incompatible pollutant regulated by § 18-106. For purposes of this paragraph, the term "pollutant" shall include any pollutant identified in a national pretreatment standard or any incompatible pollutant identified in § 18-106.

(4) Incomplete applications. The utility will act only on applications that are accompanied by a report which contains all the information required in § 18-108(3). Industrial users who have filed incomplete applications will be notified by the utility that the application is deficient and the nature of such deficiency and will be given thirty (30) days to correct the deficiency. If the deficiency is not corrected within that period or with such extended time allowed by the utility, the utility shall deny the application and notify the applicant in writing of such action.

(5) Evaluation of application permit conditions. Upon receipt of complete applications, the utility shall review and evaluate the applications and shall propose such special permit conditions as the utility deems advisable. The utility may deny any application for a wastewater discharge permit. All wastewater discharge permits shall be expressly subject to all the provisions of this chapter and all other applicable ordinances, laws, and regulations. Wastewater discharge permits shall contain at a minimum:

(a) A statement that indicates the wastewater discharge permit issuance date, expiration date and effective date as specified in § 18-108(9).

(b) A statement that the wastewater discharge permit is nontransferable without prior notification to the utility as specified in § 18-108(10), and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;

(c) Effluent limits, including best management practices, based on applicable pretreatment standards.

(d) Self-monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include an identification of pollutants (or best management practice) to be monitored, sampling location, sampling frequency, and sample type based on federal, state, and local law.

(e) A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable federal, state, or local law.

(f) Requirements to control slug discharge, if determined by the utility to be necessary.

The utility may also propose that the wastewater discharge permit be subject to one or more special conditions in regard to any of the following:

(a) Pretreatment requirements.

(b) The average and maximum wastewater constituents and characteristics.

(c) Limits on rate and time of discharge of requirements for flow regulations and equalization.

(d) Requirements for installation of inspection and sampling facilities.

(e) Requirements for submission of technical reports or discharge reports.

(f) Requirements for maintaining records relating to wastewater discharge.

(g) Mean and maximum mass emission rates, or other appropriate limits when toxic pollutants (as set forth in § 18-106) are proposed or present in the industrial user's wastewater discharge.

(h) Other conditions deemed appropriate by the utility to ensure compliance with this chapter or other applicable ordinance, law, or regulation.

(i) A reasonable compliance schedule, as determined by the utility, up to one (1) year in duration or such earlier date as may be required by other applicable law or regulation, whichever is sooner, to ensure the industrial user's compliance with pretreatment requirements or improved methods of operation and maintenance.

(j) Requirements for the installation of facilities to prevent and control accidental discharge or spills at the user's premises.

(k) The unit discharge or schedule of charges and fees for the wastewater to be discharged to a community sewer.

(6) Applicant to be notified; right to object. (a) Upon completion of the evaluation, the utility shall notify the applicant of any denial or special permit conditions proposed for inclusion in the wastewater discharge permit.

(b) The applicant shall have thirty (30) days from and after the date of the utility's recommendations for denial or special permit conditions to review same and file written objections with the utility in regard to any denial or special permit conditions recommended. The utility may, but is not required, to schedule a meeting with applicant's

authorized representative within fifteen (15) days following receipt of the applicant's objections, to attempt to resolve disputed issues concerning the denial or special permit conditions.

(c) If applicant files no objection to special permit conditions proposed by the utility or a subsequent agreement is reached concerning same, the utility shall issue a wastewater discharge permit to applicant with such special conditions incorporated therein. Otherwise, the utility shall submit the disputed matters to the board for resolution.

(7) Board to establish permit conditions; hearing. (a) In the event the utility cannot issue a wastewater discharge permit pursuant to § 18-108(6), the utility shall submit to the board the reasons for the denial or the proposed permit conditions and the applicant's written objections thereto at the next regularly scheduled meeting of the board or a specially called meeting.

(b) The board shall schedule a hearing within ninety (90) days following the meeting referred to above unless such time is extended for just cause shown to resolve any disputed matters relevant to such permit.

(c) The utility shall notify the applicant of the date, time, place, and purpose of the hearing scheduled by the board. The applicant and the utility shall have the right to participate in the hearing and present any relevant evidence to the board concerning the proposed denial or special permit conditions or other matters being considered by the board.

(d) Following the hearing or additional hearings deemed necessary and advisable by the board, the board shall render a decision on the utility's denial to issue a wastewater discharge permit or establish special permit conditions deemed advisable to ensure the applicant's compliance with this chapter or other applicable laws or regulations and direct the utility to issue a wastewater discharge permit to the applicant accordingly.

(8) Compliance schedule and reporting requirements. The following conditions shall apply to the schedules required by this section:

(a) Schedule components. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment requirements for the industrial user to meet the applicable pretreatment standards (e.g., hiring an engineer, completing the engineering report, completing final plans, executing contracts for major components, commencing construction, completing construction, etc.).

(b) Schedule intervals. No such increment shall exceed nine (9) months.

(c) Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the utility including, at a minimum, whether or not it complied with the increment of progress to be met on such date

and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. In no event shall more than nine (9) months elapse between such progress reports to the utility.

(9) Duration of permit. All existing permits for significant industrial users shall be reviewed and reissued with revisions as necessary to comply with new regulatory measures of this chapter within one year of adoption of this ordinance.

Wastewater discharge permits shall be issued for a period not to exceed five (5) years. Permits issued to industrial users granted an exception pursuant to § 18-107(8) shall be issued for a period of one (1) year. A permit may remain effective after the expiration date if the IU has submitted a formal appeal or the utility requires an extended time for review.

Notwithstanding the foregoing, industrial users subject to a national pretreatment standard shall apply for new permits on the effective date of such national pretreatment standards. The utility shall notify in writing any industrial user whom the utility has cause to believe is subject to a national pretreatment standard of the promulgation of such federal regulations, but any failure of the utility in this regard shall not relieve the industrial user of the duty of complying with such national pretreatment standards. An industrial user must apply in writing for a renewal permit within the period of time not more than ninety (90) days and not less than thirty (30) days prior to expiration of the current permit.

Limitations or conditions of a permit are subject to modification or change as such changes become necessary due to changes in applicable water quality standards, changes in the utility's NPDES permit, changes in § 18-106(11), changes in other applicable law or regulation, or for other just cause. Industrial users shall be notified of any proposed changes in their permit by the utility at least thirty (30) days prior to the effective date of the change. Any change or new condition in a permit shall include a provision for a reasonable time schedule for compliance. The industrial user may appeal the decision of the utility in regard to any changed permit conditions as otherwise provided in this chapter.

(10) Transfer of a permit. Wastewater discharge permits are issued to a specific industrial user for a specific operation. A wastewater discharge permit shall not be reassigned or transferred or sold to a new owner, new user, a different premises, or a new or changed operation, unless as approved by the utility. Upon approval by the utility, a copy of the existing permit shall be given to the new owner/operator.

(11) Revocation of permit. Any permit issued under the provisions of this chapter is subject to modification, suspension, or revocation in whole or in part during its term for cause, including but not limited to, the following:

(a) Violation of any terms or conditions of the wastewater discharge permit or other applicable law or regulation.

(b) Obtaining of a permit by misrepresentation or failure to disclose fully all relevant facts.

(c) A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

(d) Refusal of reasonable access to the user's premise for the purpose of inspection or monitoring. (Ord. of Sept. 1994, as replaced by Ord. #2012-19, Sept. 2012, and Ord. #2014-33, Oct. 2014)

18-109. Inspections, monitoring, and records. (1) Inspections, monitoring, and entry. (a) When required to carry out the objective of this chapter, including but not limited to:

(i) Developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, standard of performance, or permit condition under this chapter;

(ii) Determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, standard of performance, or permit condition;

(iii) Any requirement established under this section.

(b) The utility shall require any industrial user to:

(i) Establish and maintain records;

(ii) Make reports;

(iii) Install, use, and maintain monitoring equipment or methods, including where appropriate, biological monitoring methods;

(iv) Sample effluents in accordance with these methods, at such locations, at such intervals, and in such manner as the utility shall prescribe; and

(v) Provide such other information as the utility may reasonably require.

(c) Specific requirements under the provisions of paragraph (b) of this section shall be established by the utility, or the board as applicable, for each industrial user and such requirements shall be included as a condition of the industrial user's wastewater discharge permit. The nature of degree of any requirement under this provision shall depend upon the nature of the user's discharge, the impact of the discharge on the POTW, the volume of water discharged, and the technical feasibility of an economic reasonableness of any such requirement imposed.

(d) The utility or his authorized representative shall, upon presentation of his credentials:

(i) Have a right of entry to, upon, or through any user's premises in which an effluent source is located or in which any

records required to be maintained under this subsection are located.

(ii) Have access at reasonable times to and copy any records, inspect any monitoring equipment or method required under paragraph (b), and sample any effluents which the owner or operator of such source is required to sample.

(e) In the event any industrial user denies the utility or his authorized representative the right of entry for inspection, sampling effluents, inspecting and copying records, or verifying that a user is not discharging industrial wastes or performing such other duties as shall be imposed upon the utility by this chapter, the utility shall seek a warrant or use such other legal procedures as advisable and reasonably necessary to discharge the duties of this section.

(f) Any industrial user failing or refusing to discharge any duty imposed upon the user under the provisions of this section, or who denies the utility or authorized representative the right to enter the user's premises for purposes of inspection, sampling effluents, inspecting and copying records, or such other duties as may be imposed upon him by this section, shall be deemed to have violated the conditions of the wastewater discharge permit and such permit shall be subject to modification, suspension, or revocation under the procedures established in this chapter. A user who does not have an industrial waste discharge permit and denies the utility or authorized representative the right to inspect as described herein is subject to having the sewer service in question terminated by the utility.

(2) Reports. (a) Progress reports. No later than fourteen (14) days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the utility, including as a minimum, whether it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for the delay, and steps being taken by the industrial user to return the construction to the schedule established. In no event shall more than nine (9) months elapse between such progress reports to the utility.

(b) Ninety (90) day report, new source compliance. Within ninety (90) days following the date for final compliance with applicable pretreatment standards or, in the case of a new source, following commencement of the introduction of wastewater into the POTW, any industrial user subject to pretreatment standards and requirements shall submit to the utility a report containing the information described in § 18-108(3)(d) through (f).

(c) Self-monitoring reports. (i) All SIUs shall submit to the utility during the months of May and November, unless required more frequently in the pretreatment standard or by the utility, a

report indicating the nature and concentration of pollutants in the effluent which are limited by their permit. In addition, this report shall include a record of the total daily flows. At the discretion of the utility and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the utility may agree to alter the months during which the above reports are to be submitted.

(ii) The utility, as applicable, may impose mass limitations on industrial users employing dilution to meet applicable pretreatment standards or requirements or in other cases where the imposition of mass limitations are appropriate. In such cases, the report required by paragraph (c)(i) of this section shall indicate the mass of pollutants regulated by pretreatment standards in the effluent of the industrial user.

(d) The reports required in this section shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration or production rate and mass limits where requested by the utility, as applicable, of pollutants contained therein which are limited by the applicable pretreatment standards or industrial permit. For industrial user subject to equivalent mass or concentration limits established by the utility as alternative standards, the report shall contain a reasonable measure of the user's long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed only in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report shall include the user's actual average production rate for the reporting period. In cases where the pretreatment standard requires compliance with a BMP or pollution prevention alternative, the user must submit documentation to determine the compliance status. The frequency of monitoring shall be prescribed in the applicable treatment standard.

(3) Monitoring facilities. (a) All SIUs shall install a monitoring station of a standard design or one satisfactory to the utility within one (1) year from adoption of this chapter. All users who propose to discharge or who in the judgment of the utility could now or in the future discharge wastewater with constituents and characteristics different from that produced by a domestic premise may be required to install a monitoring facility. Monitoring facilities shall be properly maintained in good working order at all times. Failure to maintain the monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.

(b) Installation. Required monitoring facilities shall be constructed, operated, and maintained at the user's expense. The purpose of the facility is to allow inspection, sampling, and flow measurement of wastewaters. If sampling or metering equipment is also

required by the utility, it shall be provided, installed, and operated at the user's expense. The monitoring facility will normally be required to be located on the user's premises outside the building. The utility may, however, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed in the public street right-of-way with the approval of the public agency having jurisdiction of that right-of-way and located so that it will not be obstructed by landscaping or parked vehicles.

(c) Access. If the monitoring facility is inside the user's fence, there shall be accommodations to allow safe and immediate access for utility personnel. There shall be ample room in or near such facility to allow accurate sampling and compositing of samples for analysis. The entire facility and any sampling and measuring equipment shall be maintained at all times in a safe and proper operating condition by and at the expense of the user.

(d) The industrial user shall be required to design any necessary facility and to submit according to the permit compliance schedule an engineering report, including detailed design plans and operating procedures to the utility for review in accordance with accepted engineering practices. The utility shall review the plans and other documents within forty-five (45) days and shall recommend to the industrial user any change deemed appropriate.

(e) Upon approval of plans and other documents, the industrial user shall secure all building, electrical, plumbing, and other permits required and proceed to construct any necessary facility and establish required operating procedures within the time provided in the industrial user's wastewater discharge permit.

(4) Sampling and analysis. (a) All collected samples must be of such nature that they provide a true and accurate representation of the industry's normal workday effluent quality.

(b) Chain-of-custody procedures, sample preservation techniques, and sample holding times recommended by EPA shall be followed in all self-monitoring activities. Grab samples must first be used for cyanide, phenols, oil and grease, sulfide, volatile organics, and when a continuous monitor is not used; pH. In addition, grab samples may be required to show compliance with instantaneous limits. All other samples shall be twenty-four (24) hour flow-proportional composite samples, unless otherwise approved by the utility.

(c) Monitoring shall be performed at the approved monitoring station on the effluent sewer. Location and design of the monitoring station shall be subject to the review and approval of the utility. Any change in monitoring location will be subject to the approval of the utility.

(d) All analyses shall be performed in accordance with procedures established by EPA under the provisions of section 304(h) of

the Act [33 U.S.C. 1314(h)] and contained in 40 C.F.R. part 136 and amendments thereto or with any other test procedures approved by EPA. Sampling shall be performed in accordance with the techniques approved by EPA. Where 40 CFR part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the Administrator of the EPA determines that the part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the utility or other parties, approved by the administrator of the EPA.

(e) For sampling required in support of baseline monitoring and ninety (90) day compliance reports, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data does not exist; a lower minimum may be authorized. For self-monitoring reports, the SIU is required to collect the number of grab samples as specified in the industrial user discharge permit to assess and assure compliance with applicable pretreatment standards and requirements.

(5) Dangerous discharge notification. (a) Telephone notification. Any person or user causing or suffering any discharge, whether accidental or not, which presents or may present an imminent or substantial endangerment to human health and welfare or the environment, or which is likely to cause interference with the POTW, shall notify the utility immediately by telephone. In the absence of the utility, notification shall be given to the utility employee then in charge of the treatment works. Such notification will not relieve the permit holder from any expense, loss, liability, or penalty which may be incurred as a consequence of the discharge.

(b) Written report. Within five (5) days following such occurrence, the user shall provide the utility with a detailed written report describing the cause of the dangerous discharge and measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, fish kills, or any other damage to person or property; nor shall such notification relieve the user of any penalties, civil penalties, or other liability which may be imposed by this chapter or other applicable law.

(c) Notice to employees. A notice shall be permanently posted on the user's bulletin board or other prominent place advising employers of a contact in the event of a dangerous discharge. Employers shall ensure that all employees who may cause or suffer such a dangerous discharge to occur are advised of the emergency notification procedure.

(6) Slug reporting. The industrial user shall notify the utility or the POTW immediately by telephone of any slug loading or changes that occur by the user which may affect the potential for a slug discharge, as defined by § 18-107(5), by the industrial user.

(7) Notification of the discharge of hazardous wastes. (a) The industrial user shall not as soon as practicable the POTW, the EPA Regional Waste Management Division Director, and state hazardous waste authorities of any discharge into the POTW of a substance which is a listed or characteristic waste under section 3001 of RCRA (42 USCA § 6921). Such notification must include a description of any such wastes discharged, specifying the volume and concentration of such wastes and the type of discharge (continuous, batch, or other), identifying the hazardous constituents contained in the listed wastes and estimating the volume of hazardous wastes expected to be discharged during the following twelve (12) months. The notification must take place within one hundred eighty (180) days after notification by the utility. This requirement shall not apply to pollutants already reported under the self-monitoring requirements of § 18-109(2).

(b) Dischargers are exempt from the requirements of this paragraph during a calendar month in which they generate no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.5(2), (f), (g), and (j). Generation of more than one hundred (100) kilograms of hazardous wastes in any given month requires a one (1) time notification. Subsequent months during which the industrial user generates more than one hundred (100) kilograms of hazardous waste do not require additional notification, except for the acute hazardous wastes specified in 40 CFR 261.5(3), (f), (g), and (j).

(c) In the case of new regulations under section 3001 of RCRA(42 USCA § 6921) identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the POTW of the discharge of such substance within ninety (90) days of the effective date of such regulations, except for the exemption in paragraph (b) of this section.

(d) In the case of any notification made under this section, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of wastes generated to the degree it has determined to be economically practicable and that it has selected the method of treatment, storage, or disposal currently available which minimizes the present and future threat to human health and the environment.

(8) Notification of changed discharge. All industrial users shall promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or

characteristic hazardous wastes, for which the industrial user submitted initial notification under § 18-109(7).

(9) Provisions governing fraud and false statements. The reports required to be submitted under this chapter shall be subject to the provisions of 18 U.S.C. § 1001 relating to fraud and false statements and the provisions of sections 309(c)(4) and (6) of the Act (33 USCA § 1311), as amended, governing false statements, representation, or certifications in reports required under the Act.

(10) Signatory requirements for industrial user reports. The reports required by this chapter shall include a certification statement as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

The reports shall be signed as follows:

(a) By a responsible corporate officer if the industrial user submitting the reports required by this section is a corporation. For the purpose of this paragraph, a responsible corporate officer is:

(i) A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or

(ii) The manager of one (1) or more manufacturing, production or operation facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can assure the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(b) By a general partner or proprietor if the industrial user submitting the reports required by this section is a partnership or sole proprietorship, respectively.

(c) By a duly authorized representation of the individual designation in paragraph (a) of this section if:

(i) The authorization is made in writing by the individual described in paragraph (a).

(ii) The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, operator of a well, well field utility, or a person in position of equivalent responsibility or with overall responsibility for environmental matters for the company.

(iii) The written authorization is submitted to the control authority.

(d) If an authorization under paragraph (c) of this section is no longer accurate because, a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of paragraph (c) of this section must be submitted to the utility prior to or in conjunction with any reports to be signed by an authorized representative.

(11) Reporting of violation. If sampling performed by an industrial user indicates a violation, the user shall notify the utility within twenty-four (24) hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the utility within thirty (30) days after becoming aware of the violation. Where the utility has performed sampling and analysis in lieu of the user, the utility must perform the repeat sampling and analysis unless it notifies the user of the violation and requires the user to perform the repeat analysis. The industrial user is not required to resample if one of the following criteria is met:

(a) The utility performs sampling at the industrial user at a frequency of at least once per month.

(b) The utility performs sampling at the user between the time when the user performs its initial sampling and the time when the user receives the results of this sampling.

(12) Reporting of all monitoring. If an industrial user subject to the reporting requirements, by this section of this chapter monitors any pollutant more frequently than required by the utility using approved procedures prescribed in this chapter, the results of this monitoring shall be included in the report unless otherwise exempted by the utility.

(13) Notice of bypass. (a) If an industrial user knows in advance of the need for a bypass, it shall submit prior notice to the utility. If possible, this should be submitted at least ten (10) days before the date of the bypass.

(b) An industrial user shall submit oral notice to the utility of an unanticipated bypass that exceeds applicable pretreatment standards

within twenty-four (24) hours from the time the industrial user becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times; and, if the bypass has not been corrected, the anticipated time it is exposed to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The utility may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

(14) Maintenance of records. Any industrial user subject to the reporting requirements established in this section shall maintain records of all information resulting from any monitoring activities required by this section. Such records shall include for all samples:

- (a) The date, exact place, method, and time of sampling and the names of the persons taking the samples.
- (b) The dates on which analyses were performed.
- (c) Who performed the analyses.
- (d) The analytical techniques/methods.
- (e) The results of the analyses.

(15) Retention period. Any industrial user subject to the reporting requirement established in this section shall be required to retain for a minimum of three (3) years any records of monitoring activities and results (whether or not such monitoring activities are required by this section) and any documentation associated with the application of best management practices and shall make these records available for inspection and copying by the utility, TDEC Director of the Division of Water Pollution Control, and EPA. The retention period shall be extended during the course of any unresolved litigation regarding the industrial user or upon request from the utility, the director, or the EPA.

(16) Confidential information. Any records, reports, or information obtained under this section shall:

- (a) In the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment, or permit condition, and
- (b) Available to the public to the extent provided by 40 CFR, part 2.302. If, however, upon showing satisfactory to the utility by any person that, if made public records, reports, information, or particular parts (other than effluent data) to which the utility has access under this section, would divulge methods or processes entitled to protection as trade secrets of such person, the utility shall consider such record, report, or information, or information, particular portion thereof confidential in accordance with the purposes of this chapter. Such record, report, or information may be disclosed to officers, employee, or authorized representatives of the United States or the State of Tennessee concerned

with carrying out the provisions of the CWA or when relevant in any proceeding under this chapter or other applicable laws. (Ord. of Sept. 1994, as replaced by Ord. #2012-19, Sept. 2012, and Ord. #2014-33, Oct. 2014)

18-110. Enforcement. (1) Complaints and orders. (a) Should the utility have reason to believe that a violation of any provision of the ordinance or orders of the board issued pursuant thereto has occurred, is occurring, or is about to occur, the utility may order that a written complaint be served upon the alleged violator(s).

(b) The complaint shall specify the provision(s) of the pretreatment program or order alleged to be violated or about to be violated, the facts alleged to constitute a violation thereof, and may order that necessary corrective action be taken within a reasonable time to be prescribed in such order, and shall inform the violators of the opportunity for a hearing before the utility board.

(c) Any such order shall become final and not subject to review unless the person or persons named therein request by written petition a hearing before the board as provided in § 18-110(4), no later than thirty (30) days after the date such order is served; provided, however, that the board may review such final order on the same grounds upon which a court of the state may review default judgments.

(2) Additional remedies. In addition to other remedies provided herein, the utility may issue a show-cause notice to any user who appears to be violating any provision of this chapter to show cause why sewer service should not be discontinued. The notice shall include the nature of the violation with sufficient specificity as to the character of the violation and the date(s) which such violation(s) occurred to enable the user to prepare a defense. Such notice shall be mailed to the user by certified mail, return receipt requested, or shall be personally delivered to the user at least twenty (20) days prior to the proposed action, except in the event of an emergency. At the show-cause hearing, the user may present any defense to such charges, either in person or through submission of written or documentary proof. Following the hearing or opportunity for a hearing, the board may at the board's discretion order termination of sewer service if satisfied from all available proof that the violation was willful and the termination is necessary to abate the offending condition or to prevent future violations. The board may terminate service for a period not to exceed one (1) year for a willful violation and may terminate service indefinitely to abate offending conditions or prevent future violations subject to the corrections of such conditions or violations by the user.

Any violation of provisions of this chapter that is not corrected or abated following a notice and opportunity for a hearing shall be grounds for termination of water service and/or plugging of the sewer line.

(3) Emergency termination of service. (a) When the utility finds that an emergency exists in which immediate action is required to protect public health, safety, or welfare, the health of animals, fish, or aquatic life, a public water supply, or the facilities of the POTW of the pretreatment agency, the utility may, without prior notice, issue an order reciting the existence of such an emergency and requiring that certain action(s) be taken as the utility deems necessary to meet the emergency.

(b) If the violator fails to respond or is unable to respond to the utility's order, the utility may take such emergency action as deemed necessary or contract with a qualified person(s) to carry out the emergency measures. The utility may assess the person(s) responsible for the emergency condition for actual costs incurred by the utility in meeting the emergency.

(c) In the event such emergency action adversely affects the user, the utility shall provide the user an opportunity for a hearing as soon as practicable thereafter to consider restoration of service upon abatement of the condition or other reasonable conditions. Following the hearing, the utility may take any such authorized action should the proof warrant such action.

(4) Hearings. (a) Any hearing or re-hearing brought before the board shall be conducted in accordance with the following:

(i) Upon receipt of a written petition from the alleged violator pursuant to this section, the utility shall give the petitioner thirty (30) days' written notice of the time and place of the hearing, but in no case shall the hearing be held more than sixty (60) days from the receipt of the written petition unless the utility and the petitioner agree to a postponement.

(ii) The hearing provided may be conducted by the board at a regular or special meeting. A quorum of the board must be present at the regular or special meeting in order to conduct the hearing.

(iii) A verbatim record of the prehearings of the hearings shall be made and filed with the board in conjunction with the findings of fact and conclusions of law made pursuant to paragraph (vi) of this section. The transcript shall be made available to the petitioner or any party to a hearing upon payment of a charge set by the utility to cover the costs of preparation.

(iv) In connection with the hearing, the chairman shall issue subpoenas in response to any reasonable request by any party to the hearing requiring the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in the hearing. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under this section, the chancery court of Bradley County shall have jurisdiction upon the

application of the board or the utility to issue an order requiring such person to appear and testify or produce evidence as the case may require. Failure to obey such order of the court is punishable by the court as contempt.

(v) Any member of the board may administer oaths and examine witnesses.

(vi) On the basis of the evidence produced at the hearing, the board shall make findings of fact and conclusion of law and enter such decisions and orders as in its opinion will best further the purposes of the pretreatment program and shall give written notice to such decisions and orders to the alleged violator. The order issued under this subsection shall be issued no later than thirty (30) days following the close of the hearing by the person or persons designated by the chairman.

(vii) The decision of the board shall become final and binding on all parties unless appealed to the courts as provided in paragraph (b).

(viii) Any person to whom an emergency order is directed pursuant to § 18-110(3) shall comply therewith immediately but on petition to the board shall be afforded a hearing as soon as possible, but in no case shall such hearing be held later than three (3) days from the receipt of such petition by the board.

(ix) Upon agreement of all parties, the testimony of any person may be taken by deposition or written interrogatories. Unless otherwise agreed, the deposition shall be taken in a manner consistent with rules 26 through 33 of the Tennessee Rules of Civil Procedure, with the chairman to rule on such matters as would inquire a ruling by the court under said rules.

(x) The party at the hearing bearing the affirmative burden of proof shall first call witnesses, which shall be followed by witnesses called by other party. Rebuttal witnesses shall be called in the same order. The chairman shall rule on any evidentiary questions arising during such hearing and shall make other rulings necessary or advisable to facilitate an orderly hearing subject to approval of the board. The board, the utility, his representative, and all parties shall have the right to examine any witness. The board shall not be bound by or limited to rules of evidence applicable to legal proceedings.

(xi) Any person aggrieved by any order or determination of the utility where an appeal is not otherwise provided by this section may appeal said order or determination to be reviewed by the board under the provisions of this section. A written notice of appeal shall be filed with the utility and the chairman, and said notice shall set forth with particularity the action or inaction of the

utility complained of and the relief being sought by the person filing said appeal. A special meeting of the board may be called by the chairman upon the filing of such appeal, and the board may, at members' discretion, suspend the operation of the order or determination of the utility on which is based the appeal until such time as the board has acted upon the appeal.

(xii) The vice chairman or the chairman pro tem shall possess all the authority delegated to the chairman by this section when acting in his absence or in his place.

(b) An appeal may be taken from any final order or other final determination of the utility or board by any party who is or may be adversely affected thereby to the chancery court pursuant to the common law writ of certiorari set out in Tennessee Code Annotated, § 27-8-101, within sixty (60) days from the date such order or determination is made.

(5) Civil penalty. (a) Any person, including, but not limited to, industrial users, who does any of the following acts or omissions shall be subject to a civil penalty of up to ten thousand dollars (\$10,000.00) per day for each day during which the act or omission continues or occurs:

(i) Violates any effluent standard or limitation imposed by a pretreatment program.

(ii) Violates the terms or conditions of a permit issued pursuant to a pretreatment program.

(iii) Fails to complete a filing requirement of a pretreatment program.

(iv) Fails to allow or perform an entry, inspection, monitoring, or reporting requirement of a pretreatment program.

(v) Fails to pay user or cost recovery charges imposed by a pretreatment program.

(vi) Violates a final determination or order of the board.

(b) Any civil penalty shall be assessed in the following manner:

(i) The utility may issue an assessment against any person or industrial user responsible for the violation.

(ii) Any person or industrial user against whom an assessment has been issued may secure a review of such assessment by filing with the utility a written petition setting forth the grounds and reasons for his objections and asking for a hearing on the matter involved before the board. If a petition for review of the assessment is not filed within thirty (30) days of the date the assessment is served, the violator shall be deemed to have consented to the assessment, and it shall become final.

(iii) When any assessment becomes final because of a person's failure to appeal the utility's assessment, the utility may apply to the appropriate court for a judgment and seek execution of such judgment and the court, in such proceedings, shall treat a

failure to appeal such assessment as a confession of judgment in the amount of the assessment.

(iv) In assessing the civil penalty, the utility may consider the following factors:

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

(B) Damages to the utility, including compensation for the damage or destruction of the facilities of the POTW, which also includes any penalties, costs, and attorneys' fees incurred by the utility as the result of the illegal activity, as well as the expenses involved in enforcing this section and the costs involved in rectifying any damages.

(C) Cause of the discharge or violation.

(D) The severity of the discharge and its effect upon the facilities of the POTW and upon the quality and quantity of the receiving waters.

(E) Effectiveness of action taken by the violator to cease the violation.

(F) The technical and economic reasonableness of reducing or eliminating the discharge.

(G) The economic benefit gained by the violator.

(v) The utility may institute proceedings for assessment in the name of the Cleveland Utilities Board in the chancery court of the county in which all or part of the pollution of violation occurred.

(c) The board may establish by regulation a schedule of the amount of civil penalty which can be assessed by the utility for certain specific violations or categories of violations.

(i) Any civil penalty assessed to a violator pursuant to this section may be in addition to any civil penalty assessed by the Commissioner of Environment and Conservation for violations of Tennessee Code Annotated, § 69-3-115(a)(a)(F). Provided, however, the sum of penalties imposed by this section and by Tennessee Code Annotated, § 69-3-115(a) shall not exceed ten thousand dollars (\$10,000.00) per day for each day during which the act or omission continues or occurs.

(6) Assessment for noncompliance with program permits or orders.

(a) The utility may assess the liability of any polluter or violator for damages to the pretreatment agency resulting from any person(s) or industrial user(s) pollution or violation, failure, or neglect in complying with any permits or orders issued pursuant to the provisions of the pretreatment program. Tennessee Code Annotated, §§ 69-3-123, 69-3-124, or 69-3-125, or §§ 18-110(5) or (9).

(b) If an appeal from such assessment is not made to the board by the polluter or violator within thirty (30) days of notification of such assessment, he shall be deemed to have consented to such assessment and it shall become final.

(c) Damages may include any expenses incurred in investigating and enforcing the pretreatment program or Tennessee Code Annotated, §§ 69-3-123 through 69-3-129 or § 18-110(5) through (9), in removing, correcting, and terminating any pollution, and also compensation for any actual damages caused by the pollution or violation.

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

(7) Judicial proceedings and relief. The utility may initiate proceedings in the chancery or circuit court of the county in which the activities occurred against any person or industrial user who is alleged to have violated or is about to violate the pretreatment program, Tennessee Code Annotated, §§ 69-3-123 through 69-3-129, § 18-110(5) through (9), or orders of the board. In such action, the utility may seek, and the court may grant, injunctive relief and any other relief available in law or equity.

(8) Administrative enforcement remedies. (a) Notification of violation. When the utility finds that any industrial user has violated or is violating this chapter, or a wastewater permit or order issued hereunder, the utility or his agent may serve upon said user written notice of the violation. Within fifteen (15) days of the receipt date 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 utility. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the notice of violation.

(b) Consent orders. The utility is hereby empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the industrial user responsible for the noncompliance. Such orders will include specific action to be taken by the industrial user 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 paragraph (d) below.

(c) Show-cause hearing. The utility may order any industrial user which causes or contributes to a violation of this chapter or wastewater permit or order issued hereunder, to show cause why a proposed enforcement action should not be taken. Notice shall be served

on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user 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 requested) at least ten (10) days prior to the hearing. Such notice may be served on any principal executive, general partner, or corporate officer. Whether or not a duly notified industrial user appears as noticed, immediate enforcement action may be pursued.

(d) **Compliance order.** When the utility finds that an industrial user has violated or continues to violate this chapter or a permit or order issued thereunder, he may issue an order to the industrial user responsible for the discharge directing that, following a specified time period, sewer service shall be discontinued unless adequate treatment facilities, devices, or other related appurtenances have been installed and are properly operated. Orders may also contain such other requirements deemed reasonably necessary and appropriate to address the noncompliance, including the installation of pretreatment technology, additional self-monitoring, and management practices.

(e) **Cease and desist orders.** When the utility finds that an industrial user has violated or continues to violate this chapter or any permit or order issued hereunder, the utility may issue an order to cease and desist all such violations and direct those persons in noncompliance to do one of the following:

(i) Comply with the order.

(ii) Take appropriate remedial or preventive action needed to properly address a continuing or threatened violation, including halting operations and terminating the discharge.

(9) **Assessment of damages to users.** When the discharge of waste or any other act or omission cause an obstruction, damage, or any other impairment to the utility's facilities which causes an expense or damages of whatever character or nature to the utility, the utility shall assess the expenses and damages incurred by the utility to clear the obstruction, repair damage to the facility, and otherwise rectify any impairment, and bill the person responsible for the damage for reimbursement of all expenses and damages suffered by the utility. If the person responsible refuses to pay, then the utility shall forward a copy of the statement and documentation of all expenses to the utility's attorney who shall be authorized to take appropriate legal action.

(10) **Disposition of damage payments and penalties.** All damages and/or penalties assessed and collected under the provisions of § 18-110(5) through (9) shall be placed in a special fund by the utility and allocated and appropriated to the sewer system for the administration of its pretreatment program.

(11) **Criminal penalties.** In addition to civil penalties imposed by the local administrative officer and the State of Tennessee, any person who willfully

and negligently violates permit conditions is subject to criminal penalties imposed by the State of Tennessee and the United States.

(12) Remedies nonexclusive. The remedies provided for in this ordinance are not exclusive. The utility may take any, all, or any combination of these actions against a noncompliant industrial user. Enforcement of pretreatment violations will generally be in accordance with the utility's enforcement response guide. However, the utility may take other action against any industrial user when the circumstances warrant. Further, the utility is empowered to take more than one (1) enforcement action against any noncompliant user. (Ord. of Sept. 1994, as replaced by Ord. #2012-19, Sept. 2012, and Ord. #2014-33, Oct. 2014)

18-111. Wastewater volume determination. (1) Metered water supply. Charges and fees related to the volume of wastewater discharged to the utility's sewer system shall be based upon the user's total water consumption from all water supply sources. The total amount of water used shall be determined from public meters installed and maintained by the utility and/or private meters installed and maintained at the expense of the user and approved by the utility.

(2) Actual wastewater volume. When charges and fees are based upon water usage and/or discharge and where, in the opinion of the utility, a significant portion of the water received from any metered source does not flow into the community sewer because of the principal activity of the user or removal by other means, the charges and fees will be applied only against the volume of water discharged from such premises into the community sewer. Written notification and proof of the diversion of water must be provided by the user, and approved by the utility.

The users may install a meter of a type and at a location approved by the utility, to measure either the amount of sewage discharged or the amount of water diverted. Such meters shall be maintained at the expense of the user and be tested for accuracy at the expense of the user when deemed necessary by the utility.

(3) Estimated wastewater volume. For users where, in the opinion of the utility, it is unnecessary or impractical to install meters, charges and fees may be based upon an estimate of the volume to be discharged. The estimate shall be prepared by the user and approved by the utility. The number of fixtures, seating capacity, population equivalent, annual production of goods and services, and other such factors as deemed rational by the utility shall be used to estimate the wastewater discharge volume.

(4) Domestic flows. For the separate determination of the volumes of domestic and industrial flows from industrial users for purposes of calculating charges based upon industrial wastewater flows alone, users shall install a meter of a type and at a location approved by the utility. For users where, in the opinion of the utility, it is unnecessary or impractical to install such a meter, the

volume of the domestic and industrial wastewater shall be based upon an estimate prepared by the users and approved by the utility. (Ord. of Sept. 1994, as replaced by Ord. #2012-19, Sept. 2012, and Ord. #2014-33, Oct. 2014)

18-112. Wastewater charges and fees. (1) Purpose of charges and fees. A schedule of charges and fees shall be adopted by the utility which will enable it to comply with the revenue requirements of the Federal Water Pollution Control Act Amendments. Charges and fees shall be determined in a manner consistent with regulations of the federal grant program in order that sufficient revenues are collected to defray the utility's cost of operating and maintaining adequate wastewater collection and treatment systems and to provide sufficient funds for equipment replacement, capital outlay, bond service costs, capital improvements, and depreciation.

(2) Abutting property owners; to pay charges. The owner or occupant of each lot or parcel of land which abuts upon a street or other public way containing a sanitary sewer upon which lot or parcel a building has been or may hereafter be constructed for residential, commercial, or industrial use shall pay the sewer service charges as provided in this chapter. The utility or his designee shall make the determination whether or not a lot or parcel abuts upon a segment of street, alley, easement, or other public way in which there is a sewer for the purposes of levying service charges; provided that he or she may waive the collection of such charges where the connection is infeasible based upon engineering or hydraulic principles, the connection would not comport with applicable plumbing or building codes, or the connection would not comport with other applicable codes, laws, or regulations.

(3) Contracts for disposal of sewage authorized; charges. The utility may (subject to approval by the city council) enter into contracts with any municipality, county, incorporated district or person for the treatment and disposal of sewage collected and pumped or delivered to some part of the sewer system; provided, however, that the charges to be paid for the treatment and disposal of such sewage shall not be less than an amount which is fair and equitable, taking into account the cost to the city of such treatment and disposal and the cost of the sewage disposal system. All revenues received pursuant to such contract shall be deemed to be revenue of the sewer system, and shall be applied and accounted for in the same manner as other revenues derived from the operation of such system.

(4) Secondary metering. Whenever a property upon which a sewer user charge is imposed under this chapter uses water for an industrial or commercial purpose, which water so used is not discharged into the sewerage system of the utility, the quantity of water so used and not discharged into the utility's sewers shall be excluded in determining the sewer user charge of the owner or occupant; provided that the quantity of water so used and not discharged into the utility sewers is measured by a device or meter (called a secondary meter) approved by the utility and installed by the owner or occupant without cost to

the utility. The sewer user charge based upon the consumption of water to be paid by the owner or occupant of such property shall be computed at the rates provided in this chapter less the quantity not discharged into the utility's sewers. The utility reserves the right to require calibration of secondary meters when appropriate. A secondary meter shall meet the following requirements:

(a) Meters should read in one hundred (100) cubic feet.

(b) Meters must be located either in an outdoor meter box or vault, or inside the user's building or structure in a clean, dry, safe place not subject to wide temperature variations so that the meter can be easily examined, read, or removed.

(c) The user shall, at its expense, provide suitable pipe connections and shut-off valves, one (1) each at the inlet and outlet sides of the meter.

(d) The meter box or vault may be constructed to protect the meter from freezing and damage by vehicular traffic, and its location and design shall prevent, as far as possible, inflow of surface water.

(e) Any changes in location of secondary meters, malfunctions, replacements, or any other changes in the approved secondary meter installation must be reported to the utility in writing. Also, a copy must be forwarded to the water company containing all pertinent information regarding that particular meter.

(f) No retroactive credits will be issued if the holder of the secondary meter permit fails to comply with the rules and regulations in force at any particular time.

(g) If any water exempted from the sewer service charge is returned to the sewer system at any time or point, a metering device shall be installed. Any flow registered through such a meter shall be charged for sewer service.

(h) Any secondary meter must be easily accessible by the utility. If this is not possible, remote read meters shall be installed and protected from any magnetic interference. It is the responsibility of the permit holder to assure the accuracy of the remote read to the installed meter.

(i) All meters must be calibrated and certified for accuracy once every eighteen (18) months. The certification of the inspection or a copy thereof has to be forwarded to the utility.

(5) Types of charges and fees. The charges and fees established in the utility's schedule of charges and fees may include, but not be limited to, the following:

- Connection fees.
- User charges and surcharges.
- Fees for monitoring requested by user.
- Fees for permit applications.
- Fees for garbage grinders.
- Fees for truck discharge operation permits.

- Fees for discharge of holding tank wastes.
- Inspection fees.

(6) Basis for determination of charges. Charges and fees shall be based upon a minimum basic charge for each premise, computed on the basis of normal wastewater from a domestic premise with the following characteristics:

| | | |
|------------------|---|----------|
| BOD ₅ | - | 300 mg/l |
| COD | - | 600 mg/l |
| Suspended Solids | - | 400 mg/l |
| Volume | - | 300 mg/l |

The charges and fees for all users other than the basic domestic premise shall be based upon the relative difference between the average wastewater constituents and characteristics of that user as related to those of a domestic premise.

The charges and fees established for permit users shall be based upon the measured or estimated constituents and characteristics of the wastewater discharge of that user which may include, but not be limited to, BOD, COD, suspended solids, oil and grease, and volume.

(7) User charges. Each user of the utility's sewer system will be levied a charge for payment of bonded indebtedness of the utility and for the user's proportionate share of the operation, maintenance, and replacement costs of the sewer system. A surcharge may be levied against those users with wastewater that exceeds the strength of normal wastewater.

The user charge will be computed from a base charge plus a surcharge. The base charge will be the user's proportionate share of the costs of operation, maintenance, and replacement for handling its periodic volume of normal wastewater plus the user's share of the bond amortization costs of the utility.

(a) Operation, maintenance, and replacement (OM&R) user charges. Each user's share of OM&R costs will be computed by the following formula:

$$C_u = \frac{C_t}{V_t} (V_u)$$

Where:

C_u = User's charge for OM&R per unit of time.

C_t = Total OM&R cost per unit of time, less cost recovered from surcharges

V_t = Total volume contribution from all users per unit of time.

V_u = Volume contribution from a user per unit of time.

(b) Bonded indebtedness charges. Each user's share of bonded indebtedness costs will be based on a schedule which reflects the user's volumetric and/or waste strength contribution to the system.

(c) User surcharges. The surcharge will be the user's proportionate share of the OM&R costs for handling its periodic volume of wastewater which exceeds the strength of BOD₅, SS, and/or other elements in normal wastewater as defined by § 18-112(6). The amount of the surcharge will be determined by the following formula:

$$C_s = (B_c \times B + S_c \times S + P_c \times P) \times 8.34 \times V_u$$

Where:

C_s = Surcharge for wastewaters exceeding the strength of normal wastewater expressed in dollars per billing period.

B_c = OM&R cost for treatment of a unit of BOD₅ expressed in dollars per pound.

B = Concentration of BOD₅ from a user above the base level of 300 mg/l expressed in mg/l.

S_c = OM&R cost for treatment of a unit of SS expressed in dollars per pound.

S = Concentration of SS from a user above the base level of 400 mg/l, expressed in mg/l.

P_c = OM&R cost for treatment of a unit of any pollutant which the POTW is committed to treat by virtue of an NPDES permit or other regulatory requirement, expressed in dollars per pound.

P = Concentration of any pollutant from a user above a base level. Base levels for pollutants subject to surcharges will be established by the utility.

V_u = Volume contribution of a user per billing period in million gallons based on a twenty-four (24) hour average for billing period.

The concentrations of any pollutant of an industrial user and the volume contribution of that user shall be calculated from discharge monitoring reports subject to verification by the utility, from records maintained by the industrial user, and from reliable information obtained from any other source.

The values of parameters used to determine user charges may vary from time to time. Therefore, the utility is authorized to modify any parameter or value as often as is necessary. Review of all parameters and values shall be undertaken where necessary, but in no case less frequently than annually.

(d) Pretreatment program charges. Industrial users may be required to pay a separate pretreatment program charge. The pretreatment program charge will be based on the user's proportional shares of the costs of administering the POTW pretreatment program which includes costs incurred by the utility for verification monitoring, analysis, and reporting. Each user's share of the pretreatment program costs will be computed by the following formula:

$$C_u = \frac{C_t}{V_t} (V_u)$$

Where:

C_u = User's charge for POTW pretreatment program per unit of time.

C_t = Total POTW pretreatment program costs per unit of time.

V_t = Total volume contribution of permitted industrial users per unit of time.

V_u = Volume contribution from a permitted industrial user per unit of time.

(8) Review of OM&R charges. The utility shall review at least annually the wastewater contribution by users, the total costs of OM&R of the treatment works, and its approved user charge system. The utility shall revise the user charges to accomplish the following:

(a) Maintain the proportionate distribution of OM&R costs among users or classes of users.

(b) Generate sufficient revenue to pay the total OM&R costs of the treatment works.

(c) Apply any excess revenues collected to the costs of operation and maintenance for the next year and adjust the rate accordingly.

(9) Charges for extraneous flows. The costs of operation and maintenance for all flow not directly attributable to users, e.g., infiltration/inflow, will be distributed proportionally among all users of the treatment works.

(10) Notification, billing, and collection. (a) Notification. Each user will be notified, at least annually, in conjunction with a regular bill of the rate and that portion of the user charges which are attributable to OM&R charges.

(b) Billing. Wastewater charges imposed by this chapter shall be added to, included in, and collected with the monthly water service bills and shall be due and payable monthly. This shall not affect the right of the utility to collect wastewater charges from customers who utilize private water supplies or public water supplies from other utilities.

Where water is provided by either private or other public sources, rates will be determined by the president/CEO of the utility for affected customers based upon all known factors at the time of the billing.

(c) Collection. Wastewater charges and fees imposed by this chapter shall be collected by the utility in a manner established by the utilities board.

(d) Delinquent accounts. The utility may discontinue water service to any customer who has a delinquent wastewater charge until such wastewater charge has been paid, except as provided by state or federal law.

(e) Adjustments. The utility shall make appropriate adjustments in the wastewater charge of sewer customers for over or under registration of utility meters, leaks, or other recognized adjustments.

(f) Appeals. A user may contest a credit or billing determination by the utility by paying said bill under protest and within thirty (30) days following the due date of said bill lodging with the utility a written notice of appeal with the utility board. The appeal shall follow the procedures in § 18-110(4). (Ord. of Sept. 1994, as amended by Ord. #2005-40, Oct. 2005, and replaced by Ord. #2012-19, Sept. 2012, and Ord. #2014-33, Oct. 2014)

18-113. Administration of sewer system. (1) Utility board. In addition to any other duty or responsibility otherwise conferred upon the utility board by this chapter, the board shall have the duty and power as follows:

(a) To recommend from time to time to the city council of the City of Cleveland that it amend or modify the provisions of this chapter.

(b) To grant exceptions pursuant to the provisions of § 18-107(8) hereof, and to determine such issues of law and fact as are necessary to perform this duty.

(c) To hold hearings upon appeals from orders of actions of the president/CEO as may be provided under any provision of this chapter.

(d) To hold hearings relating to the suspension, revocation, or modification of a wastewater discharge permit and issue appropriate orders relating thereto.

(e) To hold other hearings that may be required in the administration of this chapter and to make determinations and issue orders necessary to effectuate the purposes of this chapter.

(f) To request assistance from any office; agent, or employee of the city government and to obtain any necessary information or other assistance for the board.

(g) The board, acting through its chairman, shall have the power to issue subpoenas requiring attendance, the testimony of witnesses, and the production of documentary evidence relevant to any matter properly heard by the board.

(h) The chairman, vice chairman, or chairman pro tem shall be authorized to administer oaths to people giving testimony before the board.

(i) The board shall hold annual meetings and special meetings as the board deems necessary.

(2) President/CEO. (a) President/CEO and staff. The president/CEO and his or her staff shall be responsible for the administration of all sections of this chapter. Administratively, the president/CEO shall be appointed by and shall report to the utilities board.

(b) Authority of president/CEO. The president/CEO shall have the authority to enforce all sections of this chapter. The president/CEO shall be responsible and have the authority to maintain and operate the various treatment works, sewer lines, pump stations, and other appurtenances. The president/CEO shall be responsible for preparation of operating budget subject to the normal budgetary processes of the utility.

(c) Records. The president/CEO shall keep in this office or at an appropriate storage facility all applications required under this chapter a complete record thereof, including a record of all wastewater discharge permits.

(d) President/CEO to assist board. The president/CEO shall attend all meetings of the utilities board, or when it is necessary for the superintendent to be absent, a designated representative shall be sent to make reports to and assist the board in the administration of this chapter.

(e) Notice on national pretreatment standard. The president/CEO shall notify industrial users identified in 40 CFR, part 403.8(f) (2) of any applicable pretreatment standards or other applicable requirements promulgated by the EPA under the provisions of section 204(b) of the Act (33 U.S.C. 1284), section 405 of the Act (33 U.S.C. 1345), or under the provisions of sections 3001 (42 U.S.C. 6921), 3304 (42 U.S.C. 6924), or 4004 (42 U.S.C. 6944) of the Solid Waste Disposal Act. Failure of the superintendent to notify industrial users shall not relieve the users from the responsibility of complying with these requirements.

(f) Public participation notice. The president/CEO shall comply with the public participation requirements of 40 CFR, part 25 in the enforcement of national pretreatment standards. The president/CEO shall at least annually provide public notification in a newspaper of general circulation published in Bradley County of all significant industrial users which, during the previous twelve (12) months, significantly violated applicable pretreatment standards or other pretreatment requirements. For the purposes of this provision, a significant industrial user is in significant violation if its violations meet one or more of the following criteria:

(i) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all of the measurements taken during a six (6) month period exceed (by any magnitude) the daily maximum limit including

instantaneous limits or the average limit for the same pollutant parameter.

(ii) Technical review criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of all of the measurements taken during a six (6) month period equal or exceed the product of the daily average maximum limit including instantaneous limits or the average limit times the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH).

(iii) Any other violation of a pretreatment effluent limit (daily maximum, long-term average, instantaneous limit, or narrative standard) that the superintendent believes has caused, alone or in combination with other discharges, interference, or pass-through, including endangering the health of POTW personnel and the general public.

(iv) Any discharge of a pollutant that has caused imminent endangerment to human health and welfare or to the environment and has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge.

(v) Violation by ninety (90) days or more after the schedule date of a compliance schedule milestone contained in a permit or enforcement order for starting construction, completing construction, or attaining final compliance.

(vi) Failure to provide required reports, such as baseline monitoring reports, ninety (90) day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules within thirty (30) days of the due date.

(vii) Failure to accurately report noncompliance.

(viii) Any other violation or group of violations, including BMP violations, which the president/CEO considers to be significant.

(g) Regulations and standards authorized. The president/CEO may promulgate rules, regulations, and design criteria not inconsistent with this chapter and have them printed for distribution. These rules may include requirements for performing wastewater characterizations, analyses, and other measurements by standard methods allowed by the utility. Such rules and regulations shall be ratified and adopted by the utilities board.

(h) Sewer credits. The president/CEO shall approve secondary meters and determine other kinds of sewer user charge credits.

(i) Approves new construction. The president/CEO shall give approval in acceptance of newly constructed sanitary sewer lines, pump stations, and other appurtenances.

(j) Emergency powers. The president/CEO shall have the authority to take whatever emergency action he deems necessary whenever a situation occurs that creates danger to the personnel of Cleveland Utilities or the facilities of the system or where there is a danger to public health. (Ord. of Sept. 1994, as replaced by Ord. #2012-19, Sept. 2012, and Ord. #2014-33, Oct. 2014)

18-114. Sewer extension outside corporate limits - urban growth.

(1) No connection to city sewer shall be allowed for any property outside the city limits unless the owner(s) of the property submit a written request to the city. The request must state that the property owner(s) are requesting that the property be annexed into the city, and must include a statement by the property owner(s) that the request is binding upon the property owner(s) and all successors in title. Once the written request is submitted to the city, the city council shall then make a determination of whether the requested annexation is appropriate. Nothing in this section is intended to create any obligation on behalf of the city to annex any property outside the corporate limits of the city.

(2) Where property outside of the city's present Urban Growth Boundary (UGB) is crossed by a sewer line having capacity to this serve property and or other properties within the same drainage basin, the city shall pursue expansion of its UGB to include the area that the sewer line is capable of serving.

(3) Where the city determines that urbanization is occurring, or is reasonably expected to occur over the period to 2035, outside the city limits, the city will consider annexation and pursue expansion of its UGB if necessary.

(4) Notwithstanding the provisions of §§ 18-114(1) through (3), or any other ordinance of the city, if the city council determines, based on a review by Cleveland Utilities and city staff, that extension of sewer or sewer connection outside of the city limits is appropriate for reasons of practical system design, environmental necessity, or economic benefit to the citizens of Cleveland, the city council may approve such extension or connection or approve it with conditions. (as added by Ord. #2012-19, Sept. 2012, and amended by Ord. #2014-20, May 2014, and Ord. #2014-33, Oct. 2014)

CHAPTER 2

CROSS-CONNECTIONS, ETC.

SECTION

- 18-201. Definitions.
- 18-202. Standards.
- 18-203. Approval of state department of health required.
- 18-204. Required statement from consumers with other supply sources.
- 18-205. Inspection of cross-connections.
- 18-206. Utility's right-of-entry for inspection purposes.
- 18-207. Correction of defects, etc.
- 18-208. Protective devices.
- 18-209. Labeling of water outlet not supplied by potable system.

18-201. Definitions. The following definitions and terms shall apply in the interpretation and enforcement of this chapter:

(1) "Auxiliary intake." Any piping connection or other device whereby water may be secured from a source other than that normally used.

(2) "By-pass." Any system of piping or other arrangement whereby the water may be diverted around any part or portion of a water purification plant.

(3) "Cross-connection." Any physical connection whereby the public water supply is connected with any other water supply system, whether public or private, either inside or outside of any building or buildings, in such manner that a flow of water into the public water supply is possible either through the manipulation of valves or because of ineffective check or back-pressure valves, or because of any other arrangement.

(4) "General manager." Shall mean the general manager of the utility or officials or employees of the utility as may be designated by the general manager.

(5) "Interconnection." Any system of piping or other arrangement whereby the public water supply is connected directly with a sewer, drain, conduit, pool, storage reservoir or other device which does or may contain sewage or other waste or liquid which would be capable of imparting contamination to the public water supply.

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

(7) "Public water supply." The Cleveland utilities-water division furnishing to the city and the surrounding areas of the county for general use and which supply is recognized as the public water supply by the state department of public health.

(8) "Utility." Shall mean the Cleveland utilities, a department of the city or duly appointed officials or representatives of Cleveland utilities. (1981 Code, § 23-135)

18-202. Standards. The Cleveland utilities public water supply is to comply with Tennessee Code Annotated, § 68-221-101 and § 68-221-104 as well as the rules and regulations for public water supplies, legally adopted in accordance with this code, which pertain to cross-connections, auxiliary intakes, by-passes and interconnections, and establish an effective ongoing program to control these undesirable water uses. (1981 Code, § 23-136)

18-203. Approval of state department of health required. It shall be unlawful for any person to cause a cross-connection, auxiliary intake, by-pass or interconnection to be made, or allow one to exist for any purpose whatsoever, unless the construction and operation of same has been approved by the state department of health, and the operation of such cross-connection, auxiliary, intake, by-pass or interconnection is at all times under the direct supervision of the general manager of the utility. (1981 Code, § 23-137)

18-204. Required statement from consumers with other supply sources. Any person whose premises are supplied with water from the public water supply, and who also has on the same premises a separate source of water supply or stores water in an uncovered or unsanitary storage reservoir from which the water stored therein is circulated through a piping system, shall file with the general manager of the utility a statement of the nonexistence of unapproved or unauthorized cross-connections, auxiliary intakes, by-passes or interconnections. Such statement shall also contain an agreement that no cross-connection, auxiliary intake, by-pass or interconnection will be permitted upon the premises. (1981 Code, § 23-138)

18-205. Inspection of cross-connections. It shall be the duty of the utility to cause inspections to be made of all properties served by the public water supply where cross-connections with the public water supply are deemed possible. The frequency of inspections and reinspections based on potential health hazards involved shall be as established by the utility and as approved by the state department of health. (1981 Code, § 23-139)

18-206. Utility's right-of-entry for inspection purposes. The officials of the utility, or its authorized representative, shall have the right to enter at any reasonable time, any property served by a connection to the utility for the purpose of inspecting the piping system or systems thereof for cross-connections, auxiliary intakes, by-passes, or interconnections. On request, the owner, lessee, or occupant of any property so served shall furnish to the utility any pertinent information regarding the piping system or systems on such property. The

refusal of such information or refusal of access, when requested, shall be deemed evidence of the presence of cross-connections. (1981 Code, § 23-140)

18-207. Correction of defects, etc. (1) Any person who had cross-connections, auxiliary intakes, by-passes or interconnections in violation of the provisions of this chapter on November 28, 1977, shall be allowed a reasonable time within which to comply with the provisions of this chapter. After a thorough investigation of existing conditions and an appraisal of the time required to complete the work, the amount of time shall be designated by the utility.

(2) The failure to correct conditions threatening the safety of the public water system as prohibited by this chapter and Tennessee Code Annotated, § 68-221-104, within a reasonable time and within the time limits set by the utility, shall be grounds for denial of water service. If proper protection has not been provided after a reasonable time, the utility shall give the customer legal notification that water service is to be discontinued, and then physically separate the public water supply from the customer's on-site piping system in such a manner that the two (2) systems cannot again be connected by an unauthorized person.

(3) Where cross-connections, interconnections, auxiliary intakes, or by-passes are found which constitute an extreme hazard of immediate concern of contaminating the public water system, the general manager of the utility shall require that immediate corrective action be taken to eliminate the threat to the public water system. Immediate steps shall be taken to disconnect the public water supply from the on-site piping system unless the eminent hazard is corrected immediately. (1981 Code, § 23-141)

18-208. Protective devices. (1) Where the nature of use of the water supplied a premises by the utility is such that is deemed:

- (a) Impractical to provide an effective air-gap separation;
- (b) That the owner and/or occupant of the premises cannot or is not willing to demonstrate to the official in charge of the utility, or his designated representative, that the water use and protective features of the plumbing are such as to propose no threat to the safety or potability of the water supply;
- (c) That the nature and mode of operation within a premises are such that frequent alterations are made to the plumbing;
- (d) There is a likelihood that protective measures may be subverted, altered or disconnected;

The utility shall require the use of an approved protective device on the service line serving the premises to assure that any contamination that may originate in the customer's premises is contained therein. The protective devices shall be a reduced pressure zone type backflow preventer approved by the state department of health as to the manufacturer, model and size. The method of

installation of the backflow protective devices shall be approved by the utility prior to installation and shall comply with the criteria set forth by the state department of health. The installation shall be at the expense of the owner or occupant of the premises.

(2) The utility shall have the right to inspect and test the device or devices on an annual basis or whenever deemed necessary. Water service shall not be disrupted to test the service without the knowledge of the occupant of the premises.

(3) Where the use of water is critical to the continuance of normal operations or protection of life, property, or equipment, duplicate units shall be provided to avoid the necessity of discontinuing water service to test or repair the protective device or devices. Where only one unit is installed and the continuance of service is critical, the utility shall notify, in writing, the occupant of the premises of plans to discontinue water service and arrange for a mutually acceptable time to test and/or repair the device. The utility shall require the occupant of the premises to make all repairs indicate promptly, and the expense of such repairs shall be borne by the owner or occupant of the premises. These repairs shall be made by qualified personnel, acceptable to the utility.

(4) If necessary, water service shall be discontinued (following legal notification) for failure to maintain backflow prevention devices in proper working order. Likewise the removal, by-passing or altering of the protective devices in such a manner as to make them ineffective shall constitute grounds for discontinuance of water service. Water service to such premises shall not be restored until the customer has corrected or eliminated such conditions or defects to the satisfaction of the utility. (1981 Code, § 23-142)

18-209. Labeling of water outlet not supplied by potable system.

The potable water supply made available on the properties served by the public water supply shall be protected from possible contamination as specified herein. Any water outlet which could be used for potable or domestic purposes and which is not supplied by the potable system must be labeled in a conspicuous manner as:

WATER UNSAFE
FOR DRINKING

A minimum acceptable sign shall have white letters one-inch high located on a red background. (1981 Code, § 23-143)

CHAPTER 3

MS4 PHASE II STORMWATER MANAGEMENT PROGRAM

SECTION

- 18-301. Creation, title and short title.
- 18-302. General provisions.
- 18-303. Definitions.
- 18-304. Waivers and alternatives for compliance.
- 18-305. Land disturbance permits.
- 18-306. Stormwater pollution prevention plan design standards.
- 18-307. Permanent stormwater management: operation, maintenance, and inspection.
- 18-308. Post construction landscaping.
- 18-309. Existing locations and ongoing developments.
- 18-310. Illicit discharges.
- 18-311. Enforcement and compliance.
- 18-312. Penalties.
- 18-313. Stormwater regulations board and administrative appeals.
- 18-314. Appendix.

18-301. Creation, title and short title. The City of Cleveland, Tennessee created by Ordinance 2004-11 a MS4 Phase II Stormwater Management Program for the City of Cleveland as mandated by the National Pollutant Discharge Elimination System Permit (NPDES) pursuant to 40 CFR 122.26. This section shall provide authority for establishing and administering the MS4 Phase II Stormwater Management Program, and is amended from time-to-time, particularly as necessary due to changes in NPDES requirements. This section may be referred to by its short title, the "stormwater ordinance." (as added by Ord. #2004-41, Nov. 2004, and replaced by Ord. #2015-06, March 2015)

18-302. General provisions. (1) Purpose. The purpose of this ordinance is to:

(a) Protect, maintain, and enhance the environment of the City of Cleveland and the public health, safety and the general welfare of the citizens of the city, by controlling discharges of pollutants to the city's stormwater system and to maintain and improve the quality and quantity of stormwater discharges to the receiving waters into which the stormwater outfalls flow, including, without limitation, lakes, rivers, streams, ponds, wetlands, and groundwater.

(b) Enable the City of Cleveland to comply with the National Pollutant Discharge Elimination System permit (NPDES) and applicable regulations, 40 CFR 122.26 for stormwater discharges.

(c) Allow the City of Cleveland to exercise the powers granted in Tennessee Code Annotated, § 68-221-1105, which provides that among other powers municipalities have with respect to stormwater facilities, is the power by ordinance or resolution to:

(i) Exercise general regulation over the planning, location, construction, and operation and maintenance of stormwater facilities in the municipality, whether or not owned and operated by the municipality;

(ii) Adopt any rules and regulations deemed necessary to accomplish the purposes of this ordinance, including the adoption of a system of stormwater construction inspection fees and permits;

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

(iv) Review and approve development/redevelopment plans that will result in land disturbing activity.

(v) Issue permits for stormwater discharges, or for the construction, alteration, extension, or repair of stormwater facilities; and collect any fees approved by the city council for permits or plans review pursuant to the stormwater ordinance.

(vi) Suspend or revoke permits when it is determined that the permittee has violated any applicable ordinance, resolution, or condition of the permit; and assess and collect administrative or civil penalties for violations of the stormwater ordinance.

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

(viii) Enter contracts, expend funds, or otherwise employ available resources to remediate or mitigate the detrimental effects of contaminated land or other sources of stormwater contamination, whether public or private, or to carry out other responsibilities under the stormwater ordinance.

(2) Jurisdiction and administering entity. (a) The "MS4 Phase II Stormwater Management Program" shall govern all properties within the municipal boundary or corporate limits of the City of Cleveland, Tennessee;

(b) The City of Cleveland Development and Engineering Services Department shall administer the provisions of this chapter;

(c) The City of Cleveland may enter into interlocal agreements to administer stormwater MS4 permit programs located outside the municipal boundary or corporate limits of the City of Cleveland, Tennessee, subject to enabling provisions in Tennessee Code Annotated, § 69-3-101 and approval by the city council. (as added by Ord. #2004-41,

Nov. 2004, amended by Ord. #2005-38, Oct. 2005, and replaced by Ord. #2015-06, March 2015)

18-303. Definitions. (1) "Administrative or civil penalties." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means those penalties authorized by Tennessee Code Annotated, § 68-221-1106 for violations of the stormwater ordinance. The authorized penalty is not less than fifty dollars (\$50.00) and not more than five-thousand dollars (\$5,000.00) per day for each day of violation.

(2) "As built plans." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means drawings developed from field survey data depicting conditions as they are actually constructed.

(3) "Best Management Practices" or "BMPs." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. To be considered as BMPs, the foregoing types of practices, procedures, prohibitions, requirements, etc., are to be those approved by the City of Cleveland and incorporated in the stormwater ordinance, whether fully set out herein or incorporated by reference.

(4) "Board." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means stormwater regulations board.

(5) "Borrow pit." As defined in Tennessee Code Annotated, § 69-3-103. Currently this is an excavation from which erodible material (typically soil) is removed to be fill for another site. There is typically no processing or separation of erodible material conducted at the site. Given the nature of activity and pollutants present at such excavation, a borrow pit is considered a construction activity for the purposes of the application of the stormwater ordinance.

(6) "Buffer zone." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means a setback from the top of water body's bank of undisturbed vegetation, including trees, shrubs and herbaceous vegetation; enhanced or restored vegetation; or the re-establishment of native vegetation bordering streams, ponds, wetlands, springs, reservoirs or lakes, which exists or is established to protect those water bodies. The goal of the water quality buffer is to preserve undisturbed vegetation that is native to the streamside habitat in the area of the project. Vegetated, preferably native, water quality buffers protect water bodies by providing structural integrity and canopy cover, as well as stormwater infiltration, filtration and evapotranspiration. Buffer width depends on the size of a drainage area. Streams or other waters with drainage areas less than one (1) square mile will require buffer widths of thirty feet (30') minimum. Streams or other waters with drainage areas greater than one (1) square mile will require buffer widths of sixty feet (60') minimum. The sixty feet

(60') criterion for the width of the buffer zone can be established on an average width basis at a project, as long as the minimum width of the buffer zone is more than thirty feet (30') at any measured location.

(7) "Building permit." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means written authorization issued by the City of Cleveland Development and Engineering Services Department for construction that pertains to building activities associated with a structure.

(8) "Building official." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means an employee of the City of Cleveland who is a managing inspector certified by the State of Tennessee to inspect structures under specific code requirements.

(9) "Channel." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means a natural or artificial watercourse with a definite bed and banks that conveys water continuously or periodically.

(10) "City." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means the City of Cleveland, Tennessee.

(11) "City engineer." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means a person employed by the City of Cleveland whose position title is "city engineer," "assistant city engineer," or some similar title, and who is licensed by the State of Tennessee as a professional engineer.

(12) "Common plan of development or sale." As defined in Tennessee Code Annotated, § 69-3-103. Currently this is broadly defined as any announcement or documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may take occur on a specific plot. A common plan of development or sale identifies a situation in which multiple areas of disturbance are occurring in contiguous areas. This applies because the activities may take place at different times, on different schedules, by different operators.

(13) "Community water." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wetlands, wells and other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of the City of Cleveland.

(14) "Contaminant." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means any physical, chemical, biological, or radiological substance or matter in water.

(15) "Design storm event." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means a hypothetical storm event, of a given frequency interval and duration, used in the analysis and design of a stormwater facility. The estimated design rainfall amounts, for any return period interval (i.e., 2-yr, 5-yr, 25-yr, etc.) in terms of either twenty-four (24) hour depths or intensities for any duration, can be found by accessing the

following NOAA National Weather Service Atlas 14 data for Tennessee: http://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html?bkmrk=tn. Other data sources may be acceptable with prior written approval by TDEC Water Pollution Control.

(16) "Detention." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means the temporary delay of storm runoff prior to discharge into the natural receiving waters.

(17) "Developer." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means any individual, firm, corporation, association, partnership, or trust authorized as an owner or corporate officer to obtain permits, whether federal, state, or local and whose plan or intent is to alter or modify land characteristic or attributes.

(18) "Development." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means any alteration or modification to land improved or unimproved, including but not limited to, building construction, demolition, mining, excavation, dredging filling, grading, paving, excavating, drilling operation, or permanent storage of materials ("materials" of like nature stored in whole or in part for more than a period of thirty (30) days).

(19) "Development/redevelopment plans." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means any drawing, sketch, or other document intended as the basis for a land disturbing permit or as a description of the work to be carried out as part of any development or land disturbing activity, or any plat or similar surveyor's drawing reflecting a subdivision or other dividing of land.

(20) "Discharge." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means 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.

(21) "Easement." Currently this means an acquired privilege or right of use or enjoyment that a person, party, firm, corporation, municipality or other legal entity has in the land of another.

(22) "Easement interest." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means the acquired privilege or the right of use or enjoyment that any lot owner in a platted subdivision has in the private stormwater facilities for the storage and conveyance of all stormwater runoff from the individual lot owners' lot and/or any other lot in a platted subdivision.

(23) "Engineer" or "professional engineer." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means a person licensed by the State of Tennessee as a professional engineer.

(24) "Erosion." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means the removal of soil particles by the action of water, wind,

ice or other geological agents, whether naturally occurring or acting in conjunction with or promoted by human activities or effects.

(25) "Erosion Prevention and Sediment Control Plan (EPSCP)." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means a written plan (including drawings or other graphic representations) that is designed to minimize the erosion and sediment runoff at a site during construction activities.

(26) "Hotspot." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means an area where land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in stormwater. The following land uses and activities are deemed stormwater hot spots, but that term is not limited to only these land uses:

- (a) Vehicle salvage yards and recycling facilities
- (b) Vehicle service and maintenance facilities
- (c) Vehicle and equipment cleaning facilities
- (d) Fleet storage areas (bus, truck, etc.)
- (e) Industrial sites (included on Standard Industrial Classification code list)
- (f) Marinas (service and maintenance)
- (g) Public works storage areas
- (h) Facilities that generate or store hazardous waste materials
- (i) Commercial container nursery
- (j) Restaurants and food service facilities other land uses and activities as designated by an appropriate review authority.
- (k) Ready mix facilities (concrete manufacturers)

(27) "Illicit connections." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means illegal and/or unauthorized connections to the municipal separate stormwater system whether or not such connections result in discharges into that system.

(28) "Illicit discharge." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means any discharge to the municipal separate storm sewer system that is not composed entirely of stormwater and not specifically exempted under §18-310(2).

(29) "Impaired waters." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means a watercourse, stream, creek, river, or wetland delineated by the Tennessee Department of Environment and Conservation which is listed on the "303d" list as degraded or non-supportive of specific classified uses, including but not limited, to recreation, drinking water, agricultural, irrigation, fish and aquatic life.

(30) "Improved sinkhole." As defined in Tennessee Code Annotated, § 69-3-103. Currently this is a natural surface depression that has been altered in order to direct fluids into the hole opening. Improved sinkhole is a type of injection well regulated under TDEC's Underground Injection Control (UIC)

program. Underground injection constitutes an intentional disposal of waste waters in natural depressions, open fractures, and crevices (such as those commonly associated with weathering of limestone).

(31) "Inspector." As defined in Tennessee Code Annotated, § 69-3-103. Currently this is an inspector is a person that has successfully completed (has a valid certification from) the "Fundamentals of Erosion Prevention and Sediment Control Level I" course or equivalent course. An inspector performs and documents the required inspections, paying particular attention to time-sensitive permit requirements such as stabilization and maintenance activities. An inspector may also have the following responsibilities:

(a) Oversee the requirements of other construction-related permits, such as Aquatic Resources Alteration Permit (ARAP) or Corps of Engineers permit for construction activities in or around waters of the state;

(b) Update field SWPPPs;

(c) Conduct pre-construction inspection to verify that undisturbed areas have been properly marked and initial measures have been installed; and

(d) Inform the permit holder of activities that may be necessary to gain or remain in compliance with the Construction General Permit (CGP) and other environmental permits.

(32) "Land disturbing activity." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means any activity on property that results in an alteration of the existing soil cover both vegetative and non-vegetative and/or the existing soil topography. Land-disturbing activities include development, re-development, demolition, construction, reconstruction, clearing vegetation, grading, filling, and excavation.

(33) "Land disturbance permit." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means written authorization issued to an applicant to proceed with or conduct "land disturbing activity" with specific terms and conditions.

(34) "Maintenance." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means any activity that is necessary to keep a stormwater facility functional and in conformance with an approved "erosion and sediment control plan." Maintenance shall include complete reconstruction of a stormwater facility if reconstruction is needed in order to restore the facility to its original operational design parameters. Maintenance shall also include the correction of any condition on the site property that may directly impair the functions of the stormwater facility.

(35) "Memorial tree fund." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means a distinct separate fund or account maintained by the City of Cleveland that is solely dedicated to receive and expend funds to landscape public properties and right-of-ways.

(36) "Municipal Separate Storm Sewer System (MS4)." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means the conveyances owned or operated by the municipality for the collection and transportation of stormwater, including the roads and streets and their drainage systems, catch basins, curbs, gutters, ditches, man-made channels, and storm drains, and where the context indicates, it means the municipality that owns the separate storm sewer system.

(37) "National Pollutant Discharge Elimination System permit" or "NPDES permit." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means a permit issued pursuant to 33 U.S.C. 1342.

(38) "Off-site facility." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means a structural BMP located outside the subject property boundary described in the permit application for land development activity.

(39) "On-site facility." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means a structural BMP located within the subject property boundary described in the permit application for land development activity.

(40) "Peak flow." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means the maximum instantaneous rate of flow of water at a particular point resulting from a storm event.

(41) "Person." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means any and all persons, natural or artificial, including any individual, firm or association and any municipal or private corporation organized or existing under the laws of Tennessee or any other state or country.

(42) "Phasing." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means planning land disturbance activities in segments or increments to result in the permanent stabilization of one segment prior to the land disturbance of the next segment.

(43) "Priority area" means "hot spot." As defined in Tennessee Code Annotated, § 69-3-103.

(44) "Priority construction activity." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means those construction activities discharging directly into, or immediately upstream of, water the state recognizes as impaired (for siltation or habitat alteration) or Exceptional Tennessee Waters.

(45) "Private stormwater facilities." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means stormwater storage, conveyance, or treatment facilities that are not located within public right-of-way and shall include but are not limited to detention and retention ponds, structural and non-structural stormwater treatment, and conveyance systems.

(46) "Qualified contractor." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means a person who holds certification in the UT/TDEC Level 1 course provided by the Tennessee Department of

Environment and Conservation, or has satisfactorily completed equivalent training provided by the City of Cleveland.

(47) "Redevelopment." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means the alteration of developed land that disturbs one (1) acre or more, or less than an acre if part of a larger common plan of development, and increases the site or building impervious footprint, or offers a new opportunity for stormwater controls. The term is not intended to include such activities as exterior remodeling, which would not be expected to cause adverse stormwater quality impacts.

(48) "Regional detention or retention facility." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means a stormwater facility constructed with public or private funds in the interest of public safety to abate or reduce the potential of localized flooding and adverse impacts to established flood hazard districts. A regional detention or retention facility is an offsite stormwater facility maintained by the City of Cleveland serving two (2) or more separate property owners in the same watershed or sub watershed.

(49) "Regional detention or retention banking." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means a private capital cash or real property investment by a person or a corporate entity for the purpose of building or causing to be built a regional off-site detention or retention stormwater facility to serve existing properties in the same watershed in lieu of on-site detention or retention.

(50) "Retention pond." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means artificial pond used to store or detain stormwater runoff to allow for settlement of suspended solids and biological treatment.

(51) "Runoff." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means that portion of the precipitation on a drainage area that is discharged from the area into the municipal separate stormwater system.

(52) "Sediment." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means solid material, both mineral and organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water, gravity, or ice and has come to rest on the earth's surface either above or below sea level.

(53) "Sedimentation." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means soil particles suspended in stormwater that can settle in streambeds. Where sedimentation occurs to a sufficient extent it can disrupt the natural flow of the stream.

(54) "Soils report." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means a study of soils on a subject property with the primary purpose of characterizing and describing the soils. The soils report shall be prepared by a qualified soils engineer, who shall be directly involved in the soil characterization either by performing the investigation or by directly supervising employees conducting the investigation.

(55) "Stabilization." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means providing adequate erosion control measures, vegetative and/or structural, such that erosion is prevented from occurring.

(56) "Start of construction." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means the first date that mechanized land disturbance is authorized to proceed under a land disturbance permit.

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

(58) "Stormwater program manager" or "stormwater coordinator." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means an employee of the City of Cleveland charged with the responsibility of implementing and enforcing the provisions of this ordinance.

(59) "Stormwater management." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means a program to maintain quality and quantity of stormwater runoff to pre-development levels.

(60) "Stormwater management facilities." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means the drainage structures, conduits, ditches, combined sewers, sewers, and all device appurtenances by means of which stormwater is collected, transported, pumped, treated, or disposed of.

(61) "Stormwater management plan." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means the set of drawings and other documents prepared by a civil engineer licensed in the State of Tennessee and comprised of information and specifications pertaining to site specific drainage systems, structures, BMPs, concepts and techniques intended to maintain or restore quality and quantity of stormwater runoff to predevelopment levels.

(62) "Stormwater Pollution Prevention Plan (SWPPP)." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means a written plan that includes site map(s), an identification of construction/contractor activities that could cause pollutants in the stormwater, and a description of measures or practices to control these pollutants. It must be prepared and approved before construction begins. In order to effectively reduce erosion and sedimentation impacts, Best Management Practices (BMPs) must be designed, installed, and maintained during land disturbing activities. The SWPPP should be prepared in accordance with the current Tennessee Erosion and Sediment Control Handbook. The handbook is intended for use during the design and construction of projects that require erosion and sediment controls to protect waters of the state. It also aids in the development of SWPPPs and other reports, plans, or specifications required when participating in Tennessee's water quality regulations. All SWPPPs shall be prepared and updated in accordance with Section 3 of the General NPDES Permit for Discharges of Stormwater Associated with Construction Activities.

(63) "Stormwater regulations board." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means a five (5) member board appointed by the Cleveland City Council to serve in accordance with the terms of § 18-313.

(64) "Stormwater runoff." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means flow on the surface of the ground, resulting from precipitation.

(65) "Stream." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means a surface water that is not a wet weather conveyance.

(66) "Structural Best Management Practices (BMPs)." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means devices or facilities that are constructed to provide control of stormwater runoff.

(67) "Surface water." As defined in Tennessee Code Annotated, § 69-3-103. Currently this includes waters upon the surface of the earth inbounds created naturally or artificially including, but not limited to, streams, other watercourses, lakes and reservoirs.

(68) "Urban forester." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means an employee of the City of Cleveland whose position title is "urban forester."

(69) "Watercourse." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means a manmade or natural hydrologic feature with a defined linear channel that discretely conveys flowing water, as opposed to sheet flow.

(70) "Watershed" means all the land area that contributes runoff to a particular point along a waterway.

(71) "Waters of the state" or simply "waters." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means any and all water, public or private, on or beneath the surface of the ground, that are contained within, flow through, or border upon Tennessee or any portion thereof, except those bodies of water confined to and retained within the limits of private property in single ownership that do not combine or effect a junction with natural surface or underground waters.

(72) "Wetland(s)." As defined in Tennessee Code Annotated, § 69-3-103. Currently this means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted to life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(73) "Wet weather conveyances." As defined in Tennessee Code Annotated, § 69-3-103. Currently these are man-made or natural watercourses, including natural watercourses that have been modified by channelization, that flow only in direct response to precipitation runoff in their immediate locality and whose channels are above the groundwater table and are not suitable for drinking water supplies; and in which hydrological and biological analyses indicate that, under normal weather conditions, due to naturally occurring

ephemeral or low flow, there is not sufficient water to support fish or multiple populations of obligate lotic aquatic organisms whose life cycle includes an aquatic phase of at least two months. (Rules and Regulations of the State of Tennessee, chapter 1200-4-3-.04(3)). (as added by Ord. #2004-41, Nov. 2004, amended by Ord. #2005-38, Oct. 2005, and replaced by Ord. #2015-06, March 2015)

18-304. Waivers and alternatives for compliance. (1) General. No waivers will be granted for any new development or redevelopment subject to this ordinance. All new development construction and site work shall provide for stormwater management as required by this ordinance. However, alternatives to the 2010 NPDES General Permit for discharges from small municipal separate storm sewer systems primary requirement for on-site permanent stormwater management may be considered, if:

(a) Management measures cannot be designed, built and maintained to infiltrate, evapotranspire, harvest and/or use, at a minimum, the first inch of every rainfall event preceded by seventy-two (72) hours of no measurable precipitation. This first inch of rainfall must be one hundred percent (100%) managed with no discharge to surface waters.

(b) It can be demonstrated that the proposed development is not likely to impair attainment of the objectives of this chapter. Alternative minimum requirements for on-site management of stormwater discharges have been established in a SWPPP that has been approved by the city.

(2) Downstream damage, etc. prohibited. In order to receive consideration, the applicant must demonstrate to the satisfaction of the City of Cleveland Development and Engineering Services Department that the proposed alternative 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 streambank or streambed erosion or siltation;

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

(3) Grading permit not to be issued where alternatives requested. No grading permit shall be issued where an alternative has been requested until the alternative is approved. If no alternative is approved, the plans must be resubmitted with a SWPPP and/or stormwater management plan, which meets the primary requirement for on-site stormwater management.

(4) Existing development to comply. All existing development shall comply with the stormwater management requirements of this ordinance that are applicable to such existing development. (as added by Ord. #2004-41, Nov. 2004, amended by Ord. #2005-38, Oct. 2005, and replaced by Ord. #2015-06, March 2015)

18-305. Land disturbance permits. (1) When required. Every person conducting the following "land disturbance activity" is required to obtain land disturbance permit coverage pursuant to the provisions of this ordinance, and stormwater pollution prevention plan approval from the City of Cleveland Development and Engineering Services Department. These requirements apply to all land development activities and the associated plan and permit review and approval processes including, but not limited to, site plan applications, subdivision applications, land disturbance applications and grading applications. Land disturbance permit coverage and SWPPP approval shall be obtained prior to conducting any land disturbing activity for which such permit coverage or SWPPP approval is required. These requirements apply to any new development or redevelopment site that meets one or more of the following criteria:

(a) New development that involves any land development activity on any tract, lot, or parcel of land that is either of one (1) acre or more; or

(b) Redevelopment that involves other land development activity of one (1) acre or more; or

(c) New development or redevelopment that is part of a larger common plan of development encompassing one (1) acre or more. The larger common plan of development may or may not involve properties that are individually less than one (1) acre and may involve multiple land disturbing activities carried out at different times on different schedules; or

(d) Projects or developments of less than one (1) acre of total land disturbance may also be required to obtain authorization under this ordinance if:

(i) The City of Cleveland Development and Engineering Services Department has determined that the stormwater discharge from a site is causing, contributing to, or is likely to contribute to a violation of a state water quality standard;

(ii) The City of Cleveland Development and Engineering Services Department has determined that the stormwater discharge is, or is likely to be a significant contributor of pollutants to waters of the state; or

(e) Changes in state or federal rules require sites of less than one (1) acre that are not part of a larger common plan of development or sale to obtain a stormwater permit; or

(f) Any new development or redevelopment, regardless of size, that is defined by City of Cleveland Development and Engineering Services Department to be a hotspot land use; or

(g) Land disturbing activity on a site of any size, if such activity is adjacent to an impaired stream appearing on the 303d list of the Tennessee Department of Environment and Conservation; or

(h) The creation and operation of borrow pits where material is excavated and relocated offsite, and fill sites where materials or earth is deposited by mechanized methods resulting in an increase elevation or grade.

Note: Any discharge of stormwater or other fluid to an improved sinkhole or other injection well, as defined, must be authorized by permit or rule as a Class V underground injection well under the provisions of Tennessee Department of Environment and Conservation (TDEC) Rules, chapter 1200-4-6.

(2) Exemptions. The following activities are exempt from obtaining a land disturbance permit:

(a) Any emergency activity that is immediately necessary for the protection of life, property, or natural resources, or for the health and safety of the community, or for the continuation of essential services;

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

(c) Logging or agricultural activity that is consistent with an approved farm conservation plan or a timber management plan approved by the Tennessee Department of Environment and Conservation Surface Mining Division, the Tennessee Department of Agriculture, or the Natural Resource Conservation Service;

(3) Building permits in abeyance. Building permits issued under the authority of the building official, or a designee of, shall be held in abeyance until the applicant, owner, or designated representative has fully satisfied the following requirements for a land disturbance permit:

(a) Site plan approval pursuant to title 14, chapter 2, subsection 6.2 of the Zoning Ordinance of the City of Cleveland;

(b) Submittal of a "notice of coverage" issued by the Tennessee Department of Environment and Conservation and provided to the City of Cleveland Development and Engineering Services Department authorizing the applicant to discharge stormwater associated with construction activity, if applicable;

(c) Approval of a SWPPP and post construction components from the City of Cleveland Development and Engineering Services Department consistent with §§ 18-304 through 18-309 of this ordinance;

(d) Attended a pre-construction conference with the City of Cleveland Development and Engineering Services Department to review implementation of an approved SWPPP in accordance with §§ 18-304 through 18-309 for land. A pre-construction conference shall be conducted for all proposed land disturbance activities of one (1) acre or more located in the watershed of an impaired stream as determined by the 303d classification list of the Tennessee Department of Environment and Conservation.

(4) Application for a land disturbance permit. (a) Authorization to implement land disturbance permit program. The City of Cleveland Development and Engineering Services Department is authorized to develop and implement a land disturbance permit program and associated policies that are consistent with this ordinance. A land disturbance permit application shall include the following:

(i) Name of applicant;

(ii) Address of applicant;

(iii) Name, address, and telephone number of the current property owner of record listed 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 shall perform the land disturbing activity and who shall implement the erosion and sediment control plan;

(vi) A narrative 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 completion of the land disturbing activity;

(vii) The estimated cost of stormwater infrastructure to accommodate the proposed development;

(viii) The watershed location and receiving waters for the proposed development;

(ix) Where the property includes a sinkhole and/or waters defined as natural resource or wetland and the proposed land disturbance activity will encroach, potentially impact, or alter state waters, the applicant shall obtain from the Tennessee Department of Environment and Conservation, or appropriate regulatory permits. The issuance of a land disturbing permit under the authority of this ordinance will be in abeyance until state and federal permits, if applicable, are obtained;

(x) The inclusion of state or federal permits in the application shall not foreclose the City of Cleveland Development and Engineering Services Department from imposing additional development requirements and conditions commensurate with this ordinance.

(xi) The owner of record of the proposed development shall sign the application, or the applicant must provide certification from the owner of record providing authorization to act as the owner's agent.

(b) Each application shall be accompanied by;

(i) A performance bond in the form of a letter of credit, performance surety, or performance bond valued at the cost of providing as-built drawings in conformance with § 18-305(9);

(ii) A SWPPP satisfying the provisions of § 18-306;

(iii) A fully executed agreement to provide "as-built drawings" of the stormwater infrastructure associated with the proposed development and permanent site stabilization in post construction pursuant to the requirements of § 18-307;

(iv) A post construction-landscape plan satisfying the provisions of § 18-308, if applicable.

(5) Land disturbance permit application review procedures. (a) The City of Cleveland Development and Engineering Services Department shall review each application for a land disturbance permit to determine conformance with the provisions of this ordinance upon submittal of all documents and plans required under § 18-305(4). Within ten (10) standard working days after receiving a completed land disturbance permit application and the plans required by § 18-305(4), the engineering division of the City of Cleveland Development and Engineering Services Department shall provide one (1) of the following responses in written form:

(i) Approval of the permit application;

(ii) Approval of the permit application, subject to such reasonable conditions as may be necessary to 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) for the denial.

(b) If the City of Cleveland Development and Engineering Services Department has granted conditional approval of the permit, the applicant shall submit a revised SWPPP reflecting the revisions associated with conditional approval prior to the issuance of a land disturbance permit.

(c) If the application for the land disturbance permit is denied, the applicant may request a meeting with the director of development and engineering services in an effort to resolve issues pertaining to the permit denial. If issues related to the land disturbance permit denial cannot be resolved, the applicant may appeal the matter to the stormwater regulations board pursuant to the procedures of § 18-313.

(6) Permit duration. Land disturbance permits shall expire and become null and void if substantial work authorized by such permit has not commenced within one hundred eighty (180) calendar days of issuance, and conducted in accordance with an approved SWPPP.

(7) Notice of construction and permit monitoring requirements. The applicant shall notify the City of Cleveland Development and Engineering

Services Department Stormwater Coordinator ten (10) standard working days prior to the commencement of land disturbance activity approved in conjunction with a land disturbance permit and an approved stormwater pollution prevention plan. Quality assurance of erosion prevention and sediment controls shall be done by performing site assessment at a construction site. The site assessment shall be conducted at each outfall involving drainage totaling ten (10) or more acres or five (5) or more acres if draining to an impaired or exceptional quality waters, within a month of construction commencing at each portion of the site that drains the qualifying acreage of such portion of the site. Site assessments must be performed in accordance with the current Construction General Permit (CGP). The applicant for a land disturbance permit shall provide erosion and sediment control site inspections on a frequency of two (2) inspections per week and following each rain event of one-half inch (1/2") or greater in accordance with an approved stormwater pollution prevention plan and with the current CGP. The applicant shall provide qualified contractors to perform such inspections in accordance with the MS4 Phase II NPDES program of the Tennessee Department of Environment and Conservation. The City of Cleveland Development and Engineering Services Department Stormwater Coordinator shall make available to the applicant inspection reporting forms that shall be submitted by the applicant monthly to the stormwater coordinator, and received no later than the tenth (10th) day of each month. The inspection forms shall include, but not be limited to, the following information:

- (a) The date and location of the inspection;
- (b) Indicate if the land disturbance activity is being conducted in accordance with the approved stormwater pollution prevention plan;
- (c) Variations from the approved construction specifications;
- (d) Observed violations that existed and remedial action taken.

(8) Land disturbance permit fees and inspections. Each application for a land disturbance permit shall be accompanied by payment of land disturbance permit fees. The following fees shall apply to the issuance of a land disturbance permit that qualifies as a land disturbance activity regulated in accordance with 40 CFR 122.26 and pursuant to § 18-305(1):

Land Disturbance Permit Fees

| | |
|---|------------|
| Residential lot-single family residence (less than one acre) | \$20.00 |
| Multi-unit residential, commercial, and industrial development: | |
| Less than 1 acre | \$50.00 |
| Equal to or greater than 1 acre and less than 5 acres | \$250.00 |
| Equal to or greater than 5 acres and less than 20 acres | \$1,000.00 |
| Equal to or greater than 20 acres and less than 50 acres | \$3,000.00 |

| | |
|--|-------------|
| Equal to or greater than 50 acres and less than 150 acres | \$6,000.00 |
| Equal to or greater than 150 acres | \$10,000.00 |

Note: All primary operators must submit an NOI for CGP coverage. There are two types of Primary Operators (Initial and Subsequent). Initial primary operators are those that submit a SWPPP for the entire proposed larger common plan of development or sale. Their fee is determined by the acreage of the site. The one hundred dollar (\$100.00) fee category applies to subsequent primary operators. This fee is to cover administrative costs associated with updating and tracking permit coverage for subsequent primary operators.

For Construction General Permit (CGP) Activities that exceed one (1) year under general permit coverage the following fees will be applied

| | |
|--|------------|
| Equal to or greater than 1 acre and less than 5 acres | \$125.00 |
| Equal to or greater than 5 acres and less than 20 acres | \$500.00 |
| Equal to or greater than 20 acres and less than 50 acres | \$1,000.00 |
| Equal to or greater than 50 acres and less than 150 acres | \$2,000.00 |
| Equal to or greater than 150 acres | \$3,750.00 |

For sites that require an inspection and maintenance agreement the registration fee is twelve dollars (\$12.00) for the first two (2) sheets and five dollars (\$5.00) for each additional sheet.

Water quality fee-303d watershed

In addition to the land disturbance permit fee, a water quality impact fee of eighty-five dollars (\$85.00) shall apply to the applicants of a land disturbance permit subject to MS4 Phase II 303d oversight mandated by the City of Cleveland NPDES permit issued by the Tennessee Department of Environment and Conservation including, pre-construction conferences, monthly inspections, and associated administrative reporting. Land disturbance activity associated with the development of individual parcels to accommodate a single-family residential structure that is part of a larger common plan of development (residential subdivision), which was constructed in accordance with an approved SWPPP shall be exempt from the water quality impact fee associated with development in a 303d watershed.

(9) Performance bonds. The applicant for a land disturbance permit shall submit:

(a) Performance bond. A performance bond shall be submitted prior to the issuance of a land disturbance permit, which may be in the form of an irrevocable letter of credit, performance security, with a value consisting of the total estimated cost of providing as-built drawings and post construction stabilization in accordance with § 18-306. The applicant shall provide a cost estimate to provide the as-built drawing and landscape components of post construction. The written estimate must bear the seal of a civil engineer licensed in the State of Tennessee, which shall be subject to acceptance, amendment or rejection by the city engineer. Alternatively, the city engineer shall reserve the right to calculate the cost of providing the post construction elements of § 18-307.

(b) Release of bond. The performance bond shall be released upon satisfactory submission of as-built plans and post construction stabilization of the development in accordance with § 18-307, upon written certification by a civil engineer stipulating that the private stormwater facilities and infrastructure associated with the development was built in accordance with the approved SWPPP satisfying § 18-306, and the approved site plan pursuant to title 14, chapter 2, subsection 6.2 of the Zoning Ordinance of the City of Cleveland. Provisions for a partial pro-rata release of the performance security or bond will be subject to review based upon satisfactory completion at various stages of development, subject to approval by the city engineer. (as added by Ord. #2004-41, Nov. 2004, amended by Ord. #2005-38, Oct. 2005, replaced by Ord. #2015-06, March 2015, and amended by Ord. #2017-20, July 2017)

18-306. Stormwater pollution prevention plan design standards.

(1) Stormwater quality best management practices manual.

(a) Adoption. The City of Cleveland adopts as its stormwater quality Best Management Practices (BMP) manual the following publications, which are incorporated by reference in this ordinance as fully set out herein verbatim:

(i) "Tennessee Department of Environment and Conservation Sediment and Erosion Control Handbook," or

(ii) "Tennessee Permanent Stormwater Management and Design Guidance Manual," or

(iii) The Nashville-Davidson County Metro Stormwater Management Manual (BEST MANAGEMENT PRACTICES (BMP) MANUAL - Volume 4) also known as the MS4 BMP Manual; most current edition.

(b) Alternative specifications may be utilized upon review and approval by the city engineer.

(2) Land development. This section shall be applicable to all land development, including, but not limited to, site plan applications, subdivision applications, land disturbance applications and grading applications. These standards apply to any new development or redevelopment site that meets one (1) or more of the following criteria:

(a) New development or redevelopment that involves land development activities of one (1) acre or more;

(b) Projects or developments of less than one (1) acre of total land disturbance may also be required to obtain authorization under this ordinance if:

(i) The City of Cleveland Development and Engineering Services Department has determined that the stormwater discharge from a site is causing, contributing to, or is likely to contribute to a violation of a state water quality standard;

(ii) The City of Cleveland Development and Engineering Services Department has determined that the stormwater discharge is, or is likely to be a significant contributor of pollutants to waters of the state;

(iii) Changes in state or federal rules require sites of less than one (1) acre that are not part of a larger common plan of development or sale to obtain a stormwater permit;

(iv) Any new development or redevelopment, regardless of size, that is defined by the City of Cleveland Development and Engineering Services Department to be a hotspot land use; or

(v) Minimum applicability criteria set forth in item (a) above if such activities are part of a larger common plan of development, even multiple, that is part of a separate and distinct land development activity that may take place at different times on different schedules.

Note: Any discharge of stormwater or other fluid to an improved sinkhole or other injection well, as defined, must be authorized by permit or rule as a Class V underground injection well under the provisions of Tennessee Department of Environment and Conservation (TDEC) Rules, chapter 1200-4-6.

(3) Submittal of a copy of the NOC, SWPPP and NOT to the local MS4. Permittees who discharge stormwater through an NPDES-permitted Municipal Separate Storm Sewer System (MS4) who are not exempted in section 1.4.5 (permit coverage through qualifying local program) of the Construction General Permit (CGP) must provide proof of coverage under the Construction General Permit (CGP); submit a copy of the Stormwater Pollution Prevention Plan (SWPPP); and at project completion, a copy of the signed Notice of Termination (NOT) to the City of Cleveland Development and Engineering Services Department. Permitting status of all permittees covered (or previously covered)

under this general permit as well as the most current list of all MS4 permits is available at the TDEC's data viewer web site.

Copies of additional applicable local, state or federal permits (i.e.: ARAP, etc.) must also be provided upon request. If requested, these permits must be provided before the issuance of any land disturbance permit or the equivalent.

In the event the City of Cleveland becomes a Qualified Local Program (QLP) the following will apply:

(a) The SWPPP is required for obtaining QLP permit coverage for sites with a disturbed area greater than one (1) acre. A SWPPP shall present in detail the best management practices that will be employed to minimize erosion and control sedimentation.

(b) The plan shall be sealed in accordance with the Tennessee Construction General Permit.

(c) Best management practices presented in the plan shall conform to the requirements found in the Tennessee Erosion and Sediment Control Handbook, and shall meet or exceed the requirements of the Tennessee Construction General Permit.

(d) The plan shall include measures to protect legally protected state or federally listed threatened or endangered aquatic fauna or flora or critical habitat (if applicable).

(e) The plan submitted shall be subject to any additional requirements set forth in the city's subdivision regulations, zoning ordinance, erosion and sediment control policy and any other applicable city regulations.

(f) Riparian buffer zones shall meet the requirements both in accordance with the Tennessee Construction General Permit and with the buffer zone requirements of this ordinance.

(g) Construction of the site in accordance with the approved plan must commence within one (1) year from the approval date of the stormwater pollution prevention plan, or the stormwater pollution prevention plan will become null and void and the plan must be resubmitted for approval.

(h) Stormwater pollution prevention plans shall include the components required by the Tennessee Construction General Permit and any other information deemed necessary by the stormwater coordinator.

(4) Stormwater Pollution Prevention Plan (SWPPP) for construction stormwater management. The applicant must prepare a stormwater pollution prevention plan for all construction activities that complies with subsections (5) - (7) below and with the SWPPP requirements in the Construction General Permit (CGP). The purpose of this plan is to identify construction/contractor activities that could cause pollutants in the stormwater, and to describe measures or practices to control these pollutants during project construction. Additional requirements for discharges into impaired or exceptional Tennessee waters that are set forth in the Tennessee Construction General Permit shall be

implemented for all priority construction activities. The stormwater coordinator, at his or her discretion, may require BMPs that conform to a higher than minimum standard for priority construction activities, or for exceptional Tennessee waters or where deemed necessary.

(5) Stormwater pollution prevention plan requirements.

(a) Topographic base map: A topographic base is required with a scale of not less than 1" = 100' that extends a minimum of one hundred feet (100') beyond the limits of the proposed development and shall include:

(i) Existing surface water including, but not limited to, streams, ponds, culverts, ditches, sink holes, spring heads, wetlands;

(ii) Nearest existing upstream and downstream drainage structures with the information such as type, size, and invert elevations of the structures;

(iii) Existing and proposed contours at two foot (2') intervals with reference datum mean sea level;

(iv) Proposed stormwater conveyance systems, pipes, culverts, drainage channels, detention facilities, drainage swales, wetlands, berms, drainage structures, inlets, and manholes. Provide, as applicable, the invert elevations, top of structure elevations for structures, spot elevations, and percent grade for the drainage system.

(v) Design location of proposed stormwater storage facilities or conveyances including drainage channels, including sumps, basins, channels, culverts, ponds, storm, drains, and drop inlets;

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

(vii) Existing natural and artificial features;

(viii) Proposed land use with a tabulation of the percentage of surface area utilized for each ancillary use, show drainage patterns, locations of utilities, locations of roads and easements, and provide the limits of clearing and grading;

(ix) Proposed structural and non-structural best management practices;

(x) Existing and proposed building pad elevation(s) and roadway elevations if building construction is proposed;

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

(xii) Plans and specifications for the proposed stormwater system, retaining walls, cribbing, planting, erosion control devices, whether temporary or permanent, to be constructed in conjunction with, or as a part of the proposed work shall be required, with a

map delineating the watershed and a statement explaining the amount of estimated runoff used to determine the design characteristics of any drainage device. The upstream watershed shall be considered in design calculations. If warranted, downstream stormwater system improvements may also be required to abate adverse impacts to existing infrastructure or structures.

(xiii) Upon request a no-rise certificate shall be required by the city engineer that is prepared in accordance with FEMA standards. The City of Cleveland has defined the one-hundred (100) year flood event as the base flood.

(b) Calculations. Hydrologic and hydraulic design calculations for the pre-development and post-development conditions for the design storms utilizing accepted engineering principles and practices. These calculations must show that the proposed stormwater management measures are capable of controlling runoff from the site in compliance with this ordinance and meet the requirements of the city engineer. 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) Stormwater conveyance system capacities;
- (vii) Flow velocities;
- (viii) Rate and volume of runoff data for the design storms events referenced in the best managements practices manual § 18-306(1);
- (ix) Documentation of sources for all computation methods and field test results.
- (x) Stormwater discharges from new development and redevelopment sites must be managed such that post development hydrology does not exceed the pre development hydrology at the site.

(c) Affidavit. When fragile, complex, or hazardous areas are present, including but not limited to, unstable slopes, uncontrolled fill, federal jurisdictional wetlands, or sinkholes, the city engineer or stormwater coordinator may require an affidavit executed by the owner and engineering representative that may include:

- (i) Compaction report where a site is proposed to be filled and used for a building pad or roadway;

(ii) Soil engineering report, including data regarding the nature, distribution, strength of existing soils, conclusions, and recommendations for earthwork procedures;

(iii) Geology report, including a description of site geology, conclusions, and recommendations regarding the effect of geologic conditions on the proposed development.

(d) Soils information. If a stormwater best management practice is dependent on the hydrologic properties of soils, 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.

(e) Buffer zone (§ 18-303(6)). A water quality buffer zone is required along all perennial and intermittent streams, and wetlands. The stream buffer zone will be clearly identified on proposed site plans and SWPPPs. A stream buffer area will be delineated on a proposed development with field stakes established at fifty foot (50') intervals on each side of the stream, channel or wetland. The stream buffer area metes and bounds shall be shown on the submitted plan. The stream buffer zone area will remain intact, with no removal of vegetation, including upper and lower story vegetative canopy, during all phases of construction, unless otherwise approved in conjunction with recreational uses identified in the SWPPP or subdivision plat. The stream buffer zone will be segregated land disturbance activities conducted in accordance with an approved SWPPP. The identification of streams and wetlands shall be included in the SWPPP and determinations shall be performed by a qualified hydrologic professional.

(f) Buffer zone requirements. (i) "Construction" applies to all streams adjacent to construction sites, with an exception for streams designated as impaired or Exceptional Tennessee waters, as designated by the Tennessee Department of Environment and Conservation. A thirty foot (30') natural riparian buffer zone adjacent to all streams at the construction site shall be preserved, to the maximum extent practicable, during construction activities at the site. The water quality buffer zone is required to protect waters of the state located within or immediately adjacent to the boundaries of the project, as identified using methodology from standard operating procedures for hydrologic determinations (see rules to implement a certification program for qualified hydrologic professionals, Tennessee Rules chapter 0400-40-17). Buffer zones are not primary sediment control measures and should not be relied on as such. Rehabilitation and enhancement of a natural buffer zone is allowed, if necessary, for improvement of its effectiveness of protection of the waters of the state. The zone requirement only applies to new construction sites. The riparian buffer zone should be preserved between the top of stream bank

and the disturbed construction area. The thirty feet (30') criterion for the width of the buffer zone can be established on an average width basis at a project, as long as the minimum width of the buffer zone is more than fifteen feet (15') at any measured location.

(ii) A sixty foot (60') natural riparian buffer zone adjacent to the receiving stream designated as impaired or exceptional Tennessee waters shall be preserved, to the maximum extent practicable, during construction activities at the site. The water quality buffer zone is required to protect waters of the state (e.g., perennial and intermittent streams, rivers, lakes, wetlands) located within or immediately adjacent to the boundaries of the project, as identified on a seven and one-half (7.5) minute USGS quadrangle map, or as determined by the director. Buffer zones are not sediment control measures and should not be relied upon as primary sediment control measures. Rehabilitation and enhancement of a natural buffer zone is allowed, if necessary, for improvement of its effectiveness of protection of the waters of the state. The buffer zone requirement only applies to new construction sites. The riparian buffer zone should be established between the top of stream bank and the disturbed construction area. The sixty foot (60') criterion for the width of the buffer zone can be established on an average width basis at a project, as long as the minimum width of the buffer zone is more than thirty feet (30') at any measured location.

(iii) "Permanent" new development and significant redevelopment sites are required to preserve water quality buffers along waters within the MS4. Buffers shall be clearly marked on site development plans, land disturbance permit applications, and/or concept plans. Buffer width depends on the size of a drainage area. Streams or other waters with drainage areas less than one (1) square mile will require buffer widths of thirty feet (30') minimum. Streams or other waters with drainage areas greater than one (1) square mile will require buffer widths of sixty feet (60') minimum. The sixty feet (60') criterion for the width of the buffer zone can be established on an average width basis at a project, as long as the minimum width of the buffer zone is more than thirty feet (30') at any measured location.

(g) Maintenance agreement stormwater storage facilities. The developer or owner of real property that is served by an on-site or off-site stormwater management facility, including stormwater storage facilities, shall be responsible for maintenance, repair, and operation during site development. The developer's responsibility will terminate after a two (2) year period from the issuance of a land disturbance permit upon satisfying two (2) conditions:

- Successful completion of post construction in accordance with §§ 18-307 and 18-308, and
- The sale or transfer of ownership of fifty-one percent (51%) of all parcels in the platted subdivision.

As a precondition to any plat approval by the planning commission, all subdivision plats shall contain a "stormwater facility maintenance agreement," which shall include the provisions for future maintenance of the stormwater storage facility. As a general rule, this verbiage contained on the plat shall designate that all lot owners in the platted subdivision shall have an easement interest in the stormwater storage facilities for water runoff from all lots in the subdivision. This easement interest shall be designated upon the recorded plat. Private stormwater storage facilities shall be shown on the final recorded plat. Private stormwater facilities shall include but are not limited to stormwater storage facilities, such as detention and retention ponds, structural and non-structural stormwater treatment facilities and open channel conveyances that are not located within public right-of-ways. The future maintenance, repair and operation of the private stormwater facilities shall be the responsibility of all subdivision lot owners of record of those lots shown on the recorded plat. In the event, a subdivision is developed in phases then all subsequently developed lots in the subdivision shall share the same easement as those lot owners shown on the initial plat and/or plats. It being the intent that all lot owners in any particular subdivision; whether in the initial or any later phase shall share equally in the easement rights in and to the stormwater storage facilities as well as sharing equally in the future maintenance and upkeep of the stormwater storage facilities. As an additional requirement to the approval of any plat, there shall be a stormwater storage basin easement shown on any recorded plat that contains a storm water detention basin. This stormwater detention basin easement shall be a twenty foot (20') access easement. This easement is for the purpose of allowing city engineering personnel, stormwater inspectors, grading equipment operators, storm water monitoring personnel and/or other necessary personnel to investigate, inspect, repair and/ or maintain the detention basin or stormwater quality structure as needed to determine proper functioning, need for maintenance, maintenance and/or other necessary repairs and/or situations that may occur in times of emergency or urgent conditions. This twenty foot (20') access easement shall be shown on the recorded plat and shall be provided to and from stormwater detention basins and shall abut on a public right-of-way for at least twenty feet (20') and must be easily traversable by potential grading equipment (bulldozers and/ or back hoes) as well as those individuals noted above. This twenty foot (20') stormwater detention basin access easement area shall not contain any buildings or structures, large trees or heavy

shrubby, utility poles, manholes, overhead utility lines without adequate clearance, deep ditches or channels and/or any other structures or items causing the stormwater detention basin to be inaccessible. However, the property owner may plant small shrubs of little or no value that can be easily removed or cleared. The property owner may also place small fences in the area that can be easily removed; ideally any fence contained in this easement area shall contain a gate through the fence. Any structure located upon the stormwater detention basin access easement area must be portable and quickly and easily removable. The City of Cleveland shall not be responsible for damage to any structure, utilities or vegetation located within this stormwater detention basin access easement area. The City of Cleveland and/or its designated officials shall have access over and across this stormwater detention basin easement as they deem the same necessary to inspect and /or maintain the stormwater detention facility. The City of Cleveland shall not be responsible for the repair or replacement of structures, utilities and/or vegetation located upon the stormwater detention basin access easement area. This stormwater detention basin easement area is normally intended for heavy equipment access rather than ordinary passenger vehicle access. A city stormwater inspector will normally gain access to the detention basin or water quality facility while parking nearby.

(i) Division of tract into parcels for resale. For larger common plans of development, each parcel or lot served by a private stormwater storage facility shall have equivalent or proportioned easement ownership in stormwater facilities. This ownership of each private stormwater facility shall be equally appropriated by the recorded plat to each parcel of the larger common plan of development. Maintenance of private stormwater facilities serving multiple parcels shall be the cumulative responsibility of each parcel owner of record of any platted tract or lot in the subdivision. The final recorded subdivision plat shall reflect the easement ownership for each parcel in a larger common plan of development, whether residential, commercial, or industrial. The applicant for a land disturbance permit or owner or record shall present a final plat prior to recording as a final document that designates easement ownership of stormwater facilities to each parcel prior to recording as an official recorded plat in the Bradley County Register of Deeds.

(ii) Single tract of land. The maintenance of private stormwater facilities constructed in conjunction with development on a single tract shall be the responsibility of the owner by record. The final recorded plat shall identify all private stormwater storage facilities on the same parcel as the associated structure.

(iii) The maintenance agreement shall:

(A) Provide for maintenance of stormwater facilities in accordance with § 18-306(1);

(B) If private stormwater facilities are not properly maintained as set out herein, then the City of Cleveland shall require the subdivision parcel owners of record served to perform the maintenance and repair at the expense of parcel owners served by said facilities. The city reserves the right to conduct repair(s) of stormwater storage facilities, or may cause to be repaired, and to assess a lien on each individual subdivision parcel owners of record served by the private stormwater facilities. The maintenance agreement shall also provide that the City of Cleveland will be compensated for all expenses associated with performing the maintenance and repair of private stormwater storage facilities, including legal expenses, court costs and/or other expenses incurred in the repair and any associated legal action associated therewith. In the event legal action is deemed necessary by the City of Cleveland and in the event a judgment is rendered on behalf of the City of Cleveland, then the city shall be authorized to issue a lien against each subdivision parcel owner of record, which lien shall be a lien on their respected properties and/ or interests in the property.

(6) Sediment and erosion control plan. The sediment and erosion control plan shall satisfy best management practices adopted in § 18-306(1), and NPDES rules promulgated by the Tennessee Department of Environment and Conservation.

(7) Sediment and erosion control plan requirements. The applicant must prepare a sediment and erosion control plan for all land disturbance activities regulated in accordance with § 18-304(1). The sediment and erosion control plan shall accurately describe the potential for soil erosion and sedimentation resulting from land disturbing activity and incorporate BMPs appropriate to site conditions. The length and complexity of the plan is to be commensurate with the land disturbance area, topography, and potential for off-site damage. The plan shall bear the seal of a registered professional engineer licensed in the State of Tennessee, and conform to standard adopted in § 18-305(1), and NPDES rules promulgated by the Tennessee Department of Environment and Conservation:

(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 two feet (2') or less showing present conditions and proposed contours resulting from land disturbing activity;

(c) All existing drainage ways, including intermittent and wet-weather. 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 must 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 must include the sequence of implementation for tree protection measures;

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

(g) Approximate flows of existing stormwater 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 stormwater 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 run-off mitigation measures. The evaluation must include projected effects on property adjoining the site and on existing drainage facilities and systems. The plan must address the adequacy of outfalls from the development, when water is concentrated, what is the capacity of waterways, if any, accepting stormwater off-site; and what measures, including infiltration, sheeting into buffers, that are going to 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 sedimentation and erosion control plans as related to other major items of construction, beginning with the initiation of excavation and including the construction of any sediment basins or retention facilities or any other structural BMPs;

(n) Specific remediation measures to prevent erosion and sedimentation run-off. Plans shall include detailed drawings of all control measures used, stabilization measures including vegetation and

non-vegetation measures, both temporary and permanent, will be detailed. Detailed construction notes and a maintenance schedule shall be included for all control measures in the plan;

(o) Specific details shall be provided 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. Soil, sediment, and debris brought onto streets and public ways must be removed by the end of the work day by machine, broom or shovel. 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;

(q) A description of on-site measures to be taken to recharge surface water into the ground water system through infiltration;

(r) Specific remediation measures of how litter, construction debris, concrete truck washout, and construction chemicals exposed to stormwater shall be picked up prior to anticipated storm events or before being carried off of the site by wind (e.g., forecasted by local weather reports), or otherwise prevented from becoming a pollutant source for stormwater discharges (e.g., screening outfalls, daily pick-up, etc.). After use, materials used for erosion prevention and sediment control (such as silt fence) should be removed or otherwise prevented from becoming a pollutant source for stormwater discharges.

(8) Retaining wall requirements. (a) Retaining walls located on private property shall be the responsibility of the applicant(s). The applicant(s) shall ensure that the retaining wall is properly constructed. The applicant(s) shall be responsible for maintenance and repairs of all retaining walls on their property. Applicants are not allowed to construct retaining walls of any size within public right-of-way or in areas that will be dedicated for public right-of-way.

To obtain a land disturbance permit for construction of retaining walls four feet (4') or taller on private property, the following information must be submitted to the engineering division:

(i) A plan sheet that includes existing and proposed contours of the wall, top elevation of the wall, drainage features, buildings, property lines, proposed wall locations, any public easements, parking facilities and streets.

(ii) A typical wall section showing wall and footing dimensions, backfill slopes, finished grade elevations, steel reinforcement details, weephole locations, and subsurface drainage systems.

(iii) Engineering calculations for the design of the wall, noting all assumptions such as concrete and steel reinforcement

strengths, soil parameters, surcharges, bearing pressures, safety factors for bearing capacity, overturning and sliding. The minimum required factors of safety are: bearing capacity = 3.0, overturning = 2.0, and sliding = 1.5.

(iv) All retaining wall plans, profiles, cross sections and calculations shall be prepared and sealed by a registered professional engineer licensed to practice in the State of Tennessee. The professional engineer must have sufficient education and experience to design a retaining wall that ensures the safety of the general public. The professional engineer shall also have complete control of all aspects of the design and preparation of plans and calculations. Approval of necessary plans and calculations will not transfer responsibility of the retaining wall design to the City of Cleveland.

(b) The professional engineer shall be responsible for all aspects of the retaining wall design. The use of standard designs from reputable manufacturers or from TDOT standard details are allowable and encouraged, but the professional engineer that stamps the drawings and computations are responsible for the retaining wall design. Inadequate information from geotechnical investigations and reports will not excuse the engineer's responsibility or liability.

(9) General design performance criteria for permanent stormwater management: The provisions of this subsection, § 18-306(9) shall become effective from and after January 1, 2020.

The following performance criteria shall be addressed for permanent stormwater management at all development sites:

(a) Site design standards for all new and redevelopment require, in combination or alone, management measures shall be designed in accordance with the Tennessee Permanent Stormwater Management and Design Guidance Manual, built and maintained to infiltrate, evapotranspire, harvest and/or use, at a minimum, the first inch, or known as the first flush, of every rainfall event preceded by seventy-two (72) hours of no measurable precipitation. This first inch of rainfall must be one hundred percent (100%) managed with no discharge to surface waters.

(b) Limitations to the application of runoff reduction requirements include, but are not limited to:

- (i) Where a potential for introducing pollutants into the groundwater exists, unless pretreatment is provided;
- (ii) Where pre-existing soil contamination is present in areas subject to contact with infiltrated runoff;
- (iii) Presence of sinkholes or other karst features.

(c) Pre-development infiltrative capacity of soils at the site must be taken into account in selection of runoff reduction management measures.

(d) Incentive standards for re-developed sites: a ten percent (10%) reduction in the volume of rainfall to be managed for any of the following types of development. Such credits are additive such that a maximum reduction of fifty percent (50%) of the standard in the paragraph above is possible for a project that meets all five (5) criteria:

- (i) Redevelopment;
- (ii) Brownfield redevelopment;
- (iii) High density (>7 units per acre);
- (iv) Vertical density, (Floor to Area Ratio (FAR) of 2 or >18 units per acre); and
- (v) Mixed use and transit oriented development (within one-half (1/2) mile of transit).

(e) For projects that cannot meet one hundred percent (100%) of the runoff reduction requirement unless subject to the incentive standards, the remainder of the stipulated first flush amount of rainfall must be treated prior to discharge with a technology documented to remove eighty percent (80%) Total Suspended Solids (TSS) unless an alternative provided under this ordinance is approved. The treatment technology must be designed, installed and maintained to continue to meet this performance standard.

(f) For projects that cannot meet one hundred percent (100%) of the runoff reduction requirements, the City of Cleveland Development and Engineering Services Department may allow runoff reduction measures to be implemented at another location within the same USGS twelve (12) digit Hydrologic Unit Code (HUC) as the original project. Off-site mitigation must be a minimum of 1.5 times the amount of water not managed on site. The off-site mitigation location (or alternative location outside the twelve (12) digit HUC) and runoff reduction measures must be approved by the City of Cleveland Development and Engineering Services Department. The City of Cleveland Development and Engineering Services Department shall identify priority areas within the watershed in which mitigation projects can be completed. The City of Cleveland Development and Engineering Services Department must create an inventory of appropriate mitigation projects, and develop appropriate institutional standards and management systems to value, evaluate and track transactions. Mitigation can be used for retrofit or redevelopment projects, but should be avoided in areas of new development.

(g) To protect stream channels from degradation, specific channel protection criteria shall be provided as prescribed in the MS4 BMP manual.

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

(i) Stormwater discharges from hot spots may require the application of specific structural BMPs and pollution prevention practices. In addition, stormwater from a hot spot land use may not be infiltrated.

(j) Prior to or during the site design process, applicants for land disturbance permits shall consult with the City of Cleveland Development and Engineering Services Department to determine if they are subject to additional stormwater design requirements.

(k) The calculations for determining peak flows as found in § 18-306(12) shall be used for sizing all stormwater facilities.

(10) Permanent stormwater management plan requirements. The stormwater management plan shall include sufficient information to allow the City of Cleveland Development and Engineering Services 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 stormwater generated at the project site. To accomplish this goal the stormwater management plan shall include the following:

(a) Topographic base map: Topographic base map of the site which extends a minimum of one hundred feet (100') beyond the limits of the proposed development and indicates:

(i) Existing surface water drainage including streams, ponds, culverts, ditches, sink holes, 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; the limits of clearing and grading.

(b) Proposed structural and non-structural BMPs;

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

(d) Calculations: Hydrologic and hydraulic design calculations for the pre-development and post-development conditions for the design storms specified in the MS4 BMP manual. These calculations must show

that the proposed stormwater management measures are capable of controlling runoff from the site in compliance with this chapter and the guidelines of the MS4 BMP manual. 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, stormwater sewer, ditch and/or other stormwater conveyance capacities;
- (vii) Flow velocities;
- (viii) Data on the increase in rate and volume of runoff for the design storms referenced in the MS4 BMP manual; and
- (ix) Documentation of sources for all computation methods and field test results.

(e) Soils information: If a stormwater 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.

(11) Maintenance and repair plan: The design and planning of all permanent stormwater management facilities shall include detailed maintenance and repair procedures to ensure their continued performance. These plans will identify the parts or components of a stormwater 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.

(12) Minimum design standards - stormwater conveyance system. Stormwater conveyance systems including, but not limited to, open ditches, pipes, culverts, catch basins, drop inlets, and bridges shall be incorporated in the SWPPP in conjunction with minimum standards prescribed in this ordinance, and shall be designed by a civil engineer licensed in the State of Tennessee. Stormwater facilities constructed in conjunction with a proposed development or property improvements shall be an integral component of a SWPPP that shall be reviewed and approved by the city engineer prior to issuance of a land disturbance permit. Stormwater hydrology and hydraulic calculations shall accompany the SWPPP and site plan.

The stormwater conveyance system design shall satisfy the minimum design standards:

(a) Erosion, sedimentation, and stormwater control measures, pipes, structures, and devices shall be planned, designed, constructed, operated and maintained so as to provide effective soil erosion and stormwater control from the peak runoff rates. The stormwater system, excluding stormwater detention ponds, water quality control facilities and sinkholes, shall be designed to accommodate a ten (10) year return frequency twenty-four (24) hour duration storm, except for those facilities which would flood public roadway classified by the Tennessee Department of Transportation as a collector or arterials. Where warranted by local controlling factors, an alternative storm frequency shall be required;

(b) In conjunction with Federal Emergency Management Agency (FEMA) requirements, stormwater receiving inlets shall not restrict the flow of floodwaters or increase flood heights. Stormwater culverts shall be designed for a one hundred (100) year flood frequency, when such culvert is located in a one hundred (100) year floodplain. Transportation facilities classified as a collector or arterial by the Tennessee Department of Transportation facility inventory shall utilize a fifty (50) year flood frequency for stormwater culvert design, and a ten (10) year flood frequency shall be utilized for local transportation facilities. Although roadway overtopping will be allowed for ten (10) year and fifty (50) year floods, the design shall be such that damage will not occur to the roadway or adjacent properties during a one hundred (100) year flood;

(c) Stormwater swales shall be designed utilizing acceptable engineering principles and practices to accommodate a one hundred (100) year storm event and the design shall demonstrate that the stormwater swale at full capacity will not result in structural flooding of adjacent buildings and structures;

(d) Stormwater site runoff calculations shall be developed utilizing the rational formula or the Natural Resource Conservation Service (NRCS, formerly the Soil Conservation Service) TR-55 method for watersheds of fifty (50) acres or less. For watersheds greater than fifty (50) acres, but less than two thousand (2,000) acres, the NRCS TR-55 method shall be utilized. For watersheds greater than two-thousand (2,000) acres, the flood frequency methodology utilized by the US Army Corps of Engineers shall be employed in the stormwater runoff calculations;

(e) The minimum culvert size shall be fifteen inch (15") inside diameter with a maximum velocity not to exceed fifteen feet (15') per second. The maximum allowable slope of a culvert shall be fifteen percent (15%) without pipe restraining methods utilized in the design

and construction. Energy dissipaters shall be provided at the outlet end of all culverts;

(f) Stormwater discharges and conveyances originating from storage facilities including, but not limited to, detention basin(s) must be routed to an existing natural or manmade stormwater channel. Hydraulic calculations utilizing the methodology of § 18-306(12)(d) shall demonstrate that the capacity of the receiving stormwater channel will accommodate a two (2) year and ten (10) year design flood event. The hydraulic calculations and stormwater runoff computations must extend at a minimum to the second downstream roadway crossing, or to a blue-line stream appearing on a United States Geological Society (USGS) map. Routing calculations must be extended further downstream, if the city engineer or his representative has reasonable concern of adverse downstream impacts to public infrastructure or property;

(g) Stormwater drainage culverts shall be installed on a uniform grade and with a compacted base. In the event rock is encountered in the culvert trench, the rock shall be removed four inches (4") below the site plan grade. Stormwater culverts shall be installed with the spigot end directed as the flow inlet with joints established utilizing manufacture's specifications, at a sufficient depth below the surface to ensure the culvert will not collapse, and in conjunction with specifications applicable to the product. The minimum depth of a culvert below a roadbed surface shall be one foot (1'). Roadway cross drains shall be of a minimum length to collect stormwater from the full roadway width, including shoulders and side slopes;

(h) All stormwater conveyance structures, pipes, or culverts, located under roadways shall incorporate end walls, headwalls, concrete aprons, concrete wing walls, and/or rip-rap rock as end treatment, as necessary, to prevent erosion;

(i) The designer shall incorporate stormwater collection structures to capture runoff from paved surfaces in all sag locations and other depressed areas to ensure positive drainage. Collection structures should be spaced so that the spread (width of stormwater) in roadway areas to collect the design flow shall not exceed six feet (6');

(j) Inlet capacity at sags shall include provisions for debris blockage by providing twice the required operational flow. Where inlet conditions control the amount of flow that can pass through the culvert, improved inlets can greatly increase the hydraulic performance of a culvert and shall be required at the discretion of the city engineer;

(k) Stormwater collection structures, manholes, and junction boxes shall consist of prefabricated reinforced concrete structures, cast in-place, or an approved equivalent. Stormwater collection or inlet structures shall conform to Tennessee Department of Transportation standards;

(l) Open stormwater conveyance channels, trenches, or ditches incorporated in the SWPPP shall include stabilization in accordance with § 18-306(1) to abate erosion within the channel;

(m) When necessary for proper stormwater conveyance, inlet and outlet ditches shall be provided at drainage structures. Minimum drainage easements shall be provided for residential subdivision developments in accordance with the Cleveland Subdivision Regulations, section 4.08B, and incorporated on side and rear parcel lines. Where at all possible, primary stormwater conveyances shall be incorporated at the rear of the lot lines and not parallel to the roadway to avoid having oversized stormwater structures under driveway;

(n) Plans and specifications for all retaining walls, cribbing, planting, anti-erosion devices, or other protective devices, whether temporary or permanent, to be constructed in conjunction with or as a part of the proposed development shall be included in the SWPPP. Retaining walls shall meet the requirements specified in § 18-306(8).

(13) Stormwater detention design - minimum standards. In the interest of public safety and stormwater quality, stormwater detention or retention shall be integrated into the SWPPPs to abate increased peak stormwater runoff. The primary criteria in evaluating SWPPPs and site designs shall be the comparison of pre-development site runoff and post-development site runoff. Other evaluation processes shall include an assessment of potential increase in stormwater flood height, the frequency of flooding, and the proximity to any structures. The SWPPP shall utilize pervious areas for detention, stormwater treatment, allow infiltration of stormwater runoff, and comply with the following criteria:

(a) Stormwater storage facilities with one inch (1") first flush water quality treatment shall be required for development meeting the following conditions:

(i) Commercial, industrial, educational, institutional and recreational developments consisting of one (1) acre or more of disturbed area;

(ii) Commercial, industrial, educational, institutional and recreational developments consisting of less than one (1) acre, that is part of a larger common plan of development;

(iii) Any project such as new development, re-development or property improvements which includes the addition of one-half (1/2) acre or greater of impervious area;

(iv) Residential development of four (4) acres or greater being developed.

(b) The one inch (1") first flush amount of rainfall must be treated prior to discharge with a technology documented to remove eighty percent (80%) Total Suspended Solids (TSS) unless an alternative provided under this ordinance is approved. The treatment technology

must be designed, installed and maintained to continue to meet this performance standard.

(c) When a proposed development or re-development does not exceed the criteria listed in § 18-306(13)(a), the city engineer shall have the authority to require stormwater storage detention or retention with first flush water quality treatment to prevent downstream flooding and damage.

(d) All development or re-development meeting the criteria listed in § 18-306(13)(a) shall control the peak stormwater flow rates of the site stormwater discharges associated with design storms specified in § 18-306(13)(f)(i) and reduce the post construction stormwater runoff to pre-construction levels. All site development or re-development shall provide first flush discharge treatment or an acceptable alternative in accordance with stormwater quality standards.

(e) The stormwater detention or retention storage requirements may be waived or modified if the following occurs:

(i) The peak runoff discharge from the site is mitigated by a regional detention stormwater facility or by off-site detention banking.

(ii) The applicant(s) licensed civil engineer shall demonstrate that installing the required on-site stormwater storage facility(s) is unwarranted, would not increase the potential for flooding hazards, and would not be in the best interest of the City of Cleveland. Hydrologic and hydraulic computations shall be submitted that utilizes accepted engineering practices to support such a conclusion. The primary occurrence of such conditions typically involves direct stormwater discharges into a main stream such as South Mouse Creek, Little Chatata, Candies Creek, and Fillauer Branch without flowing through a named creek or stream, through a public drainage system, or across a downstream property boundary, and is located in the very lowest downstream reaches of that watershed. It shall be determined by acceptable engineering principles and practices that post development stormwater should be released quickly to avoid the peak discharge timing for the entire watershed and not increase the peak runoff rate for storm events identified in the design standards for storage in § 18-306(13)(f)(i). The hydrologic analysis for such demonstration shall include more than one representative downstream location for comparing hydrographs. Even if stormwater detention is waived for the above situation, the site development must provide first flush treatment or an acceptable alternative in order to protect water quality.

(f) Detention structure design criteria. Standards governing drainage detention control shall comply with the following standards and specifications:

(i) All stormwater detention structures must detain the post development peak flow rates for two (2) year, five (5) year, ten (10) year, and twenty-five (25) year within a twenty-four (24) hour design storm frequency to discharge at or below pre-development peak flow rates and pass a one hundred (100) year storm without damage to the facility or adjacent property.

(ii) The required hydrologic and hydraulic computations shall be in accordance with Natural Resource Conservation Service (NRCS), formerly the Soil Conservation Service; unit hydrograph procedures using Antecedent Moisture Condition (AMC) II curve numbers and Type II rainfall distribution. All post development conditions must be routed to the maximum extent possible at time intervals of one-tenth (0.1 hour) through the detention pond utilizing hand calculations or computer models;

(iii) If hydrologic or topographic conditions warrant greater control than that provided by the minimum control requirements, the city engineer shall impose any requirements deemed necessary to control the volume, timing, and rate of runoff in the interest of public safety;

(iv) The civil engineer representing the owner or developer is charged with determining the predevelopment conditions, including the curve number. If the engineer cannot determine the predevelopment conditions, then a maximum pre-development curve number of seventy (70) may be used to compute the predevelopment flow and satisfy the requirement. If the downstream system extending from the site to the second existing road crossing or blue line stream is examined and found to be adequate to carry the two (2) and ten (10) year storm events for a twenty-four (24) hour storm event, the requirement for detention for areas of redevelopment may be waived;

(v) Typical stormwater detention or storage facilities are dry detention basins, wet detention basins, retention basins, and constructed wetlands. All detention computations must use NRCS design methods with Type II twenty-four (24) hour storm and average antecedent moisture conditions;

(vi) Detention facilities shall be designed and graded to allow access for maintenance personnel, maintenance vehicles, and equipment. The SWPPP shall incorporate a permanent drainage easement to provide access for future maintenance or repair, which shall be designated on the final recorded plat.

(vii) The detention pond design shall incorporate a trash rack or trash collection appurtenance. (as added by Ord. #2004-41, Nov. 2004, amended by Ord. #2005-38, Oct. 2005, replaced by Ord. #2015-06, March 2015, and amended by Ord. #2016-09, April 2016, and Ord. #2017-20, July 2017)

18-307. Permanent stormwater management: operation, maintenance, and inspection. (1) As built plans. All persons or entities designated as having a valid land disturbance permit are required to submit actual as-built plans developed from field survey data at the post construction phase. Two (2) benchmarks of public record referenced to Tennessee State Plane Coordinates shall be identified on the as-built plans. The as-built plans shall include all stormwater management facilities, and conveyances, roadways, and private stormwater storage facilities located on-site. The plan must show the final (actual) design specifications for all stormwater structures and roadway gutters and shall include a description of:

- (a) Structure materials,
- (b) Invert elevations,
- (c) Structure dimensions shall include inside pipe diameter(s),
- (d) Slope of stormwater conveyances and pipes, and the stream buffer metes and bounds.

The stream buffer zone area will remain in tact, with no removal of vegetation, including upper and lower story vegetative canopy, during all phases of construction,. The as-built drawings must also include infrastructure to be accepted by the City of Cleveland and constructed as part of the development and/or redevelopment, including but not limited to curb and gutters, edge of pavement, and stormwater facilities. The as-built drawings must bear the seal by a civil engineer or registered licensed surveyor in the State of Tennessee and submitted to the engineering division of the City of Cleveland Development and Engineering Services Department in hard copy and electronic format compatible with AutoCAD or Micro station. A final post inspection will be conducted by the engineering division of the City of Cleveland Development and Engineering Services Department prior to the release of the performance security or performance bond. The engineering division shall have the discretion to adopt provisions for a partial pro-rata release of the performance surety or performance bond on the completion of various stages of development. The performance value of mapping shall be held in abeyance until as-built drawings required under this provision are submitted and approved by the engineering division. In addition, occupation permits shall not be granted until corrections to all BMPs have been made and accepted by the city.

- (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 stabilize. Stabilization measures shall be initiated as soon as possible in portions of the site

where construction activities have temporarily or permanently ceased. Temporary or permanent soil stabilization at the construction site (or a phase of the project) must be completed not later than fifteen (15) days after the construction activity in that portion of the site has temporarily or permanently ceased. In the following situations, temporary stabilization measures are not required:

(i) Where the initiation of stabilization measures is precluded by snow cover or frozen ground conditions or adverse soggy ground conditions, stabilization measures shall be initiated as soon as practicable; or

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

(b) Permanent stabilization with perennial vegetation (using native herbaceous and woody plants where practicable) or other permanently stable, non-eroding surface shall replace any temporary measures as soon as practicable. Unpacked gravel containing fines (silt and clay sized particles) or crusher runs will not be considered a non-eroding surface.

(c) The following criteria shall apply to revegetation efforts:

(i) Reseeding must be done with an annual or perennial cover crop accompanied by placement of straw mulch or its equivalent of sufficient coverage to control erosion until such time as the cover crop is established over ninety percent (90%) of the seeded area.

(ii) Replanting with native woody and herbaceous vegetation must be accompanied by placement of straw mulch or its equivalent of sufficient coverage to control erosion until the plantings are established and are capable of controlling erosion.

(iii) Any area of revegetation must exhibit survival of a minimum of seventy-five percent (75%) of the cover crop throughout the year immediately following revegetation. Revegetation must be repeated in successive years until the minimum seventy-five percent (75%) survival for one (1) year is achieved.

(iv) In addition to the above requirements, a landscaping plan must 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 stormwater management facilities. Periodic inspections of facilities shall be performed, documented, and reported in accordance with this chapter, as detailed in § 18-309.

(4) Records of installation and maintenance activities. Parties responsible for the operation and maintenance of a stormwater management facility shall make records of the installation of the stormwater facility, and of all maintenance and repairs to the facility, and shall retain the records for at least three (3) years. These records shall be made available to the city during inspection of the facility and at other reasonable times upon request.

(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 stormwater facilities under this chapter, the city, after reasonable notice, may correct a violation of the design standards or maintenance needs by performing all necessary work to place the facility in proper working condition. In the event that the stormwater management facility becomes a danger to public safety or public health, the city shall notify in writing the party responsible for maintenance of the stormwater management facility. Upon receipt of that notice, the responsible person shall have thirty (30) days to effect maintenance and repair of the facility in an approved manner. In the event that corrective action is not undertaken within that time, the city may take necessary corrective action. The cost of any action by the city under this section shall be charged to the responsible party. (as added by Ord. #2004-41, Nov. 2004, amended by Ord. #2005-38, Oct. 2005, and replaced by Ord. #2015-06, March 2015)

18-308. Post construction landscaping. (1) When required. A post construction stabilization and landscape plan shall be required for:

(a) Proposed development requiring a land disturbance permit under the provisions of § 18-305(1) with a land use designation or proposed land use of industrial, commercial, or multi-unit residential structures with a cumulative living area of five-thousand (5,000) square feet, or greater.

(b) Redevelopment and property improvements.

(i) Existing industrial, commercial, or multi-unit residential structures that are expanded by fifty-percent (50%), or greater;

(ii) The addition of parking spaces to serve an existing industrial, commercial, or multi-unit residential structure where the existing parking area is increased by twenty-five percent (25%), or greater.

(2) Exemptions. The following land disturbance activity or development is exempt from the post construction landscape plan requirement of § 18-308. An exemption of the post construction landscape provisions of § 18-308 does not constitute an exemption from the remaining provisions of this

ordinance; such remaining provisions shall apply to all land disturbance activity identified in § 18-305(1) in accordance with the State of Tennessee NPDES MS4 Phase II Stormwater Permit issued to the City of Cleveland.

The following land disturbance activities are exempt from the provisions of § 18-308:

(a) Exempt from obtaining a land disturbance permit under the provisions of § 18-305(2);

(b) Single family residential parcels that are a part of a larger common plan of development (larger tract divided into parcels). Land disturbance permits in accordance with § 18-305(1) shall be required for parcels of a larger common plan of development in accordance with NPDES MS4 Phase II requirements;

(c) Development in the Central Business District (CBD) zoning district.

(3) Landscape plan requirements. The applicant for a land disturbance permit shall submit a post construction landscape plan in accordance with § 18-308(1). The landscape plan shall be developed by a professional in accordance with rules promulgated by the State of Tennessee Board of Architectural and Engineering Examiners, the landscape plan shall be prepared by a qualified registrant.

The landscape plan shall contain the following:

(a) Plant schedule. The plant schedule shall contain:

(i) Quantity of plant material;

(ii) Common and botanical name of plant material;

(iii) Size and spacing of landscape materials at time of planting;

(iv) General plant comments;

(v) Plant materials located in the public right-of-way;

(vi) Location and description of landscape improvements, including perimeter landscaping, landscaping within parking lots, and buffer zones if the parking area is two (2) or more acres, (the description shall include the size of the parking area and the actual percentage of the parking area used for landscaping);

(vii) Planting and installation details to ensure conformance with all required standards; and

(viii) Irrigation system details.

(4) Landscape plan review procedures. (a) The landscape plan will be reviewed by the Urban Forester in accordance with the provisions of § 18-305(5).

(b) Alternative landscaping plan. Recognizing the need for diversified methods of landscaping, the applicant for a land disturbance permit may submit an alternative methods or materials to the urban forester to determine if the proposed alternative satisfies the provisions of this ordinance;

(c) Memorial tree fund. If an alternative landscape plan is not feasible as determined by the urban forester, and the applicant for a land disturbance permit is unable to achieve the intent of the landscape plan, the applicant may achieve the necessary equivalency in off-site landscaping in conjunction with the memorial tree fund. The mitigation or exchange ratio shall be 2:1 calculated at the current fair market value to purchase plant materials, planting, and maintenance. Payments received for mitigation or off-site landscaping shall be deposited in the memorial tree fund and shall be expended solely to landscape public properties and right-of-ways.

(5) Landscape plan standards. (a) A landscape plan shall include at a minimum:

- (i) Plant materials approved by the urban forester;
- (ii) Shade trees shall be a minimum of one and one-half inches (1 1/2") in caliper, ornamental trees be a minimum of one and one-half inches (1 1/2") in caliper, and evergreen trees shall be a minimum of six feet (6') in height;
- (iii) The owner shall ensure that planting areas, i.e., tree pits, hedge trenches, and shrub beds are excavated appropriately. Soil within the planting areas should be reasonably free of rock, debris, inorganic compositions and chemical residues. Plants shall rest on a well compacted surface;
- (iv) Existing trees shall be preserved whenever feasible.
- (v) Planting Areas shall be mulched to a thickness of three to four inch (3" - 4") in depth and consist of bark, pine needles, or other suitable materials to cover the planting areas, remaining landscape areas shall be in grass or ground cover;
- (vi) Trees and shrubs shall not be located within a dedicated utility easement, whether private or public utilities.
- (vii) Landscape plans shall not include plant materials on the undesirable plant list. The urban forester and/or the department of community development shall provide the undesirable plant list.

(b) Perimeter landscaping. (i) Planting yards are required around the perimeter or an equivalent area of a development, with the exclusion egress for vehicles or pedestrians. Traffic considerations shall be paramount in perimeter landscaping. A planting yard shall be a minimum width of:

- (A) Five feet (5') for a parcel with a total area of two (2) acres or less,
- (B) Eight feet (8') for a parcel with a total area of two (2) acres, or greater.

The width of perimeter planting yard may range from zero percent (0%) to two-hundred percent (200%) of the required

minimum width along the perimeter, but the average width of the perimeter planting yard shall be at least the required minimum.

(ii) Plantings yards shall be placed along the front, side and rear property lines, with traffic and safety considerations being paramount. A property bounded by two (2) or more public right-of-ways has two (2) or more front yards;

(iii) Planting yards shall contain a number of shade trees equivalent to one (1) shade tree for each forty (40) linear feet of perimeter, excluding any vehicular access way. Ornamental trees may be substituted for up to forty percent (40%) of otherwise required shade trees. Shade trees shall not be planted under overhead utility lines. Landscaping trees shall be distributed along property lines; however, distribution is to be in accordance with design considerations particular to the site, such as screening, traffic site distance, safety, and aesthetics. In order to achieve equity in the number of shade trees required for development occurring on sites with equivalent areas, but with different perimeter lengths, the number of shade trees required for each forty feet (40') of perimeter shall not exceed what would have been required had the site been a perfect square.

(iv) Planting yards shall consist of diverse species of trees satisfying spacing criteria cited in this part, and shall incorporate shrubs at equal intervals planted between perimeter trees, subject to approval of the urban forester. One (1) tree species shall not comprise more than sixty percent (60%) of the total number of trees provided;

(v) In the case of a larger common plan of industrial, commercial, or multi-unit residential structures resulting in multiple parcel of the same zoning classification, perimeter landscaping shall be limited to the larger tract prior to dividing into parcels.

(c) Landscaping parking areas - proposed development. Proposed parking areas shall be effectively landscape islands with trees and shrubs to reduce adverse impacts of peak stormwater runoff from impervious areas. Development of lots of record in existence prior to the effective date of this chapter which are being developed so as to be required to provide twenty (20) or fewer parking spaces, and which are not otherwise part of a larger common plan of development, are exempt from the parking area landscaping requirements of this subsection.

(i) Proposed parking areas shall incorporate landscape islands to consist of a minimum of four percent (4%) of the total impervious area, exclusive of the building footprint area.

(ii) Proposed parking areas with a single access aisle shall be designed and constructed with landscape islands dividing

rows of parking spaces at increments of twenty (20) spaces. Off-street parking areas with multiple access aisles shall be designed and constructed with landscape islands dividing at least every twelve (12) parking spaces in a row. Landscape islands shall have a minimum width of eight feet (8') and shall have a minimum depth equal to the depth of the adjacent parking stall(s). Landscape island spacing criteria notwithstanding, the greater of five (5) or twenty percent (20%) of the required landscape islands may be combined with other islands or otherwise located around the parking lot or on its perimeter when necessary to accommodate other design considerations including, but not limited to, the location of handicapped parking, fire lanes, loading zones, and other site features. Each landscape island shall have at least one (1) shade tree, except that an ornamental tree is to be substituted for the shade tree underneath an overhead power line, and three (3) shrubs.

(iii) Landscape islands shall be constructed to include a continuous curbing perimeter, and shall be back-filled with topsoil to a depth of eighteen inches (18") and shall be free of rock, debris, inorganic compositions, and chemical residues detrimental to plant life.

(iv) The landscape requirements for parking lots are in addition to the requirements for buffer zones and perimeter landscaping.

(d) Landscape requirements for existing parking areas:

(i) In parking areas subject to § 18-308(1)(b) trees shall be planted at the rate of one (1) shade tree per twelve (12) parking spaces;

(ii) Trees shall be located within or adjacent to parking areas as tree islands, medians, at the end of parking bays, traffic delineators, or between rows or parking spaces in a manner;

(iii) The landscape requirements for parking lots are in addition to the requirements for buffer zones and perimeter landscaping.

(6) Irrigation requirement. The post construction landscape plan shall identify irrigation measures to satisfy survival rate requirements.

(a) Landscaping materials installed in accordance with an approved landscape plan shall be watered by one (1) of the following methods:

(i) An above ground or under ground irrigation system;

or

(ii) A hose attachment, within one hundred feet (100') of all landscaping.

(b) Landscape irrigation water shall supplement rainfall at a rate of one inch (1") per week during the growing seasons. Slow release (i.e. "treegators") bags are recommended for supplemental watering.

(7) Landscape installation. Landscaping materials shall be installed in accordance with widely accepted professional planting procedures. Landscape materials, which fail to satisfy the minimum requirements or standards of this ordinance at the time of installation, shall be removed and replaced with acceptable materials.

(8) Maintenance requirements - warranty. The applicant shall warranty plant material survival of ninety-percent (90%) for a two (2) year period consistent with an approved landscape plan. (as added by Ord. #2004-41, Nov. 2004, amended by Ord. #2005-38, Oct. 2005, and replaced by Ord. #2015-06, March 2015)

18-309. Existing locations and ongoing developments. (1) On-site stormwater management facilities maintenance agreement:

(a) Where the stormwater facility is located on property that is subject to a development agreement, and the development agreement provides for a permanent stormwater maintenance agreement that runs with the land, the owners of property must execute an inspection and maintenance agreement that shall operate as a deed restriction binding on the current property owners and all subsequent property owners and their lessees and assigns, including but not limited to, homeowner associations or other groups or entities.

(b) The maintenance agreement shall:

(i) Assign responsibility for the maintenance and repair of the stormwater facility to the owners of the property upon which the facility is located and be recorded as such on the plat for the property by appropriate notation.

(ii) Provide for a periodic inspection by the property owners in accordance with the requirements of subsection (v) below for the purpose of documenting maintenance and repair needs and to ensure compliance with the requirements of this ordinance. The property owners will arrange for this inspection to be conducted by a registered professional engineer licensed to practice in the State of Tennessee, who will submit a signed written report of the inspection to the City of Cleveland Development and Engineering Services Department. It shall also grant permission to the city to enter the property at reasonable times and to inspect the stormwater facility to ensure that it is being properly maintained.

(iii) 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, cutting and vegetation removal,

and the replacement of landscape vegetation, in detention and retention basins, and inlets and drainage pipes and any other stormwater facilities. It shall also provide that the property owners shall be responsible for additional maintenance and repair needs consistent with the needs and standards outlined in the MS4 BMP manual.

(iv) Provide that maintenance needs must be addressed in a timely manner, on a schedule to be determined by the City of Cleveland Development and Engineering Services Department.

(v) Provide that if the property is not maintained or repaired within the prescribed schedule, the City of Cleveland Development and Engineering Services 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 City of Cleveland Development and Engineering Services Department's cost of performing the maintenance shall be a lien against the property.

(2) Existing problem locations - no maintenance agreement. (a) The City of Cleveland Development and Engineering Services Department shall in writing notify the owners of existing locations and developments of specific drainage, erosion or sediment problems affecting or caused by such locations and developments, and the specific actions required to correct those problems. The notice shall also specify a reasonable time for compliance. Discharges from existing BMPs that have not been maintained and/or inspected in accordance with this ordinance shall be regarded as illicit.

(b) Inspection of existing facilities. The city may, to the extent authorized by state and federal law, enter and inspect private property for the purpose of determining if there are illicit non-stormwater discharges, and to establish inspection programs to verify that all stormwater management facilities 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 city's NPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water

in drainage control facilities; and evaluating the condition of drainage control facilities and other BMPs.

(3) Owner/operator inspections - generally. The owners and/or the operators of stormwater management practices shall:

(a) Perform routine inspections to ensure that the BMPs are properly functioning. These inspections shall be conducted on an annual basis, at a minimum. These inspections shall be conducted by a person familiar with control measures implemented at a site. Owners or operators shall maintain documentation of these inspections. The City of Cleveland Development and Engineering Services Department may require submittal of this documentation.

(b) Perform comprehensive inspection of all stormwater management facilities and practices. These inspections shall be conducted once every five (5) years, at a minimum. Such inspections must be conducted by either a professional engineer or landscape architect, licensed in the State of Tennessee. Complete inspection reports for these five year inspections shall include:

- (i) Facility type,
- (ii) Inspection date,
- (iii) Latitude and longitude and nearest street address,
- (iv) BMP owner information (e.g. name, address, phone number, fax, and email),
- (v) A description of BMP condition including: vegetation and soils; inlet and outlet channels and structures; embankments, slopes, and safety benches; spillways, weirs, and other control structures; and any sediment and debris accumulation,
- (vi) Photographic documentation of BMPs, and
- (vii) Specific maintenance items or violations that need to be corrected by the BMP owner along with deadlines and reinspection dates.

(c) Owners or operators shall maintain documentation of these inspections. The City of Cleveland Development and Engineering Services Department may require submittal of this documentation.

(4) Requirements for all existing locations and ongoing 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 must be vegetated or covered under the standards and guidelines specified in § 18-307(2)(c)(i), (ii), (iii) and on a schedule acceptable to the City of Cleveland Development and Engineering Services Department.

(b) Cuts and slopes must 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.

(e) Stormwater runoff shall, at the discretion of the City of Cleveland Development and Engineering Services Department be controlled to the maximum extent practicable to prevent its pollution. Such control measures may include, but are not limited to, the following:

- (i) Ponds
 - (A) Detention pond
 - (B) Extended detention pond
 - (C) Wet pond
 - (D) Alternative storage measures
- (ii) Constructed wetlands
- (iii) Infiltration systems
 - (A) Infiltration/percolation trench
 - (B) Infiltration basin
 - (C) Drainage (recharge) well
 - (D) Porous pavement
- (iv) Filtering systems
 - (A) Catch basin inserts/media filter
 - (B) Sand filter
 - (C) Filter/absorption bed
 - (D) Filter and buffer strips
- (v) Open channel
 - (A) Swale

(5) Corrections of problems subject to appeal. Corrective measures imposed by the stormwater coordinator under this section are subject to appeals process under § 18-313. (as added by Ord. #2004-41, Nov. 2004, amended by Ord. #2005-38, Oct. 2005, and replaced by Ord. #2015-06, March 2015)

18-310. Illicit discharges. (1) General. This section shall apply to all water generated on developed or undeveloped land entering the municipality's separate storm sewer system.

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

Uncontaminated discharges from the following sources:

- (a) Water line flushing or other potable water sources,
- (b) Landscape irrigation or lawn watering with potable water,
- (c) Diverted stream flows,

- (d) Rising ground water,
- (e) Groundwater infiltration to storm drains,
- (f) Pumped groundwater,
- (g) Foundation or footing drains,
- (h) Crawl space pumps,
- (i) Air conditioning condensation,
- (j) Springs,
- (k) Non-commercial washing of vehicles,
- (l) Natural riparian habitat or wetland flows,
- (m) Swimming pools (if dechlorinated-typically less than one PPM chlorine),
- (n) Fire fighting activities, and
- (o) Dye testing conducted in conjunction with the operation of water distribution and wastewater utilities.

(3) Prohibition of illicit connections. (a) The construction, use, maintenance or continued existence of illicit connections to the separate municipal 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 stormwater pollutants. 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 municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed 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 stormwater, or the municipal separate storm sewer system, the person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials the person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, the person shall notify the City of Cleveland Development and Engineering Services Department Stormwater Division in person or by telephone or facsimile no later than the next business day. Notifications in person or by telephone shall be entered in a telephone log maintained by the City of Cleveland Development and Engineering Services Department Stormwater Division. If the discharge of prohibited materials

emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained in accordance with NPDES requirements for the facility, or in accordance with the Tennessee Water Quality Control Act and/or any subsequent revisions as a matter of law. (as added by Ord. #2004-41, Nov. 2004, amended by Ord. #2005-38, Oct. 2005, and replaced by Ord. #2015-06, March 2015)

18-311. Enforcement and compliance. (1) Enforcement authority. It shall be unlawful for any person to violate the provisions of this ordinance or conduct operations that violate the terms of the Tennessee Water Quality Control Act 69-3-101. Under the provisions of Tennessee Code Annotated, § 68-221-1106, violations will be subject to enforcement action. City of Cleveland Development and Engineering Services Department are authorized under the provisions of Tennessee Code Annotated, § 68-221-1106 to conduct administrative enforcement and shall have the authority to issue notices of violation and citations.

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

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

(c) Show cause hearing. The stormwater coordinator 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 requested) at least five (5) days prior to the hearing.

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

(e) **Cease and desist orders.** When the stormwater coordinator finds that any person has violated or continues to violate this ordinance or any permit or order issued hereunder, the stormwater engineer 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. (as added by Ord. #2004-41, Nov. 2004, amended by Ord. #2005-38, Oct. 2005, and replaced by Ord. #2015-06, March 2015)

18-312. Penalties. (1) **Violations.** Any person who shall commit any act declared unlawful under this ordinance, who violates any provision of this ordinance, who violates the provisions of any permit issued pursuant to this ordinance, or who fails or refuses to comply with any lawful communication or notice to abate or take corrective action by the stormwater coordinator shall be guilty of a civil offense.

(2) **Penalties.** Under the authority provided in Tennessee Code Annotated, § 68-221-1106, the municipality declares that any person violating the provisions of this ordinance may be assessed a civil penalty by administrative order signed by the development and engineering services director of not less than fifty dollars (\$50.00) and not more than five thousand dollars (\$5,000.00) per day for each day of violation. Each day of violation shall constitute a separate violation

(3) **Measuring civil penalties.** In assessing a civil penalty, the development and engineering services director with recommendations from the stormwater coordinator shall consider:

- (a) The harm done to the public health or the environment, including the severity of the discharge and its effect upon public

stormwater facilities and upon the quality and quantity of the receiving waters;

(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 and the effectiveness of action taken by the violator to cease the violation;

(e) Damages to the city, including compensation for the damage or destruction of public stormwater facilities, and also including any penalties, costs and attorneys' fees incurred by the city as a result of the illegal activity, as well as the expenses involved in enforcing this ordinance and the costs involved in rectifying any damages;

(f) The amount of penalty established by ordinance or resolution for specific categories of violations, if any;

(g) The technical and economic reasonableness of reducing or eliminating the discharge;

(h) The cause of the discharge or violation;

(i) Any equities of the situation, which outweigh the benefit of imposing any penalty or damage assessment.

(4) Schedule of civil penalties and enforcement protocol. The stormwater regulations board may establish by regulation a schedule of the amount of civil penalties which can be assessed by the development and engineering services director for certain specific violations or categories of violations. The stormwater regulations board may also establish by regulation an enforcement protocol in order to assure fair and just enforcement to all parties involved and to provide adequate guidance to stormwater field personnel.

(5) Recovery of damages and costs. In addition to the civil penalty in § 18-312(2) above, the City of Cleveland may recover;

(a) All damages proximately caused by the violator to the municipality, which may include any reasonable expenses incurred in investigating violations of, and attorney's fees and expenses in enforcement procedures associated with this ordinance, or any other actual damages caused by the violation.

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

(6) Other remedies. The City of Cleveland may institute civil proceedings in any court of competent jurisdiction seeking monetary damages for any damages caused to publicly owned stormwater facilities by any person, or to seek injunctive or other equitable relief to enforce compliance with the provisions of this ordinance or to enforce compliance with any consent order of

the development and engineering services director, the stormwater coordinator, or the stormwater regulations board.

(7) Remedies cumulative. The remedies set forth in this section shall be cumulative, not exclusive, and it shall not be a defense to any action that one (1) or more of the remedies set forth herein has been sought or granted.

(8) Failure to appeal civil penalties or damage assessments. If an appeal to the stormwater regulations board is not filed within thirty (30) days after the date that a civil penalty or damage assessment has been served in any manner allowed by law, the violator shall be deemed to have consented to the civil penalty or damage assessment, and it shall become final. Whenever a damage assessment or civil penalty has become final because of a failure to appeal, and it has not been paid, the city may apply to the appropriate chancery court for a judgment and seek execution of the judgment in any manner allowed by law. The chancery court, in such proceeding, shall treat the failure to appeal such damage assessment or civil penalty as a confession of judgment as provided in Tennessee Code Annotated, § 68-221-1106. (as added by Ord. #2004-41, Nov. 2004, amended by Ord. #2005-38, Oct. 2005, and Ord. #2006-25, July 2006, and replaced by Ord. #2015-06, March 2015)

18-313. Stormwater regulations board and administrative appeals. (1) Board established. There is hereby established a board of five (5) members to be known as the "Stormwater Regulations Board."

(2) Composition; terms; filling vacancies. The five (5) members of this board shall be appointed by the city council. The city council shall appoint members with the following qualifications: one (1) environmental engineer, environmental scientist, or environmental technician, one (1) attorney, one (1) person employed or retired from an industrial or commercial establishment regulated by this article, and two (2) persons that shall not have any particular qualifications, but to the extent practical shall be selected to maintain diversity on the board. Initial appointments are to be made for staggered terms as follows: two (2) seats for a term of one (1) year; two (2) seats for a term of two (2) years; and one (1) seat for a term of three (3) years. Subsequent appointments to each seat are to be for terms of four (4) years. All members shall serve until their successor is appointed and all members shall serve at the pleasure of the city council. A member of the stormwater regulations board may be removed from the board at any time by a majority vote of the city council when it is demonstrated that such board member has a pattern of repeated absences from board meetings, or when such board member exhibits disregard for controlling state and federal laws and local ordinances, or when such board member fails to declare a conflict of interest in a given case and votes on the case. In the event of a vacancy, the city council shall appoint a member to fill the unexpired term. The board members shall serve without compensation, but shall receive actual expenses incurred in attending meetings of the board and the performance of any duties as members of the board.

(3) General duties of the board. The board shall have the following duties and powers in addition to any other duties or responsibilities conferred upon the board by this ordinance.

(a) To recommend from time to time to the city council that it amend or modify the provisions of this ordinance;

(b) To hold hearings upon appeals from orders or actions of the stormwater coordinator, the development and engineering services director, or building official as may be provided under any provision of this ordinance;

(c) To hold hearings relating to the suspension, revocation, or modification of a stormwater discharge permit and issue appropriate orders relating thereto;

(d) To hold hearings relating to an appeal concerning any civil penalty imposed under this ordinance;

(e) To hold such other hearings as may be required in the administration of this ordinance and to make such determinations and issue such orders as may be necessary to effectuate the purposes of this ordinance;

(f) To request assistance from any officer, agent, or employee of the city and to obtain such information or other assistance as the board might need;

(g) The board acting through its chairperson shall have the power to issue subpoenas requiring attendance and testimony of witnesses and the production of documentary evidence relevant to any matter properly heard by the board; and

(h) The chairperson or vice chairperson shall be authorized to administer oaths to those persons giving testimony before the board.

(4) Election of officers; meetings; and quorum. The following constitutes rules and procedure for the stormwater regulations board. The board may adopt such other rules and procedures as the board deems appropriate provided that such rules are consistent with procedures described herein.

(a) Election of officers. The board shall elect from among its own members a chairperson, and a vice-chairperson. Secretarial services shall be provided by the City of Cleveland in a manner to be prescribed by the city manager.

(b) Initial meeting. Within thirty (30) days of the initial appointment of the board members, the board shall hold an initial meeting. At the initial meeting the board will elect officers as provided by this ordinance and review the general duties of the board identified in § 18-313(3).

(c) Regular meetings. Regular meetings shall be held at a time and place chosen by the stormwater regulations board. The board shall

hold regular semiannual meetings and called meetings as the board may find necessary.

(d) **Called meetings.** The chairperson or vice-chairperson or any two (2) members may schedule a called meeting of the stormwater regulations board as deemed necessary provided that advance notice is given to each board member at least forty-eight (48) hours prior to the commencement of the called meeting.

(e) **Public notice of regular meetings.** Public notice of regular meetings shall be by publication in a newspaper of general circulation at least five (5) days in advance of the meeting with a general description of the agenda.

(f) **Open meetings.** All meeting of the board shall be open to the public.

(g) **Conduct of meetings.** The board shall generally conduct meetings in accordance with Robert's Rules of Order.

(h) **Quorum and voting.** The presence of three (3) members of the stormwater regulations board shall constitute a quorum. If the chairperson and vice-chairperson are absent from the meeting in which there is a quorum, the members present shall elect from among the board members present a chairperson of the meeting. If only three (3) members are present and one (1) cannot vote due to a conflict of interest on a particular item, the remaining two members shall constitute a quorum for the purpose of that item. In the event of a tie vote on any motion, the motion shall fail. A motion shall have passed upon the affirmative vote of a majority of the quorum of board members present and voting.

(5) **Variiances.** (a) **General.** The stormwater regulations board may grant a variance from the requirements of this ordinance which would not result in the violation of any state or federal law or stormwater regulation consistent with the NPDES permit issued to the City of Cleveland, and if exceptional circumstances applicable to the site exist such that strict adherence to the provisions of this ordinance will result in unnecessary hardship and will not result in a condition contrary to the intent of the ordinance.

(b) **Conditions for a variance.** The minimum requirements for stormwater management may be waived in whole or in part upon written request of the applicant, provided that at least one (1) of the following conditions applies and the applicant can satisfy § 18-312(5)(c):

(i) It can be demonstrated that the proposed variance is not likely to impair attainment of the objectives of this ordinance.

(ii) Alternative minimum requirements for on-site management of stormwater discharges have been established in a SWPPP that has been approved by the city engineer.

(iii) Provisions are established to manage stormwater by an off-site facility. The off-site facility must be in place and

designed to provide the level of stormwater 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.

(c) Downstream damage and adverse impact prohibited. In order to receive a variance, the applicant must demonstrate utilizing sound engineering principals that the issuance of a variance will not lead to any of the following conditions downstream:

- (i) Deterioration of existing culverts, bridges, dams, and other structures;
- (ii) Degradation of biological functions or habitat;
- (iii) Accelerated stream bank or streambed erosion or siltation;
- (iv) Increased threat of flood damage to public health, life or property.

(d) Variance request. The following procedures and information will be required prior to the stormwater regulations board's consideration of a variance.

(i) A written petition for a variance shall be required and shall state the specific variance sought and the reasons, with supporting data, and provide specifics regarding valid reasons a variance should be granted. The petition shall include all information necessary to evaluate the proposed variance and shall be filed with the stormwater coordinator.

(ii) The stormwater coordinator shall conduct a review of the request for a variance within ten (10) working days after receipt and may either support the petition or may object to the petition. If the stormwater coordinator objects to the variance, the stormwater coordinator shall state the reasons.

(iii) Once the stormwater coordinator's review is complete or the ten (10) days for review have expired, the petition shall be subject to board action at the next regularly scheduled meeting or at a called meeting.

(6) Administrative appeals. Pursuant to Tennessee Code Annotated, § 68-221-1106(d), any person aggrieved by the imposition of an administrative civil penalty or damage assessment as provided by this ordinance may appeal said administrative civil penalty or damage assessment to the stormwater regulations board. Any person or entity aggrieved by any order or determination issued under this ordinance may appeal said order or determination to the stormwater regulations board who shall review the order or determination reviewed under the provisions of this section.

(a) Appeals must be in writing. All appeals must be in writing and filed with the stormwater coordinator and with the board

chairperson. The appeal shall set forth with particularity the action or inaction complained of and the relief sought by the person filing said appeal. The chairperson may call a special board meeting upon the filing of such appeal. As such special meeting, the board may in its discretion suspend or stay the operation of any civil penalty, damage assessment, order or determination until such time as the board has conducted a public hearing on the appeal.

(b) **Deadline for appeal.** All appeals must be filed within thirty (30) days after the civil penalty or damage assessment is served in any manner authorized by law. An appeal of any other order or determination issued under this ordinance shall be filed within thirty (30) days from the effective date of the order or determination.

(c) **Public hearing.** Upon the receipt of an appeal to the stormwater regulations board, the board shall hold a public hearing within thirty (30) days. Five (5) days prior notice of the time, date, and location of said hearing shall be published in a daily newspaper of general circulation. Ten (10) days notice by registered mail or certified mail (return receipt requested) shall also be provided to the appealing party. This notice of hearing shall be sent to the address provided by the appealing party at the time of the filing of the appeal.

(d) **Record of appeal hearing.** At any such hearing, all testimony presented shall be under oath or upon solemn affirmation in lieu of oath. The board shall make a record of such hearing, but the same need not be a verbatim record. Any party coming before the board shall have the right to have such hearing recorded stenographically at their expense, but in such event the record need not be transcribed unless any party seeks judicial review of the order or action of the board by common law writ of certiorari, and in such event the party seeking such judicial review shall pay for the transcript and provide the board with the original of the transcript so that it may be certified to the court.

(e) **Subpoenas.** The chairperson may issue subpoenas requiring attendance and testimony of witnesses or the production of evidence, or both. A written request for the issuance of a subpoena must be filed with the chairperson by no later than seven (7) days prior to the scheduled hearing date. The written request for a subpoena must set forth the name and address of the party to be subpoenaed and it must identify with particularity any evidence to be produced by the witness. If a request for the issuance of a subpoena is timely, the chairperson shall issue the subpoena if the witness is a city resident. If the chairperson issues a subpoena, the same shall be delivered to the chief of police for service by any police officer of the city. If the witness does not reside in the city, the chairperson shall mail a written notice to the witness requesting that the witness attend the hearing.

(f) Depositions. Upon agreement of all parties, the testimony of any person may be taken by deposition or written interrogatories. Unless otherwise agreed, the deposition shall be taken in a manner consistent with rules 26 through 33 of the Tennessee Rules of Civil Procedure, with the chairperson to rule on such matters as would require a ruling by the court under such rules.

(g) Hearing procedure. The appealing party at a public hearing shall first call that party's witnesses; to be followed by witnesses called by other parties, to be followed by any witnesses that the board may desire to call. Rebuttal witnesses shall be called in the same order. The chairman shall rule on any evidentiary questions arising during such hearing and shall make such other rulings as may be necessary or advisable to facilitate an orderly hearing subject to approval of the board. The board, the stormwater engineer, his or her representative, and all parties shall have the right to examine any witness. The board shall not be bound by the rules of evidence applicable to legal proceedings.

(h) Appeals from a decision of the stormwater regulations board. If a party is not satisfied with the decision of the stormwater regulations board, they may appeal the decision of the stormwater regulations board pursuant to the provisions of Tennessee Code Annotated, title 27, chapter 8. If an appeal of the decision of the stormwater regulations board is not filed within the time allowed by law, the party shall be deemed to have consented to the decision of the stormwater regulations board, and it shall become final. Whenever a damage assessment or civil penalty has become final because of a failure to appeal and it remains unpaid, the city may apply to the appropriate chancery court for a judgment and seek execution of the judgment in any manner allowed by law. The chancery court, in such proceeding, shall treat the failure to appeal such damage assessment or civil penalty as a confession of judgment as provided in Tennessee Code Annotated, § 68-221-1106. (as added by Ord. #2005-38, Oct. 2005, and replaced by Ord. #2015-06, March 2015)

18-314. Appendix. (1) As-built agreement form.



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Post Construction Site Stabilization. In compliance with Section 18-306 of the Cleveland Municipal Code, the Developer further agrees to complete post construction site stabilization on the Property. If the Developer fails to comply with this provision, the Developer will be subject to enforcement action under Section 18-310 of the Cleveland Municipal Code.

Post Construction Landscape Plan. If applicable, Developer further agrees to provide a post construction landscape plan in accordance with the provisions of Section 18-307 of the Cleveland Municipal Code. If the Developer fails to comply with this provision, the Developer will be subject to enforcement action under Section 18-310 of the Cleveland Municipal Code.

The undersigned understands and agrees that this Agreement and ultimately the overall Application for a Land Disturbance permit shall be subject to the acceptance, amendment and/or rejection by the City Engineer.

Dated this _____ day of _____, 20_____.

DEVELOPER

By: _____

Title: _____

STATE OF TENNESSEE)
COUNTY OF BRADLEY)

Before me personally appeared _____, to me known to be the person(s) described herein (or proved to me on the basis of satisfactory evidence) and who executed the foregoing instrument, and acknowledge the execution of the same as his/ her free act and deed.

WITNESSED by me this _____ day of _____, 200__.

NOTARY PUBLIC

My commission expires: _____.



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 As-Built Agreement
 Stormwater MS4 Phase II
 Page 1

Project Title: _____

Tax Map-Group-Parcel _____

Agreement

This agreement is entered into in accordance with the provisions of the City of Cleveland's Stormwater Management Program codified as Sections 18-301 through 18-313 of the City of Cleveland's Municipal Code.

The undersigned _____ is the Developer of a Tract of land as shown and described on the attached Exhibit A. The property shall be referred to herein as "the Property."

Developer agrees that this agreement shall be and is binding upon the undersigned developer, his or her heirs, assigns and successors in interest. Developer, his or her heirs, assigns and successors in interest are collectively referred to herein as "Developer".

As Built Drawings. In compliance with Section 18-306 of the Cleveland Municipal Code, Developer agrees to provide as built drawings of the stormwater infrastructure associated with the proposed development on the Property. Developer understands and agrees that Developer is responsible to provide a cost estimate for the cost of these as built drawings. This cost estimate must be provided at the time this agreement is executed. Developer will not be able to obtain a land disturbance permit until this cost estimate has been provided to the City. Developer understands and agrees that this written estimate must bear the seal of a licensed Tennessee Civil Engineer or the seal of a licensed Tennessee surveyor.

The as built drawings shall be provided to the City of Cleveland by Developer upon completion of post construction site stabilization as defined in Section 18-306 of the Cleveland Municipal Code. If Developer fails to provide the as built drawings to the City within 30 days after completion of post construction site stabilization as defined in Section 18-306 of the Cleveland Municipal Code, then Developer is in default under this agreement. The City will notify the Developer of this Default and give Developer 30 days to cure the Default. If the Default is not cured within 30 days after notice to the Developer, then the City will have the right to hire a licensed Tennessee Surveyor to provide the as built drawings to the City. If the City is forced to hire a surveyor to provide the as built drawings due to the Developer's default, Developer will be obligated to pay the City an amount equal to twice the City's cost in obtaining the as built drawings. In addition, the Developer will be responsible for the City's attorneys fees and litigation expenses should the City be required to hire an attorney to enforce the City's rights under this agreement.

(as added by Ord. #2015-06, March 2015)

CHAPTER 4**STORMWATER UTILITY ORDINANCE****SECTION**

- 18-401. Legislative findings and policy.
- 18-402. Creation of stormwater utility and stormwater management fund.
- 18-403. Definitions.
- 18-404. Funding of stormwater utility.
- 18-405. Stormwater management fund.
- 18-406. Operating budget.
- 18-407. Stormwater user's fees established.
- 18-408. Single Family Unit (SFU).
- 18-409. Base rate.
- 18-410. Property classification for stormwater user's fee.
- 18-411. Payment of stormwater user's fee.
- 18-412. Billing procedures, delinquent bills and penalties for late payment.
- 18-413. Stormwater fee adjustments and credits.
- 18-414. [Deleted.]

18-401. Legislative findings and policy. The city council finds, determines and declares that the stormwater system which provides for the collection, treatment, storage and disposal of stormwater provides benefits and services to all developed property within the incorporated city limits. Such benefits include, but are not limited to: the provision of adequate systems of collection, conveyance, detention, treatment and release of stormwater; the reduction of hazards to property and life resulting from stormwater runoff; improvements in general health and welfare through reduction of undesirable stormwater conditions; and improvements to the water quality in the stormwater and surface water system and its receiving waters. (as added by Ord. #2014-26, June 2014, and replaced by Ord. #2015-13, June 2015)

18-402. Creation of stormwater utility and stormwater management fund. To achieve the purposes of the Federal Clean Water Act and Tennessee Code Annotated, § 68-221-1101 et seq., there is created a stormwater utility and a stormwater enterprise fund known as the Cleveland Stormwater Management Fund to fund the stormwater utility in and for the city within development and engineering services. The stormwater utility, pursuant to the policy that may be established by the city council and under the general supervision and control of the city manager, through the department of development and engineering services, with the participation and assistance of other city departments, may:

- (1) Administer the acquisition of property for and the design, construction, maintenance and operation of the stormwater utility system, including capital improvements designated in the capital improvement program;
- (2) Administer and enforce this ordinance and all regulations and procedures adopted relating to the design, construction, maintenance, rehabilitation, operation and alteration of the utility stormwater system, including, but not limited to, the quantity, quality and/or velocity of the stormwater conveyed thereby;
- (3) Advise the city council and other city departments on matters relating to the utility;
- (4) Prepare and revise a comprehensive drainage plan for adoption by the city council;
- (5) Review plans and approve or deny, inspect and accept extensions and connections to the system;
- (6) Enforce regulations to protect and maintain water quality and quantity within the system in compliance with water quality standards established by state, regional and/or federal agencies as now adopted or hereafter amended; or
- (7) Annually analyze the cost of services and benefits provided, and the system and structure of fees, charges, civil penalties and other revenues of the utility. (as added by Ord. #2014-26, June 2014, and replaced by Ord. #2015-13, June 2015)

18-403. Definitions. For the purpose of this ordinance, the following definitions shall apply: Words used in the singular shall include the plural, and the plural shall include the singular; words used in the present tense shall include the future tense. Words not defined in this section will be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary.

- (1) "Base rate" means the stormwater user's fee for a single-family unit in the city.
- (2) "Bonds" means revenue bonds, notes, loans or any other debt obligations issued or incurred to finance the costs of construction.
- (3) "Construction" means the erection, building, acquisition, alteration, reconstruction, improvement or extension of stormwater facilities; preliminary planning to determine the economic and engineering feasibility of stormwater facilities; the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary in the construction of stormwater facilities; and the inspection and supervision of the construction of stormwater facilities.
- (4) "Costs of construction" means costs reasonably incurred in connection with providing capital improvements related to stormwater facilities or any portion thereof, including but not limited to the costs of:

- (a) Acquisition of all property, real or personal, and all interests in connection therewith including all rights-of-way and easements therefor,
 - (b) Physical construction, installation and testing, including the costs of labor, services, materials, supplies and utility services used in connection therewith,
 - (c) Architectural, engineering, legal and other professional services,
 - (d) Insurance premiums taken out and maintained during construction, to the extent not paid for by a contractor, for construction and installation,
 - (e) Any taxes or other charges which become due during construction,
 - (f) Expenses incurred by the City of Cleveland or on its behalf with its approval in seeking to enforce any remedy against any contractor or sub-contractor in respect of any default under a contract relating to construction,
 - (g) Principal of and interest of any bonds, and
 - (h) Miscellaneous expenses incidental thereto.
- (5) "Debt service" means, with respect to any particular fiscal year and any particular series of bonds, an amount equal to the sum of:
- (a) All interest payable on such bonds during such fiscal year, plus
 - (b) Any principal installments of such bonds during such fiscal year.
- (6) "Developed property" means real property which has been altered from its natural state by the creation or addition of impervious areas, by the addition of any buildings, structures, pavement or other improvements.
- (7) "Dwelling" or "dwelling unit" means a building or a portion thereof occupied for residential purposes.
- (8) "Fee(s)" or "stormwater user's fee(s)" means the charge established by ordinance, and levied on owners or users of parcels or pieces of real property to fund the costs of stormwater management and of operating, maintaining, and improving the stormwater system in the city. The stormwater user's fees are in addition to any other fee that the city has the right to charge under any other rule or regulation of the city.
- (9) "Fiscal year" means July 1 of a calendar year to June 30 of the next calendar year, both inclusive.
- (10) "Impervious surface" means a surface which substantially reduces and/or prevents absorption of stormwater into the ground.
- (11) "Impervious surface area" means the number of square feet of horizontal surface covered by buildings, and other impervious surfaces. All building measurements shall be made between exterior faces of walls, foundations, columns or other means of support or enclosure.

(12) "Non-single-family residential property" means land that is zoned, developed or used solely as residential land, including, but not limited to, duplexes, townhouses, apartments, condominiums, mobile homes, mobile home parks, mixed use buildings and other multi-unit residential developments, or any other lands upon which there are residential structures that contain more than one (1) dwelling unit.

(13) "Other developed property" means developed property other than single-family residential property. Such property includes, but not be limited to, commercial properties, industrial properties, parking lots, hospitals, schools, recreational and cultural facilities, hotels, offices, churches, and mixed use property.

(14) "Property" means real property.

(15) "Property owner" means the property owner of record as listed in the county's assessment roll. A property owner includes any individual, corporation, firm, partnership, or group of individuals acting as a unit, and any trustee, receiver, or personal representative.

(16) "Single family residential property" means a developed property which serves the primary purpose of providing one (1) detached dwelling unit for one (1) family or housekeeping unit, but this does include single wide mobile homes, even if attached to the land or there is only one (1) unit on the property.

(17) "Single-Family Unit" or "SFU" means the average square footage of the impervious surface area for a single-family residential property determined pursuant to this ordinance.

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

(19) "Stormwater facilities" or "stormwater flood control facilities" means all natural and manmade conveyances and structures for which the partial or full purpose or use is to convey surface water within the jurisdictional boundaries of the city. This includes all natural conveyances for which the city has assumed a level of maintenance responsibility, to which the city has made improvements, against the flooding of which the city must make provision to protect public and private property, or for which the city is accountable under federal or state regulations for protecting the water quality within its jurisdictional boundaries.

(20) "Stormwater management" means the planning, acquisition, design, construction, regulation, improvement, repair, rehabilitation, maintenance, and operation of property, facilities and programs relating to water, flood plains, flood control, grading, erosion, conservation, riparian buffers and sediment control.

(21) "Stormwater management fund" or "fund" means the fund created by this ordinance to operate, maintain, and improve the city's stormwater system.

(22) "Surface water" includes waters upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other water courses, lakes and reservoirs.

(23) "User(s)" means for developed non-exempt property the person listed as receiving utility service or, if there is no such service or person listed, the property owner. It may also mean the property owner of property with multiple utility service accounts on such property . (as added by Ord. #2014-26, June 2014, and replaced by Ord. #2015-13, June 2015)

18-404. Funding of stormwater utility. Revenue sources for the stormwater utility's activities may include, but are not limited to, the following:

- (1) Stormwater user's fees.
- (2) Civil penalties and damage assessments imposed for or arising from the violation of the city's stormwater management ordinance.
- (3) Stormwater permit and inspection fees.
- (4) Bonds or other debt services.
- (5) Other funds or income obtained from federal, state, local, and private grants, or revolving funds, and from the Local Government Public Obligations Act of 1986 (Tennessee Code Annotated, title 9, chapter 21).

To the extent that the stormwater user fees collected are insufficient to fund the stormwater management program and its components, the cost of the same may be paid from such city funds as may be determined by the city council. (as added by Ord. #2014-26, June 2014, and replaced by Ord. #2015-13, June 2015)

18-405. Stormwater management fund. All revenues generated by or on behalf of the stormwater utility shall be deposited in a stormwater management fund and used exclusively for the stormwater utility. (as added by Ord. #2014-26, June 2014, and replaced by Ord. #2015-13, June 2015)

18-406. Operating budget. The city council will adopt an operating budget for the stormwater utility each fiscal year. The operating budget will set forth for such fiscal year the estimated revenues and the estimated costs for the management, acquisition, operations and maintenance, extension and replacement and debt service of the stormwater utility. (as added by Ord. #2014-26, June 2014, and replaced by Ord. #2015-13, June 2015)

18-407. Stormwater user's fees established. There will be imposed on each and every developed property in the city, except exempt property, a stormwater user's fee, which will be set from time to time by ordinance. Prior to establishing or amending the fees, the city will advertise its intent to do so by publishing notice in a newspaper of general circulation in the city at least thirty (30) days in advance of the meeting of the city council at which the fees are

considered for adoption or amendment. (as added by Ord. #2014-26, June 2014, and replaced by Ord. #2015-13, June 2015)

18-408. Single-Family Unit (SFU). (1) There is established, for purposes of calculating the stormwater user's fees, the single-family unit (SFU).

(2) The SFU is the average square footage of the impervious surface area of a single-family residential property, measured as three thousand eight hundred thirty (3,830) square feet.

(3) The SFU may be changed by the city council from time to time by amending its ordinance.

(4) The city council will have the discretion to determine the source of the data from which the SFU is established, taking into consideration the general acceptance and use of such source on the part of other stormwater systems, and the reliability and general accuracy of the source. The city council will have the discretion to determine the impervious surface area of other developed property through property tax assessor's rolls or site examination, mapping information, aerial photographs, and other reliable information. (as added by Ord. #2014-26, June 2014, and replaced by Ord. #2015-13, June 2015)

18-409. Base rate. The city council shall, by ordinance, establish the base rate for the stormwater user's fee. The base rate will be calculated to insure adequate revenues to fund the costs of stormwater management and to provide for the acquisition, operation, maintenance, rehabilitation and capital improvements of the stormwater system in the city. The base rates is set forth in of this ordinance (#2015-13) as three dollars twenty-five cents (\$3.25) per SFU per month. (as added by Ord. #2014-26, June 2014, and replaced by Ord. #2015-13, June 2015)

18-410. Property classification for stormwater user's fee. For purposes of determining the stormwater user's fee, all property in the city is classified into one (1) of the following classes:

(1) Single-family residential property fee. The city council finds that the monthly stormwater management fees for single-family residential property will be based on the mean amount of impervious surface on a single-family residential lot in the city, which is known as an SFU. There will be a tier system for single-family residential properties based on the amount of impervious surface of single-family residential property. Each property will be placed into one (1) of the following tiers and charged according to the values in the table below:

| Description | Monthly Fee |
|---|--|
| Rate - Single Family Residential Property | Charge per Dwelling Unit |
| <u>Tier (square foot)</u> 0 to 1,775 1,776 to 5,900 5,901 and beyond | 50% of base rate or \$1.65 per month 100% of base rate or \$3.25 per month 150% of base rate or \$4.90 per month |

(2) Non-single-family residential property fee. For non-single-family residential property, each property will be classified into four (4) sub-classifications to determine the monthly stormwater management fees. The charge for each dwelling unit for these property types are defined in the table below:

| Description | Monthly Fee |
|---|--|
| Rate - Non-Single-Family Residential Property | Charge per Dwelling Unit |
| <u>Subcategory</u> Duplex/Triplex/Quadplex Apartments (5 + units) Town Homes Mobile Homes | 50% of base rate or \$1.65 per month 40% of base rate or \$1.30 per month 40% of base rate or \$1.30 per month 70% of base rate or \$2.30 per month |

(3) Other developed property fee. The fee for developed property that is not single-family residential or non-single-family residential property in the city will be the base rate multiplied by the numerical factor obtained by dividing the total impervious area (square feet) of the property by one (1) SFU, rounded to the nearest tenth. But the minimum value shall not be less than one (1) single-family unit unless otherwise designated.

(4) Exempt property. The following property is exempt from the stormwater user's fee:

- (a) Property which stormwater runoff is not discharged into or through the stormwater flood control facilities, or both, of the city;
- (b) Owners and/or operators of agricultural property, in the city, upon which the owner and/or operator conducts activities that enable the owner and/or operator to satisfy the requirements of a qualified farmer or nurseryman, as defined in Tennessee Code Annotated, § 67-6-207.
- (c) Undeveloped property that is not altered from its natural state.

(d) Developed property with less than five hundred (500) total square feet of impervious surface area per individual lot.

(e) Improved public transportation ways, including public streets, roads, sidewalks, mobility paths, greenways and trails, airport runways, and internal roads within public facilities which have been conveyed to the city and are used by the general public for motor vehicle transportation.

(f) Railroad tracks, provided, however, railroad stations, maintenance buildings or other developed land will not be exempt from stormwater user fees. (as added by Ord. #2014-26, June 2014, and replaced by Ord. #2015-13, June 2015)

18-411. Payment of stormwater user's fees. Except as otherwise provided in this section, stormwater user's fees for a non-exempt property that receives utility service will be sent to the person named on the account, who shall be responsible for the payment of such fees. For developed property having no utility service the stormwater user's fees will be sent to the property owner, who shall be responsible for the payment of such fees. Where multiple utility service accounts exist on a single property, the stormwater user's fees may, for good cause shown at the discretion of the city, be sent to the property owner, who shall be responsible for the payment of such fees. (as added by Ord. #2014-26, June 2014, and replaced by Ord. #2015-13, June 2015)

18-412. Billing procedures, delinquent bills and penalties for late payment. (1) The stormwater user's fee must be set at a rate, and collected on a schedule, established by ordinance.

(2) Stormwater user's fees will be paid to Cleveland Utilities (acting as the collection agency for the city) by any method allowed by Cleveland Utilities and shall become delinquent after the due date shown on the bill. If a customer does not have water service or sewer service with Cleveland Utilities, the city may bill the owner of such property directly through a separate billing process. Such bills are subject to the same delinquency policy established herein.

(3) Stormwater user's fees shall be subject to a late payment penalty. The late payment penalty shall be applied in the same manner as Cleveland Utilities' rules and regulations as it relates to utility bills. The city shall be entitled to recover attorney's fees incurred in collecting delinquent stormwater user's fees. Any charge due under this ordinance which shall not be paid may be recovered at law by the city.

(4) Pursuant to Tennessee Code Annotated, § 68-221-1107(b), the city, through its agent Cleveland Utilities, may provide for the discontinuance of water utility service to stormwater users who fail or refuse to pay stormwater user fees, including the right not to accept payment of the water utility bill from any user without receiving at the same time payment of any stormwater fees

owed by such user and not to re-establish utility services until such time as all past due stormwater fees owed by such user have been paid and/or the user has performed all acts and discharged all obligations required by this ordinance.

(5) Pursuant to Tennessee Code Annotated, § 68-221-1112, each bill for stormwater user's fees will contain the following statement in bold:

THIS FEE HAS BEEN MANDATED BY CONGRESS.

(as added by Ord. #2014-26, June 2014, and replaced by Ord. #2015-13, June 2015)

18-413. Stormwater fee adjustments and credits. (1) Adjustments may be requested for errors or omissions on the customer's stormwater user fee. Request for adjustment due to error or oversight of the stormwater user's fee must be submitted to the city within thirty (30) days from the date of the last bill containing the customer's stormwater user fee. Any appeal for adjustment shall be filed in writing and shall state the grounds for the appeal. The director of development and engineering services may request additional information from the appealing party. Adjustments will be determined on the basis of the number of dwelling units or amount of impervious surface area on the property. The director of development and engineering services shall notify the appealing party in writing of his decision. Adjustments can also be made by the city should the city identify an error or oversight, provided the city notifies the customer in advance of the adjustment.

(2) The city will provide a system of credits to reduce stormwater user fees for properties on which stormwater control measures substantially mitigates the peak discharge, runoff volume and/or runoff pollution flowing from such properties or substantially decreases the city's cost of maintaining the stormwater management system. The development and engineering services department will develop written procedures to implement the credit system. No credit will be authorized until the city council approves such written policies to implement the system of credits; a copy of the approved procedures will be on file with the development and engineering services department. The procedures may allow credits retroactively for no more than one (1) past year. Any reimbursement granted due to a credit will be reimbursed through the utility billing system. Credits cannot exceed the stormwater utility charge for the customer. Nothing herein will prevent the city council from modifying the adopted system of credits, and such modifications may apply to holders of existing credits.

(3) Notwithstanding any other provision of law to the contrary, a municipality shall not refund an overpayment or collect amounts owed to the municipality as a result of an underpayment of any charge or fee imposed for stormwater if such overpayment, or underpayment is more than thirty-six (36) months past the date payment was first due. (as added by Ord. #2014-26, June 2014, and replaced by Ord. #2015-13, June 2015)

18-414. [Deleted.] (as added by Ord. #2014-26, June 2014, and deleted by Ord. #2015-13, June 2015)