

TITLE 16

STREETS AND SIDEWALKS, ETC¹

CHAPTER

1. MISCELLANEOUS.
2. CONSTRUCTION OR REPAIR OF SIDEWALKS, CURBS, AND GUTTERS.
3. UTILITY POLES ON STREETS AND SIDEWALKS.
4. EXCAVATIONS AND CUTS.
5. OFFICIAL STREET MAP.
6. STREET ACCEPTANCE AND CONSTRUCTION STANDARDS CODE.
7. STORMWATER.
8. REGULATION OF NEWS RACKS.

CHAPTER 1

MISCELLANEOUS

SECTION

- 16-101. Superintendent.
- 16-102. Obstructions generally.
- 16-103. Outlet pipes at filling stations not to cross sidewalks.
- 16-104. Air conditioners not to drain on sidewalks.
- 16-105. Littering streets, alleys, sidewalks, etc., prohibited.
- 16-106. Duty of property owners to remove obstructions, filth, weeds, etc., from sidewalks.
- 16-107. Parading and congregating on streets and sidewalks generally.
- 16-108. Standing and congregating on streets and sidewalks so as to obstruct entrance to abutting property.
- 16-109. Gates not to open over street or sidewalk.
- 16-110. Cellar and vault doors and gratings on sidewalks not to be left open.
- 16-111. Rubbish, junk, and dismantled vehicles prohibited within 40 feet of center line of street or alley.

16-101. Superintendent. Superintendent election, terms and duties outlined in title 1, chapter 6 of this code. (1982 Code, § 12-101)

16-102. Obstructions generally. It shall be unlawful to obstruct the sidewalks, streets, or alleys of the city by placing upon or in same, boxes, barrels, machinery, agricultural implements, or any other object or objects except when receiving or forwarding goods, wares, or merchandise and then only for a reasonable time. (1982 Code, § 12-102)

¹Municipal code reference

Related motor vehicle and traffic regulations: title 15.

16-103. Outlet pipes at filling stations not to cross sidewalks. It shall be unlawful for any person operating a garage or filling station to fill any car, truck, or other vehicle by permitting the outlet pipe from the supply tank to reach across a sidewalk. (1982 Code, § 12-103)

16-104. Air conditioners not to drain on sidewalks. It shall be unlawful for any person to install, operate, or maintain any air conditioner or like apparatus or appliance, so that the liquid drippings therefrom shall drain or fall upon any sidewalk of the city. (1982 Code, § 12-104)

16-105. Littering streets, alleys, sidewalks, etc., prohibited. It shall be unlawful for any person to litter, place, throw, track, or allow to fall on any street, alley, sidewalk, park, or recreational area any refuse, glass, cans, tacks, mud, or other objects or materials which are unsightly or which obstruct or tend to limit or interfere with the use of such public ways and places for their intended purposes. (1982 Code, § 12-105)

16-106. Duty of property owners to remove obstructions, filth, weeds, etc., from sidewalks. It shall be unlawful for any person to permit the sidewalks or gutters in front of his place of business or residence to remain obstructed or in a filthy condition, or to fail to clean same within three (3) hours after having received written notice from the police or from any member of the board of mayor and aldermen, or to permit the sidewalks in front of his place of business or residence to grow up with weeds, grass, or other vegetation. It shall be the duty of all persons, upon receiving notice as above provided, to clean and remove from such sidewalks all weeds, grass, or other vegetation growing thereon immediately. (1982 Code, § 12-106)

16-107. Parading and congregating on streets and sidewalks generally. (1) Except as otherwise provided in this section, it shall be unlawful for any person to move, congregate, or parade in or upon the streets, alleys, or sidewalks of the city carrying banners, placards, signs, and the like, or otherwise to create a disturbance thereon, or to engage in speechmaking, preaching, singing, or otherwise making loud or unusual noises for the purpose of attracting the attention of other people in the normal pursuit of their daily living.

(2) It shall be unlawful for any person to conduct or participate in any parade, pedestrian or vehicular, upon the streets or sidewalks of the city without a special permit so to do issued in accord with this section.

(3) The board of mayor and aldermen may, in its discretion, grant special permission for parades or other activities mentioned in this section, when and if it appears that such parades or activities will not be distracting to the extent of unduly disturbing the usual and customary use of the streets and

sidewalks and people moving or conducting business thereon; provided, however, that before such permission is granted, or a special permit issued, a written application therefor shall be filed in the office of the mayor by the responsible head of the group or organization that seeks to conduct or participate in such parade or activity; and provided further, that the board of mayor and aldermen may require such regulations and limitations if it may reasonably deem proper. (1982 Code, § 12-107)

16-108. Standing and congregating on streets and sidewalks so as to obstruct entrance to abutting property. It shall be unlawful for any person to position himself or congregate on the streets or sidewalks of the city so as to block or impede entrance to any public or private property, store, place of business, or public or private office or building. (1982 Code, § 12-108)

16-109. Gates not to open over street or sidewalk. It shall be unlawful for the owner of any real estate abutting on any street, alley, or square, or the agent of such owner, to erect or maintain, or cause to be erected or maintained, any gate which opens over the sidewalk or pavement of any street, alley, sidewalk, or square. (1982 Code, § 12-109)

16-110. Cellar and vault doors and gratings on sidewalks not to be left open. It shall be unlawful for any person to leave open or cause to be left open any cellar or vault door or grating on any sidewalk. (1982 Code, § 12-110)

16-111. Rubbish, junk, and dismantled vehicles prohibited within 40 feet of center line of street or alley. (1) It shall be unlawful for any person to store, stack, pile, or otherwise place papers, bottles, rags, iron, rubbish, discarded or dismantled machinery, appliances, vehicles or parts thereof, or any other object within forty (40) feet of the center line of any street, highway, or alley of the City of McMinnville that would create an eyesore, health, fire, traffic, or safety hazard, or otherwise in any way be detrimental to the community.

(2) Any person who violates any provisions of this section shall be guilty of a misdemeanor and shall be subject to a fine in accordance with the general penalty clause for this code. In addition, the license of any junk dealer shall become void upon conviction for a violation of this section, and no junk dealer's license shall be issued to such convicted person.

(3) The city recorder shall issue a notice to a person who may be in violation of subsection (1) above. This notice shall contain a brief description of the violation and the location of the premises upon which the violation exists. This notice shall be delivered by the chief of police or by some officer designated by said chief of police or by U.S. mail and shall inform the recipient that at the

end of 15 days from the date of notice that a citation may issue for violation of subsection (1). (1982 Code, § 12-111)

CHAPTER 2

CONSTRUCTION OR REPAIR OF SIDEWALKS, CURBS, AND GUTTERS¹

SECTION

- 16-201. Duties of chairman of street and sanitation committee.
- 16-202. Approval required.
- 16-203. Notice to property owners to construct.
- 16-204. Time limit for construction by property owners.
- 16-205. Failure of property owners to construct.
- 16-206. Duty of property owners to repair.
- 16-207. Failure of property owners to repair.
- 16-208. Material.
- 16-209. Grades.
- 16-210. Width of sidewalks.
- 16-211. Sidewalk slope.
- 16-212. Sidewalk expansion joints.
- 16-213. Curbs and gutters to parallel street lines.
- 16-214. Width, slope, etc., of gutters.
- 16-215. Height and width of curbing; curbing to parallel gutters.
- 16-216. Contraction joints for curbs and gutters; curbs and gutters to conform to existing work.
- 16-217. Finishing of top surfacing.

16-201. Duties of chairman of street and sanitation committee.

The chairman of the street and sanitation committee shall see that all sidewalks, curbs, and gutters are constructed and repaired by property owners in accord with this chapter. If repairs are made or new sidewalks, curbs, or gutters are constructed by and under the order of the board of mayor and aldermen, it shall be the duty of the chairman of the street and sanitation committee to have the work done as ordered by the board. (1982 Code, § 12-201)

16-202. Approval required. No new sidewalks, curbs, or gutters shall be built in the city, or old ones repaired or re-laid, without the approval of the chairman of the street and sanitation committee. (1982 Code, § 12-202)

16-203. Notice to property owners to construct. At any meeting of the board of mayor and aldermen the board may designate along what streets,

¹Charter reference

See Acts of 1901, ch. 486, which is set out in the related private acts following the charter.

alleys, or sections of streets or alleys of public square that sidewalks, curbing, and gutters shall be built, extended, or connected by the adjacent owners of real estate. The board shall serve notice upon each such property owner, which shall be in writing and issued by the recorder and served on the owner by the chief of police, directing the property owner to construct or have constructed the sidewalks, curbs, or gutters adjacent to the real estate owned by him and according to the order of the board, to be constructed in accordance with the specifications set out in this chapter. (1982 Code, § 12-203)

16-204. Time limit for construction by property owners. The construction required by the notice referred to in § 16-203 shall be completed within thirty (30) days from the date of service of such notice. (1982 Code, § 12-204)

16-205. Failure of property owners to construct. If a property owner served with notice under this chapter fails or refuses to construct the sidewalks, curbs, and gutters in accord with such notice and within thirty (30) days after service of such notice, the board of mayor and aldermen shall have the power and authority to build or have built such sidewalks, curbs, and gutters and pay for the cost of same out of the common funds of the city. The expense of such construction shall be a lien and liability against the abutting property where such construction is done and, in addition thereto, such expense shall be a personal liability against the owner of such abutting property. The city shall have and enforce a lien upon such property which shall be for the amount of the expense incurred in the construction of the sidewalks, curbs, and gutters, and shall be enforced as provided by the laws of the state. (1982 Code, § 12-205)

16-206. Duty of property owners to repair. All persons owning real estate by or along which sidewalks, curbing and gutters have been built shall keep such sidewalks, curbing, and gutters in a state of good repair and, when it becomes necessary to repair or relay such sidewalks, curbing, or gutters, the repairing or relaying shall be done with a good quality of Portland cement as specified in this chapter, except that, if the repair required is less than twenty-five (25) per cent of the whole amount of the sidewalks, curbing, or gutters abutting any one piece of property, such repairs may be made of material of the same kind of which the sidewalks, curbing, or gutters were originally constructed. (1982 Code, § 12-206)

16-207. Failure of property owners to repair. If the owner of property abutting on any sidewalk, curb, or gutter needing repair fails to repair the same in accord with this chapter, the board of mayor and aldermen may designate the sidewalks, curbs, or gutters to be repaired, and the kind of repairs which may be done, at any board meeting, notify, in writing, the owner of such

abutting property that such repairs must be made within ten (10) days from service of such notice, which notice shall be signed by the recorder and served on the owner or his agent or attorney, by the police. In the event the repairs are not made within ten (10) days as required in such notice, the repairs may be made by the board, and the cost of the repairs so made shall become a personal liability against the owner and lien upon the property or lot, which shall be enforced as prescribed in § 16-205. (1982 Code, § 12-207)

16-208. Material. All sidewalks, curbs, and gutters shall be constructed of Portland cement compound of a six (6) bag mix per cubic yard. (1982 Code, § 12-208)

16-209. Grades. (1) Upon all streets which have been paved with a permanent or semipermanent surfacing or which have a permanent grade line established and adopted and on file at the office of the recorder, all sidewalks, curbing, and gutters shall be built or constructed on a grade parallel to such grade line or permanent surfacing line and on the grades and elevations shown on the street plans for the side of the street in question. If no such plans are available, gutters may be built lower than the street and parallel to it.

(2) Sidewalks, curbing, and gutters shall be constructed or built on smooth and regular grades, with no sharp changes of grades or lines and no steps. (1982 Code, § 12-209)

16-210. Width of sidewalks. (1) All new sidewalks constructed adjacent to any public street within the corporate limits or the alleys or public square therein shall be not less than ten (10) feet wide on Main Street from Chancery Street to the public square and around the same including, also, the east and west sides of the courthouse square and thence east on Main Street to Sparta Street.

(2) Upon all streets not named in subsection (1), new sidewalks shall be not less than five (5) feet wide, except as on such streets as the board of mayor and aldermen shall especially permit, by resolution, to be constructed with less width. (1982 Code, § 12-210)

16-211. Sidewalk slope. Sidewalks shall slope toward the curbing not less than one-fourth ($\frac{1}{4}$) inch and not more than one-half ($\frac{1}{2}$) inch for each foot of width and the side next to the curbing shall be higher than the same, not less than one-fourth ($\frac{1}{4}$) inch nor over one-half ($\frac{1}{2}$) inch for each foot it may be distant from such curbing or where the curbing would be if constructed. At driveways and entrances, the sidewalk may slope to the gutter. (1982 Code, § 12-211)

16-212. Sidewalk expansion joints. Sidewalks shall be constructed with expansion joints which shall not be over twelve (12) feet apart. (1982 Code, § 12-212)

16-213. Curbs and gutters to parallel street lines. Curbing and gutters shall be built on lines parallel to the lines established for the streets in question. (1982 Code, § 12-213)

16-214. Width, slope, etc., of gutters. Gutters shall be not less than eighteen (18) inches wide and shall have a slope toward the curbing of not less than one (1) inch in twelve (12) inches.

The total thickness of gutters shall be at least six (6) inches and constructed of the same materials and in the same proportions as required for sidewalks and shall preferably be built integral with gutters. (1982 Code, § 12-214)

16-215. Height and width of curbing; curbing to parallel gutters. Curbing shall be six (6) inches in height and not less than six (6) inches in width, unless the board of mayor and aldermen shall, by resolution, permit a higher curbing. The curbing shall be built parallel with the gutters at a uniform distance above them. (1982 Code, § 12-215)

16-216. Contraction joints for curbs and gutters; curbs and gutters to conform to existing work. Curbing and gutters shall be built with contraction joints, preferably six (6) and not over twelve (12) feet apart, and shall conform in style and form to curbing and gutters previously constructed in the same block provided the same does not conflict with this chapter. (1982 Code, § 12-216)

16-217. Finishing of top surfacing. The top surfacing of sidewalks, curbing, and gutters shall be neatly struck off and then finished with a trowel or wood float and then finally finished with a brush to prevent an excessively slippery surface. (1982 Code, § 12-217)

CHAPTER 3

UTILITY POLES ON STREETS AND SIDEWALKS

SECTION

- 16-301. Compliance with chapter.
- 16-302. General requirements.
- 16-303. Authority to install on outer edge of sidewalk.
- 16-304. Location in street between sidewalks prohibited.
- 16-305. Stump, wires, etc., to be removed when pole cut down.
- 16-306. Removal of poles on notice from board.
- 16-307. City to be held free from damages.
- 16-308. Violations.

16-301. Compliance with chapter. All persons who use the streets, alleys, or public square of the city in furnishing the public or citizens of the city electric lights, power, telegraph, or telephone service shall comply with the provisions of this chapter. (1982 Code, § 12-301)

16-302. General requirements. All poles located in the streets, alleys, or public square of the city and used by persons supplying electric light, power, telephone, or telegraph service shall be sightly and in good form and of sufficient height to carry all wires so that they will not obstruct the ordinary use of the public ways of the city and so located that they will not endanger adjacent property nor obstruct the pavements, streets, alleys, and public square in their ordinary use by the public, or require any cutting, topping, or mutilation of shade trees or other trees, except for necessity. (1982 Code, § 12-302)

16-303. Authority to install on outer edge of sidewalk. All persons who furnish telegraph, telephone, and electric light service within the corporate limits are hereby given permission to set poles for wires at the outer edge of the sidewalks on the streets; provided, however, before any such poles shall be set or reset, permission shall be first had and obtained from the board of mayor and aldermen as to where such pole may be set or reset and the kind and size of the pole to be used, in order that no unsightly and unusually large and rough poles may be used to the injury of the property of the city or its citizens. (1982 Code, § 12-303)

16-304. Location in street between sidewalks prohibited. It shall be unlawful for any person to set, place, or maintain any pole for wires, cables, or guy wires in any street of the city at any point between the sidewalks on each side of such street. (1982 Code, § 12-304)

16-305. Stump, wires, etc., to be removed when pole cut down. It shall be unlawful for any person to cut down any utility pole located in accord with this chapter and leave the stump in the ground or leave the pole, cross arms, wires, or insulators in the street or gutters of the street. (1982 Code, § 12-305)

16-306. Removal of poles on notice from board. If at any time it appears to the board of mayor and aldermen that any pole or wires are dangerous or in a position or place where they obstruct the public ways or use of public ways from private property, the owners of the pole or wires must remove the same within five (5) days after being given written notice so to do.

If any person maintaining any poles under this chapter ceases to furnish the service for which such poles are used for a period of three (3) months, he shall remove such poles upon notice so to do from the board of mayor and aldermen. (1982 Code, § 12-306)

16-307. City to be held free from damages. Any person owning or maintaining any pole located in accord with § 16-303 shall hold the city free from damages from erecting or maintaining such poles and wires. (1982 Code, § 12-307)

16-308. Violations. Any person violating any provision of this chapter shall, upon conviction, be fined in accordance with the general penalty clause for this code, for each offense, and the setting or resetting of each pole in violation of this chapter shall constitute a separate offense. (1982 Code, § 12-308)

CHAPTER 4

EXCAVATIONS AND CUTS¹

SECTION

- 16-401. Permit required.
- 16-402. Applications.
- 16-403. Fees.
- 16-404. Deposit or bond.
- 16-405. Manner of excavating--barricades and lights--temporary sidewalks.
- 16-406. Restoration of streets, etc.
- 16-407. Insurance.
- 16-408. Time limits.
- 16-409. Supervision.
- 16-410. Driveway curb cuts.

16-401. Permit required. It shall be unlawful for any person, firm, corporation, association, or others, to make any excavation in any street, alley, or public place, or to tunnel under any street, alley, or public place without having first obtained a permit as herein required, and without complying with the provisions of this chapter; and it shall also be unlawful to violate, or vary from, the terms of any such permit; provided, however, any person maintaining pipes, lines, or other underground facilities in or under the surface of any street may proceed with an opening without a permit when emergency circumstances demand the work to be done immediately and a permit cannot reasonably and practicably be obtained beforehand. The person shall thereafter apply for a permit on the first regular business day on which the office of the recorder is open for business and said permit shall be retroactive to the date when the work was begun. (1982 Code, § 12-401)

16-402. Applications. Applications for such permits shall be made to the recorder or such person as he may designate to receive such applications, and shall state thereon the location of the intended excavation or tunnel, the size thereof, the purpose thereof, the person, firm, corporation, association, or others doing the actual excavating, the name of the person, firm, corporation, association, or others for whom the work is being done, and shall contain an agreement that the applicant will comply with all ordinances and laws relating

¹State law reference

This chapter was patterned substantially after the ordinance upheld by the Tennessee Supreme Court in the case of City of Paris, Tennessee v. Paris-Henry County Public Utility District, 207 Tenn. 388, 340 S.W.2d 885 (1960).

to the work to be done. Such application shall be rejected or approved by the recorder within twenty-four (24) hours of its filing. (1982 Code, § 12-402)

16-403. Fees. The fee for such permits shall be two dollars (\$2.00) for excavations which do not exceed twenty-five (25) square feet in area or tunnels not exceeding twenty-five (25) feet in length; and twenty-five cents (\$.25) for each additional square foot in the case of excavations, or lineal foot in the case of tunnels; but not to exceed one hundred dollars (\$100.00) for any permit. (1982 Code, § 12-403)

16-404. Deposit or bond. No such permit shall be issued unless and until the applicant therefor has deposited with the recorder a cash deposit. The deposit shall be in the sum of twenty-five dollars (\$25.00) if no pavement is involved or seventy-five dollars (\$75.00) if the excavation is in a paved area and shall insure the proper restoration of the ground and, laying of the pavement, if any. Where the amount of the deposit is clearly inadequate to cover the cost of restoration, the recorder may increase the amount of the deposit to an amount considered by him to be adequate to cover the cost. From this deposit shall be deducted the expense to the city of relaying the surface of the ground or pavement, and of making the refill if this is done by the city or at its expense. The balance shall be returned to the applicant without interest after the tunnel or excavation is completely refilled and the surface or pavement is restored.

In lieu of a deposit the applicant may deposit with the recorder a surety bond in such form and amount as the recorder shall deem adequate to cover the costs to the city if the applicant fails to make proper restoration. (1982 Code, § 12-404)

16-405. Manner of excavating--barricades and lights--temporary sidewalks. Any person, firm, corporation, association, or others making any excavation or tunnel shall do so according to the terms and conditions of the application and permit authorizing the work to be done. Sufficient and proper barricades and lights shall be maintained to protect persons and property from injury by or because of the excavation being made. If any sidewalk is blocked by any such work, a temporary sidewalk shall be constructed and provided which shall be safe for travel and convenient for users. (1982 Code, § 12-405)

16-406. Restoration of streets, etc. Any person, firm, corporation, association, or others making any excavation or tunnel in or under any street, alley, or public place in this city shall restore said street, alley, or public place to its original condition except for the surfacing, which shall be done by the city, but shall be paid for by such person, firm, corporation, association, or others promptly upon the completion of the work for which the excavation or tunnel was made. In case of unreasonable delay in restoring the street, alley, or public place, the recorder shall give notice to the person, firm, corporation, association,

or others that unless the excavation or tunnel is refilled properly within a specified reasonable period of time, the city will do the work and charge the expense of doing the same to such person, firm, corporation, association, or others. If within the specified time the conditions of the above notice have not been complied with, the work shall be done by the city, an accurate account of the expense involved shall be kept, and the total cost shall be charged to the person, firm, corporation, association, or others who made the excavation or tunnel. (1982 Code, § 12-406)

16-407. Insurance. In addition to making the deposit or giving the bond hereinbefore required to insure that proper restoration is made, each person applying for an excavation permit shall file a certificate of insurance indicating that he is insured against claims for damages for personal injury as well as against claims for property damage which may arise from or out of the performance of the work, whether such performance be by himself, his subcontractor, or anyone directly or indirectly employed by him. Such insurance shall cover collapse, explosive hazards, and underground work by equipment on the street, and shall include protection against liability arising from completed operations. The amount of the insurance shall be prescribed by the recorder in accordance with the nature of the risk involved; provided, however, that the liability insurance for bodily injury shall not be less than \$100,000 for each person and \$300,000 for each accident, and for property damages not less than \$25,000 for any one (1) accident, and a \$75,000 aggregate. (1982 Code, § 12-407)

16-408. Time limits. Each application for a permit shall state the length of time it is estimated will elapse from the commencement of the work until the restoration of the surface of the ground or pavement, or until the refill is made ready for the pavement to be put on by the city if the city restores such surface pavement. It shall be unlawful to fail to comply with this time limitation unless permission for an extension of time is granted by the recorder. (1982 Code, § 12-408)

16-409. Supervision. The recorder shall from time to time inspect all excavations and tunnels being made in or under any public street, alley, or other public place in the city and see to the enforcement of the provisions of this chapter. Notice shall be given to him at least ten (10) hours before the work of refilling any such excavation or tunnel commences. (1982 Code, § 12-409)

16-410. Driveway curb cuts. No one shall cut, build, or maintain a driveway across a curb or sidewalk without first obtaining a permit from the recorder. Such a permit will not be issued when the contemplated driveway is to be so located or constructed as to create an unreasonable hazard to pedestrian and/or vehicular traffic. No driveway shall exceed thirty-five (35) feet in width at its outer or street edge, and when two (2) or more adjoining driveways are

provided for the same property, a safety island of not less than ten (10) feet in width at its outer or street edge shall be provided. Driveway aprons shall not extend out into the street. (1982 Code, § 12-410)

CHAPTER 5**OFFICIAL STREET MAP****SECTION**

- 16-501. Purpose.
- 16-502. Procedure for adoption.
- 16-503. Amendments.
- 16-504. Location of official street map.

16-501. Purpose. Those streets for which the City of McMinnville is responsible for maintenance and repair shall be depicted on an Official Street Map.¹ (as added by Ord. #1192, § I, March 1996)

16-502. Procedure for adoption. The McMinnville Regional Planning Commission and Public Works Department shall review, approve, and certify the Official Street Map prior to its adoption by the board of mayor and aldermen. (as added by Ord. #1192, § I, March 1996)

16-503. Amendments. The Official Street Map may be amended as necessary by the McMinnville Board of Mayor and Aldermen, provided that such amendments are first reviewed, approved, and certified by the McMinnville Regional Planning Commission and Public Works Department. (as added by Ord. #1192, § I, March 1996)

16-504. Location of official street map. The Official Street Map shall be located in the office of the city recorder for the City of McMinnville and said map shall be the final authority as to the current status of a street as an official street of the City of McMinnville. (as added by Ord. #1192, § I, March 1996)

¹See Ord. #1193 (March 1996) of record in the office of the recorder for an ordinance to adopt an official street map.

CHAPTER 6

STREET ACCEPTANCE AND CONSTRUCTION STANDARDS CODE

SECTION

- 16-601. Purpose, authority, and jurisdiction.
- 16-602. General procedure for street acceptance.
- 16-603. Procedure for approval of streets not shown on an approved and recorded subdivision plat.
- 16-604. Procedure for approval of streets shown on an approved and recorded subdivision plat.
- 16-605. Procedure for board of mayor and aldermen approval.
- 16-606. Street construction standards.

16-601. Purpose, authority, and jurisdiction. (1) Purpose. The purpose of this code is to define the procedures and improvements that are required before the City of McMinnville, Tennessee will accept maintenance responsibility for a proposed public street. The procedures and minimum standards are necessary in order to provide fair and equitable treatment to all persons seeking to have a street accepted by the municipality, in order to insure that all streets accepted are suitable for public use, and in order to help protect McMinnville taxpayers from excessive and unnecessary expenditures for streets and street maintenance.

(2) Authority. These street acceptance and construction standards are adopted under the authority granted by section 6-2-201 of the Tennessee Code Annotated which entrusts the establishment and general supervision of streets to the City of McMinnville Board of Mayor and Aldermen; and by section 13-4-307 of the Tennessee Code Annotated which provides that the McMinnville Board of Mayor and Aldermen shall receive the recommendation of the appropriate planning commission prior to accepting or laying out any street.

(3) Jurisdiction. This code shall govern the acceptance of all streets for city maintenance within the corporate limits of the City of McMinnville, Tennessee. (as added by Ord. #1194, § 1, March 1996)

16-602. General procedure for street acceptance. The procedure for evaluation and acceptance of a street for city maintenance involves the McMinnville Regional Planning Commission, the McMinnville Public Works Department, and the McMinnville Board of Mayor and Aldermen.

There are two primary circumstances that may lead to a request for acceptance of a street for city maintenance. First, a resident or residents of the City of McMinnville may petition for the acceptance of an existing or new private street not shown on an approved and recorded subdivision plat. Second, a developer may petition for the acceptance of a proposed new street shown on

an approved and recorded subdivision plat. In both circumstances the street shall meet the construction standards specified in section 16-606 of this Street Acceptance and Construction Standards Code. (as added by Ord. #1194, § 1, March 1996)

16-603. Procedure for approval of streets not shown on an approved and recorded subdivision plat. All existing or new private streets not shown on an approved and recorded subdivision plat proposed for acceptance for city maintenance shall first be reviewed and approved by the McMinnville Regional Planning Commission prior to being submitted to the McMinnville Board of Mayor and Aldermen for adoption.

In order to secure the review and approval by the McMinnville Regional Planning Commission a preliminary street plan/survey shall be submitted to the regional planning commission. Upon completion of the required street improvements, said street improvements shall be inspected and approved by the public works department and a final street plan/survey shall be submitted to the regional planning commission.

(1) Preliminary street plan/survey requirements. (a) The preliminary street plan/survey shall be prepared by a licensed land surveyor or registered engineer and shall provide the following information:

- (i) Date, approximate north point, and graphic scale.
- (ii) Present tax map and parcel designation according to the official records in the office of the Warren County Property Assessor.
- (iii) Location sketch map.
- (iv) Names of adjoining property owners of record.
- (v) Any portion of the street lying within a floodable area.
- (vi) Location and dimensions of all exterior property boundary lines.
- (vii) Street right-of-way.
- (viii) Approximate location of street base and surfacing widths.
- (ix) Proposed street names.
- (x) Proposed location of street name signs and traffic control signs.
- (xi) Sufficient data to determine readily and to reproduce on the ground the location, bearing, and length of every street line. This shall include the radius, central angle and tangent distance for the center line of curved streets.

(b) At least seven (7) days prior to meeting at which it is to be considered, two (2) copies of the preliminary street plan/survey shall be submitted to the City of McMinnville Public Works Department and two (2) copies shall be submitted to the regional planning commission.

(c) The official submission of the preliminary street plan/survey to the regional planning commission is considered to be the first planning commission meeting at which the plan/survey is presented for consideration.

(d) Within thirty (30) days after the official submission of the preliminary street plan/survey, the regional planning commission shall approve, approve subject to modifications or disapprove the preliminary street plan/survey. If a plan/survey is disapproved, the reasons for such disapproval shall be stated in writing. If a plan/survey is approved subject to modifications, the nature of the required modifications shall also be included.

(e) The approval of the preliminary street plan/survey by the planning commission shall not constitute approval of any final street plan/survey.

(f) The approval of a preliminary street plan/survey shall terminate after one (1) years, provided however, that an extension of time can be applied for.

(2) Street profile/street construction plan requirements. If due to drainage, slope, soil conditions or other concerns, the McMinnville Public Works Department determines that a street profile/street construction plan is necessary, said profile/construction plan shall be prepared and submitted to the public works department. The street profile/street construction plan shall be prepared by a registered engineer and shall provide information as determined necessary by the McMinnville Public Works Department.

(3) Procedure for inspection and approval by the public works department. (a) Upon approval of the preliminary street plan/survey (and the street profile/street construction plan if determined necessary) construction of the required improvements shall be completed. The McMinnville Public Works Department shall be provided with an anticipated schedule for the clearing of the right-of-way, street grading, preparation of subgrade, installation of drainage system, installation of pavement base, and final street surfacing. Since the inspections need to be made periodically during the entire process, communication with the public works department is essential to make the process move as smoothly as possible.

(b) The McMinnville Public Works Department shall be notified at least twenty-four (24) hours in advance of the needed inspection on:

- (i) Clearing and stripping of right-of-way
- (ii) Construction of subgrade
- (iii) Installation of drainage improvements and construction of pavement base
- (iv) Construction of prime coat, binder surface, and final surface
- (v) Installation of street name and traffic control signs

(c) Upon completion of the required street improvements, the McMinnville Public Works Department shall make a final inspection. If the completed street is found to be in compliance with the standards for construction, the public works department director shall be authorized to sign the final street plan/survey.

(4) Final street plan/survey requirements. (a) The final street plan/survey shall be prepared by a licensed land surveyor or registered engineer; shall conform substantially to the approved preliminary street plan/survey; and in addition to the information required on the preliminary street plan/survey the final street plan/survey shall provide the following information:

(i) Location of completed pavement base and surfacing widths

(ii) Location of drainage ditches, tiles, pipes, culverts, etc.

(iii) Approved street name

(iv) Location of installed street name and traffic control signs

(v) Location of buildings on adjoining properties and driveways which will enter into the street right-of-way

(vi) Location of existing or proposed utilities located within the street right-of-way

(vii) Location of driveway culverts, bridges or easements

(viii) Name(s), seal(s) and address(es) of the licensed land surveyor or registered engineer responsible for the plan/survey preparation

(ix) Appropriate certificates for approval (see section 16-603(5) of this code)

(b) Approval of the final street plan/survey shall not be given until completion and approval of the required street improvements. These improvements are to be completed in accordance with section 16-606 of this code. The required improvements must be approved by the McMinnville Public Works Department.

(c) The final street plan/survey shall be submitted at least seven (7) days prior to the meeting at which it is to be considered, with two (2) copies submitted to the office of the McMinnville Public Works Department and two (2) copies submitted to the regional planning commission.

(d) The official submission of the final street plan/survey to the regional planning commission is considered to be the first planning commission meeting at which the plan/survey is presented for consideration.

(e) Within thirty (30) days after the official submission of the final street plan/survey, the regional planning commission shall approve or disapprove the plan/survey. If the plan/survey is disapproved, the

grounds for disapproval shall be stated upon the records of the regional planning commission.

(5) Certifications. In all cases the following certificates shall be present and signed on the original final street plan/survey before the City of McMinnville Board of Mayor and Aldermen can consider a street for acceptance for city maintenance:

(a) Certificate of ownership and dedication. Certification showing that applicant is the land owner and dedicates the street and right-of-way for public use.

(b) Certificate of accuracy and precision. Certification by a licensed land surveyor or registered engineer of accuracy of plan/survey.

(c) Certification of street construction. Certification signed by the McMinnville Public Works Department Director certifying that the street has been constructed to the required standards.

(d) Certification of planning commission approval. Certification signed by the secretary of the McMinnville Regional Planning Commission certifying that the plan/survey has been approved by the planning commission. This certificate shall not be signed unless the three above certifications have been signed.

(6) Warranty of street improvements. (a) The petitioner shall warranty all street improvements for a period of one (1) year from the date of acceptance by the City of McMinnville.

(b) The Warranty of Street Improvements shall consist of an escrow account, letter-of-credit, or certified check.

(c) The amount of the warranty shall be not less than twenty-five percent (25%) of the cost of the street improvements accepted nor more than \$5,000.

(d) The Warranty of Street Improvements shall be submitted to the City of McMinnville prior to the submittal of the final street plan/survey for final approval. (as added by Ord. #1194, § 1, March 1996)

16-604. Procedure for approval of streets shown on an approved and recorded subdivision plat. All new streets shown on an approved and recorded subdivision plat proposed for acceptance for city maintenance shall be submitted, following the completion of all street improvements to the required standards, to the board of mayor and aldermen for adoption as provided in section 16-605 of this code. (as added by Ord. #1194, § 1, March 1996)

16-605. Procedure for board of mayor and aldermen approval.

(1) Upon completion of all street improvements to the required standards and following the approval of the final street plan/survey or final subdivision plat by the McMinnville Regional Planning Commission, the plan/survey or subdivision plat shall be submitted to the McMinnville Board of Mayor and Aldermen.

(2) The board of mayor and Aldermen shall be provided with a deed to the right-of-way proposed for dedication for public use. The deed shall be submitted by the board of mayor and aldermen to the McMinnville City Attorney for his review and approval.

(3) Upon approval by the city attorney of the deed to the right-of-way proposed for dedication for public use, the board of mayor and aldermen shall take formal action to approve the street and to authorize its addition to the Official McMinnville City Street Map.

(4) Upon approval of the board of mayor and aldermen, the applicant shall record the final street plan/survey and deed with the Warren County Register of Deeds. (as added by Ord. #1194, § 1, March 1996)

16-606. Street construction standards. All streets proposed for public dedication and acceptance by the City of McMinnville for city maintenance shall be constructed in accordance with the McMinnville Subdivision Regulations, Article III Design and Specifications, Section E, Streets-Construction Procedures and Specifications, as adopted on November 14, 1995. (as added by Ord. #1194, § 1, March 1996)

CHAPTER 7

STORMWATER ORDINANCE

SECTION

- 16-701. General provisions.
- 16-702. Definitions.
- 16-703. Land disturbance permits.
- 16-704. Storm water system design and management standards.
- 16-705. Post construction.
- 16-706. Waivers.
- 16-707. Existing locations and developments.
- 16-708. Illicit discharges.
- 16-709. Enforcement.
- 16-710. Penalties.
- 16-711. Appeals.

16-701. General provisions. (1) Purpose. It is the purpose of this ordinance to:

(a) Protect, maintain, and enhance the environment of the City of McMinnville 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 of the receiving waters into which the stormwater outfalls flow, including, without limitation, lakes, rivers, streams, ponds, wetlands, and groundwater of the city.

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

(c) Allow the City of McMinnville 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 statute, including the adoption of a system of fees for services 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 plans and plats for stormwater management in proposed subdivisions or commercial developments;

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

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

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

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

(2) Administering entity. The codes enforcement office shall administer the provisions of this ordinance. (as added by Ord. #1477, Jan. 2005, and replaced by Ord. #1496, July 2005)

16-702. Definitions. For the purpose of this chapter, the following definitions shall apply: Words used in the singular shall include the plural, and the plural shall include the singular; words used in the present tense shall include the future tense. The word "shall" is mandatory and not discretionary. The word "may" is permissive. Words not defined in this section shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary.

(1) "As built plans" means drawings depicting conditions as they were actually constructed.

(2) "Best management practices" or "BMPs" are physical, structural, and/or managerial practices that, when used singly or in combination, prevent or reduce pollution of water, that have been approved by the City of McMinnville, and that have been incorporated by reference into this ordinance as if fully set out therein. [NOTE: See § 16-704(1) for recommended BMP manual.]

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

(4) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

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

(6) "Discharge" 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.

(7) "Easement" 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.

(8) "Erosion" 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 anthropogenic activities or effects.

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

(10) "Hotspot" ("priority area") means an area where land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in stormwater.

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

(12) "Illicit discharge" means any discharge to the municipal separate storm sewer system that is not composed entirely of stormwater and not specifically exempted under § 16-703(3).

(13) "Land disturbing activity" means any activity on property that results in a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land-disturbing activities include, but are not limited to, development, re-development, demolition, construction, reconstruction, clearing, grading, filling, and excavation.

(14) "Maintenance" means any activity that is necessary to keep a stormwater facility in good working order so as to function as designed. Maintenance shall include complete reconstruction of a stormwater facility if reconstruction is needed in order to restore the facility to its original operational design parameters. Maintenance shall also include the correction of any problem on the site property that may directly impair the functions of the stormwater facility.

(15) "Maintenance agreement" means a document recorded in the land records that acts as a property deed restriction, and which provides for long-term maintenance of stormwater management practices.

(16) "Municipal separate storm sewer system (MS4)" ("Municipal separate stormwater system") 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.

(17) "National Pollutant Discharge Elimination System permit" or "NPDES permit" means a permit issued pursuant to 33 U.S.C. 1342.

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

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

(20) "Peak flow" means the maximum instantaneous rate of flow of water at a particular point resulting from a storm event.

(21) "Person" 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 this or any other state or country.

(22) "Priority area" means "hot spot" as defined in § 16-702(10).

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

(24) "Sediment" 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.

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

(26) "Soils report" 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.

(27) "Stabilization" means providing adequate measures, vegetative and/or structural, that will prevent erosion from occurring.

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

(29) "Stormwater management" means the programs to maintain quality and quantity of stormwater runoff to pre-development levels.

(30) "Stormwater management facilities" 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.

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

(32) "Stormwater runoff" means flow on the surface of the ground, resulting from precipitation.

(33) "Stormwater utility" means the stormwater utility created by ordinance of the city to administer the stormwater management ordinance, and other stormwater rules and regulations adopted by the municipality.

(34) "Structural BMPs" means devices that are constructed to provide control of stormwater runoff.

(35) "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.

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

(37) "Watershed" means all the land area that contributes runoff to a particular point along a waterway. (as added by Ord. #1477, Jan. 2005, and replaced by Ord. #1496, July 2005)

16-703. Land disturbance permits. (1) When required. (a) Every person will be required to obtain a land disturbance permit from the codes enforcement office in the following cases:

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

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

(iii) Land disturbing activity of less than one (1) acre of land, if in the discretion of the codes enforcement office such activity poses a unique threat to water, or public health or safety;

(iv) The creation and use of borrow pits.

(2) Building permit. No building permit shall be issued until the applicant has obtained a land disturbance permit where the same is required by this ordinance.

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

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

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

(c) Any logging or agricultural activity that is consistent with an approved farm conservation plan or a timber management plan prepared or approved by the Tennessee Department of Environment and Conservation.

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

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

- (i) Name of applicant;
- (ii) Business or residence address of applicant;
- (iii) Name, address and telephone number of the owner of the property of record in the office of the assessor of property;
- (iv) Address and legal description of subject property including the tax reference number and parcel number of the subject property;

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

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

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

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

(b) Each application shall be accompanied by:

(i) A sediment and erosion control plan as described in § 16-704(5).

(ii) A stormwater management plan as described in § 16-704(4), providing for stormwater management during the land disturbing activity and after the activity has been completed.

(iii) Each application for a land disturbance permit shall be accompanied by payment of land disturbance permit and other stormwater management fees, which shall be set by resolution or ordinance.

(5) Review and approval of application. (a) The codes enforcement office, in conjunction with the public works and urban forestry departments will review each application for a land disturbance permit to determine its conformance with the provisions of this ordinance. Within fifteen (15) days after receiving an application, the codes enforcement office shall provide one of the following responses in writing:

- (i) Approval of the permit application;
- (ii) Approval of the permit application, subject to such reasonable conditions as may be necessary to secure substantially

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 codes enforcement office has granted conditional approval of the permit, the applicant shall submit a revised plan that conforms to the conditions established by the codes enforcement office. However, the applicant shall be allowed to proceed with his land disturbing activity so long as it conforms to conditions established by the codes enforcement office.

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

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

(7) Notice of construction. The applicant must notify the codes enforcement office ten (10) working days in advance of the commencement of construction. Regular inspections of the stormwater management system construction shall be conducted by the codes enforcement office. All inspections shall be documented and written reports prepared that contain the following information:

(i) The date and location of the inspection;

(ii) Whether construction is in compliance with the approved stormwater management plan;

(iii) Variations from the approved construction specifications;

(iv) Any violations that exist.

(8) Performance bonds. (a) The codes enforcement office, in conjunction with the public works and urban forestry department, may, at its discretion, require the submittal of a performance security or performance bond prior to issuance of a permit in order to ensure that the stormwater practices are installed by the permit holder as required by the approved stormwater management plan. The amount of the installation performance security or performance bond shall be the total estimated construction cost of the structural BMPs approved under the permit plus any reasonably foreseeable additional related costs, e.g., for damages or enforcement. [Or plus a certain percentage of the total estimated costs.] The performance security shall contain forfeiture provisions for failure to complete work specified in the stormwater management plan. The applicant shall provide an itemized construction cost estimate complete with unit prices which shall be subject to acceptance, amendment or rejection by the codes enforcement office.

Alternatively the codes enforcement office shall have the right to calculate the cost of construction cost estimates.

(b) The performance security or performance bond shall be released in full only upon submission of as-built plans and written certification by a registered professional engineer licensed to practice in Tennessee that the structural BMP has been installed in accordance with the approved plan and other applicable provisions of this ordinance. The codes enforcement office will make a final inspection of the structural BMP to ensure that it is in compliance with the approved plan and the provisions of this ordinance. Provisions for a partial pro-rata release of the performance security or performance bond based on the completion of various development stages can be made at the discretion of the codes enforcement office. (as added by Ord. #1477, Jan. 2005, and replaced by Ord. #1496, July 2005)

16-704. Stormwater system design and management standards.

(1) Stormwater design or BMP manual. (a) Adoption. The municipality adopts as its stormwater design and best management practices (BMP) manual the following publications, which are incorporated by reference in this ordinance as is fully set out herein:

- (i) TDEC Sediment and Erosion Control Manual
- (ii) TDEC Manual for Post Construction

(b) This manual includes a list of acceptable BMPs including the specific design performance criteria and operation and maintenance requirements for each stormwater practice. The manual may be updated and expanded from time to time, at the discretion of the governing body of the municipality, upon the recommendation of the codes enforcement office, based on improvements in engineering, science, monitory and local maintenance experience. Stormwater facilities that are designed, constructed and maintained in accordance with these BMP criteria will be presumed to meet the minimum water quality performance standards.

(2) General performance criteria for stormwater management. Unless granted a waiver or judged by the codes enforcement office to be exempt, the following performance criteria shall be addressed for stormwater management at all sites:

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

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

(c) 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.

(d) Stormwater discharges from "hot spots" may require the application of specific structural BMPs and pollution prevention practices.

(e) Prior to or during the site design process, applicants for land disturbance permits shall consult with the codes enforcement office to determine if they are subject to additional stormwater design requirements.

(f) The calculations for determining peak flows as found in the BMP manual shall be used for sizing all stormwater facilities.

(3) Minimum control requirements. (a) Stormwater designs shall meet the multi-stage storm frequency storage requirements as identified in the BMP manual unless the codes enforcement office has granted the applicant a full or partial waiver for a particular BMP under § 16-704(4).

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

(4) Stormwater management plan requirements. The stormwater management plan shall include sufficient information to allow the codes enforcement office 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: A topographic base map (2 foot contour intervals) to a suitable scale of the site which extends a minimum of one hundred (100) feet 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;

(v) Proposed structural BMPs;

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

(b) Calculations: Hydrologic and hydraulic design calculations for the pre-development and post-development conditions for the design storms specified in the BMP manual. These calculations must show that the proposed stormwater management measures are capable of controlling runoff from the site in compliance with this ordinance and the guidelines of the 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 BMP manual; and

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

(c) 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.

(d) Maintenance and repair plan: The design and planning of all 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. A permanent elevation benchmark shall be identified in the plans to assist in the periodic inspection of the facility.

(e) Landscaping plan: The applicant must present a detailed plan for management of vegetation at the site after construction is finished, including who will be responsible for the maintenance of vegetation at the site and what practices will be employed to ensure that adequate vegetative cover is preserved.

(f) Maintenance easements: The applicant must ensure access to the site for the purpose of inspection and repair by securing all the maintenance easements needed. These easements must be binding on the current property owner and all subsequent owners of the property and must be properly recorded in the land record.

(g) Maintenance agreement:

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

(ii) The maintenance agreement shall:

(A) Assign responsibility for the maintenance and repair of the stormwater facility to the owner of the property upon which the facility is located and be recorded as such on the plat for the property by appropriate notation.

(B) Provide for a periodic inspection by the property owner for the purpose of documenting maintenance and repair needs and ensure compliance with the purpose and requirements of this ordinance. The property owner will arrange for this inspection to be conducted by a registered professional engineer licensed to practice in the State of Tennessee who will submit a sealed report of the inspection to the codes enforcement office. 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.

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

consistent with the needs and standards outlined in the BMP manual.

(D) Provide that maintenance needs must be addressed in a timely manner, on a schedule to be determined by the codes enforcement office.

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

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

(h) Sediment and erosion control plans: The applicant must prepare a sediment and erosion control plan for all construction activities that complies with § 16-704(5) below.

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

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

(b) A topographic map with contour intervals of two (2) feet 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, etc., 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 for: the construction of rock pads, wash down pads, and settling basins for controlling erosion; road access points; eliminating or keeping soil, sediment, and debris on streets and public ways at a level acceptable to the codes enforcement office. 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 to the satisfaction of the codes enforcement office. 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. (as added by Ord. #1477, Jan. 2005, and replaced by Ord. #1496, July 2005)

16-705. Post construction. (1) As built plans. All applicants are required to submit actual as built plans for any structures located on-site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and must be sealed by a registered professional engineer licensed to practice in Tennessee. A final inspection by the codes enforcement office is required before any performance security or performance bond will be released. The codes enforcement office shall have the discretion to adopt provisions for a partial pro-rata release of the performance security or performance bond on the completion of various stages of development. In addition, occupation permits shall not be granted until corrections to all BMPs have been made and accepted by the codes enforcement office.

(2) Landscaping and stabilization requirements. (a) Any area of land from which the natural vegetative cover has been either partially or wholly cleared by development activities shall be revegetated according to a schedule approved by the urban forestry office and 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.

(b) 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 as provided for in § 16-704(4)(g)(ii)(B).

(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 ten (10) years. These records shall be made available to the codes enforcement office 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 ordinance, the codes enforcement office, after reasonable notice, may correct a violation, with city, state or contract labor 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 codes enforcement office 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 codes enforcement office may take necessary corrective action. The cost of any action by the codes enforcement office under this section shall be charged to the responsible party. (as added by Ord. #1477, Jan. 2005, and replaced by Ord. #1496, July 2005)

16-706. Waivers. (1) General. Every applicant shall provide for post construction stormwater management as required by this ordinance, unless a written request is filed to waive this requirement. Requests to waive the stormwater management plan requirements shall be submitted to the codes enforcement office for approval.

(2) Conditions for waiver. 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 of the following conditions applies:

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

(b) Alternative minimum requirements for on-site management of stormwater discharges have been established in a stormwater

management plan that has been approved by the codes enforcement office.

(c) Provisions are made 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.

(3) Downstream damage, etc. prohibited. In order to receive a waiver, the applicant must demonstrate to the satisfaction of the codes enforcement office that the waiver will not lead to any of the following conditions downstream:

- (a) Deterioration of existing culverts, bridges, dams, and other structures;
- (b) Degradation of biological functions or habitat;
- (c) Accelerated streambank or streambed erosion or siltation;
- (d) Increased threat of flood damage to public health, life or property.

(4) Land disturbance permit not to be issued where waiver requested. No land disturbance permit shall be issued where a waiver has been requested until the waiver is granted. If no waiver is granted, the plans must be resubmitted with a stormwater management plan. (as added by Ord. #1477, Jan. 2005, and replaced by Ord. #1496, July 2005)

16-707. Existing locations and developments. (1) Requirements for all existing locations and developments. The following requirements shall apply to all locations and development at which land disturbing activities have occurred previous to the enactment of this ordinance:

- (a) Denuded areas must be vegetated or covered under the standards and guidelines specified in the BMP manual and on a schedule acceptable to the codes enforcement office.
- (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-rapp, channel lining, etc., to prevent erosion.
- (d) Trash, junk, rubbish, etc. shall be cleared from drainage ways.
- (e) Stormwater runoff shall be controlled to the extent reasonable to prevent pollution of local waters. Such control measures may include, but are not limited to, the following:
 - (i) Ponds
 - (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

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

(3) Inspection of existing facilities. The codes enforcement office may, to the extent authorized by state and federal law, establish inspection programs to verify that all stormwater management facilities, including those built before as well as after the adoption of this ordinance, are functioning within design limits. These inspection programs may be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of the municipality'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.

(4) Corrections of problems subject to appeal. Corrective measures imposed by the stormwater utility under this section are subject to appeal under § 16-711 of this ordinance. (as added by Ord. #1477, Jan. 2005, and replaced by Ord. #1496, July 2005)

16-708. Illicit discharges. (1) Scope. 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:

- (a) Uncontaminated discharges from the following sources:
 - (i) Water line flushing or other potable water sources,
 - (ii) Landscape irrigation or lawn watering with potable water,
 - (iii) Diverted stream flows,
 - (iv) Rising ground water,
 - (v) Groundwater infiltration to storm drains,
 - (vi) Pumped groundwater,
 - (vii) Foundation or footing drains,
 - (viii) Crawl space pumps,
 - (ix) Air conditioning condensation,
 - (x) Springs,
 - (xi) Non-commercial washing of vehicles,
 - (xii) Natural riparian habitat or wet-land flows,
 - (xiii) Swimming pools (if dechlorinated - typically less than one PPM chlorine),
 - (xiv) Fire fighting activities, and
 - (xv) Any other uncontaminated water source.

(b) Discharges specified in writing by the codes enforcement office as being necessary to protect public health and safety.

(c) Dye testing is an allowable discharge if the codes enforcement office has so specified in writing.

(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 by the use of best management practices. 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, 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 codes enforcement office in person or by telephone or facsimile no later than the next business day. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the codes enforcement office within three (3) business days of the telephone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least ten (10) years. (as added by Ord. #1477, Jan. 2005, and replaced by Ord. #1496, July 2005)

16-709. Enforcement. (1) Enforcement authority. The director of the codes enforcement office or his designees shall have the authority to issue notices of violation and citations, and to impose the civil penalties provided in this section.

(2) Notification of violation. (a) Written notice. Whenever the director of the codes enforcement office finds that any permittee or any other person discharging stormwater has violated or is violating this ordinance or a permit or order issued hereunder, the director 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 director. 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 director is empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person responsible for the noncompliance. Such orders will include specific action to be taken by the person to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as administrative orders issued pursuant to paragraphs (d) and (e) below.

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

request that the violator show cause why this proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing.

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

(e) Cease and desist orders. When the director finds that any person has violated or continues to violate this ordinance or any permit or order issued hereunder, the director may issue an order to cease and desist all such violations and direct those persons in noncompliance to:

(i) Comply forthwith; or

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

(3) Conflicting standards. Whenever there is a conflict between any standard contained in this ordinance and in the BMP manual adopted by the municipality under this ordinance, the strictest standard shall prevail. (as added by Ord. #1477, Jan. 2005, and replaced by Ord. #1496, July 2005)

16-710. 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 codes enforcement office, 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 the codes enforcement office 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 director of the codes enforcement office may consider:

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

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

- (c) The economic benefit gained by the violator;
 - (d) The amount of effort put forth by the violator to remedy this violation;
 - (e) Any unusual or extraordinary enforcement costs incurred by the municipality;
 - (f) The amount of penalty established by ordinance or resolution for specific categories of violations; and
 - (g) Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.
- (4) Recovery of damages and costs. In addition to the civil penalty in subsection (2) above, the municipality 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 enforcing compliance 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.
- (5) Other remedies. The municipality may bring legal action to enjoin the continuing violation of this ordinance, and the existence of any other remedy, at law or equity, shall be no defense to any such actions.
- (6) Remedies cumulative. The remedies set forth in this section shall be cumulative, not exclusive, and it shall not be a defense to any action, civil or criminal, that one (1) or more of the remedies set forth herein has been sought or granted. (as added by Ord. #1477, Jan. 2005, and replaced by Ord. #1496, July 2005)

16-711. Appeals. Pursuant to Tennessee Code Annotated, § 68-221-1106(d), any person aggrieved by the imposition of a civil penalty or damage assessment as provided by this ordinance may appeal said penalty or damage assessment to the municipality's governing body.

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

(2) Public hearing. Upon receipt of an appeal, the municipality's governing body shall hold a public hearing within thirty (30) days. Ten (10) days prior notice of the time, date, and location of said hearing shall be published in a daily newspaper of general circulation. Ten (10) days notice by registered mail shall also be provided to the aggrieved party, such notice to be sent to the address provided by the aggrieved party at the time of appeal. The decision of the governing body of the municipality shall be final.

(3) Appealing decisions of the municipality's governing body. Any alleged violator may appeal a decision of the municipality's governing body pursuant to the provisions of Tennessee Code Annotated, title 27, chapter 8. (as added by Ord. #1477, Jan. 2005, and replaced by Ord. #1496, July 2005)

CHAPTER 8

REGULATION OF NEWS RACKS

SECTION

- 16-801. Findings and purpose.
- 16-802. Definitions.
- 16-803. Establishment of fixed pedestal zones.
- 16-804. Permit requirement.
- 16-805. Location and placement of fixed pedestal news racks.
- 16-806. Compliance for previously placed or installed news racks within thirty (30) days.
- 16-807. Indemnification and insurance.
- 16-808. Maintenance, continuous use, repair and removal.
- 16-809. Enforcement.
- 16-810. Notices.

16-701. Findings and purpose. The Board of Mayor and Aldermen for the City of McMinnville hereby find as follows:

(1) The public rights-of-way historically have been used to circulate newspapers and other publications; and

(2) The unregulated placement and maintenance of individual news racks in the public rights-of-way interferes with the free and unimpeded use of such public rights-of-way, and threatens the health, safety and welfare of persons who use the public rights-of-way, including pedestrians, children, the aged, persons entering and leaving vehicles and buildings, drivers, persons performing essential utility, traffic control and emergency services, and persons with disabilities; and

(3) The unregulated placement of multicolored, broken, rusted and abandoned individual news racks, of various shapes and sizes in the public rights-of-way significantly detracts from the aesthetic character of surrounding areas; and

(4) The City of McMinnville is in the midst of a revitalization of the downtown "Main Street" business district in which numerous efforts and expense have been undertaken to aesthetically improve and beautify the downtown business district; and

(5) It is the legislative intent of the Board of Mayor and Aldermen for the City of McMinnville to maintain the developed character of the revitalized downtown business district and to maintain and enhance the aesthetic quality of the business district; and

(6) The regulations contained herein are not intended to prohibit or hamper speech which is protected by the First Amendment, but merely to regulate specific activities to ensure that the public ways remain safe and useful for their primary purpose and are attractive to tourists and the public; and

(7) There is a need for reasonable time, place and manner guidelines regarding the installation, placement, size, appearance and maintenance of news racks in the public rights-of-way.

Consistent with these findings, it is the purpose of this section to promote the health and safety of users of the public rights-of-way and to enhance the aesthetics of the city in a manner which may utilize news racks as a means of distribution of newspapers and other publications, so as to do the following:

- (a) Provide for pedestrian and driving safety and convenience;
 - (b) Restrict unreasonable interference with the flow of pedestrian or vehicular traffic, including ingress into and egress from any residence or place of business, or from a the street to the sidewalk by persons exiting or entering parked or standing vehicles;
 - (c) Provide for the safety of the public and property during windstorms and other inclement weather;
 - (d) Provide reasonable access for the use and maintenance of poles, posts, traffic signs or signals, hydrants and mailboxes;
 - (e) Replace, remove or relocate individual news racks that have created visual blight on the public rights-of-way or unreasonably detracted from the aesthetics of adjacent businesses, landscaping and other improvements;
 - (f) Maintain and protect the values of surrounding properties;
- and
- (g) Reduce unnecessary exposure of the public to personal injury and property damage.

It is also the purpose of this section to ensure a diversity of viewpoints consistent with the First Amendment to the United States Constitution, and to treat all newspapers and other lawful publications equally, regardless of their content. (as added by Ord. #1519, April 2006)

16-702. Definitions. As used in this section the following terms shall have the meanings ascribed to them as follows:

(1) "Abandoned" means any individual news rack or compartment of a modular news rack that does not contain the newspaper or other publication specified therefor for more than four (4) consecutive days for a daily publication, eight (8) consecutive days for a weekly publication, sixteen (16) consecutive days for a biweekly publication, thirty-two (32) consecutive days for a monthly publication or sixty-four (64) consecutive days for a bimonthly publication.

(2) "Compartment" means the individual space within a modular fixed pedestal news rack that dispenses one (1) newspaper or other publication, including the door, coin return mechanism and associated hardware.

(3) "Director" means the director of the department of public works.

(4) "Fixed pedestal district" means and includes all public rights-of-way located within the area of the McMinnville Downtown Economic Revitalization Project, Phase I and any subsequent Phases undertaken by the

City of McMinnville in which the distribution of newspapers and other publications through news racks is restricted to fixed pedestal units installed in the place, style and manner set out herein.

(5) "Fixed pedestal permit" means a permit issued to a newspaper or other publication authorizing the placement of the newspaper or other publication in one or more spaces in a fixed pedestal news rack in a fixed pedestal zone.

(6) "Fixed pedestal news rack" means an assembly which is of a type, design or model approved by the director and which contains one or more self-service or coin-operated boxes, containers, storage units or other dispensers installed, used or maintained for the display and sale or free distribution of newspapers and other publications and which is attached to the public sidewalk, street or public right-of-way in accordance with this section.

(7) "Fixed pedestal zone" means those areas which the City of McMinnville has designated within the fixed pedestal district, as sites upon which newspapers and other publications may be distributed in fixed pedestal units installed in the style and manner required herein. The fixed pedestal zones are more specifically described in § 16-703(3) below.

(8) "Freestanding news rack" means any unmanned, self-service or coin-operated box, container, storage unit or other dispenser installed, used or maintained for the display, sale or distribution, with or without charge, of newspapers or other publications, and which is not a fixed pedestal unit authorized under this section.

(9) "Newspapers and other publications" means and includes newspapers, periodicals, advertising circulars, and all other printed materials which may be distributed through the use of news racks.

(10) "Owner" means the person or other legal entity which either owns a news rack or is responsible for its operation and maintenance.

(11) "Person" includes an individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or other group or combination acting as a unit.

(12) "Public rights-of-way" means and includes all highways, streets, alleys, sidewalks and other real property or easements, which are owned or controlled by the city or county, including the areas above and below such easements, and which are reserved or used for pedestrian or vehicular traffic.

(13) "Publisher" means the person or other legal entity selling, displaying or distributing newspapers or other publications in a news rack. (as added by Ord. #1519, April 2006)

16-803. Establishment of fixed pedestal zones. (1) Fixed pedestal units restricted. No person shall place, operate or maintain a fixed pedestal news rack on any public street, public sidewalk or public right-of-way within the fixed pedestal district except in accordance with this section. Any unauthorized

fixed pedestal news rack which in whole or in part is attached to or rests upon a public street, public sidewalk or public right-of-way located in the fixed pedestal district shall be subject to impoundment pursuant to § 16-709(7). The owner of any unauthorized fixed pedestal news rack properly impounded by the director shall be responsible for restoring the sidewalk to its original condition by replacing the concrete or other material under the direction and authorization of the director.

(2) Freestanding news racks prohibited. No person shall place, operate or maintain a freestanding news rack on any public street, public sidewalk or public right-of-way located in the fixed pedestal district. Any freestanding news rack which in whole or in part rests upon a public street, public sidewalk or right-of-way located in the fixed pedestal district shall be subject to impoundment pursuant to subsection 16-709(7).

(3) Fixed pedestal zones. Consistent with the findings and purposes stated above, the Board of Mayor and Aldermen of the City of McMinnville have designated two (2) fixed pedestal zones within the fixed pedestal district which is defined as the area encompassed by the McMinnville Downtown Economic Revitalization Project. The fixed pedestal zones are located as follows:

(a) At the corner of Court Square and Morford Street in front of the post office.

(b) Between 216 and 222 East Main Street. (as added by Ord. #1519, April 2006)

16-804. Permit requirement. (1) Fixed pedestal permit. Permits are necessary to facilitate the regulation and inspection of news racks for the purposes set forth herein. No person may place any newspaper or other publication in any fixed pedestal news rack in a fixed pedestal zone without having first obtained from the director a fixed pedestal permit authorizing placement of the newspaper or other publication in the news rack.

(2) Duty to obtain permit. Each publication seeking access to a news rack in a fixed pedestal zone shall apply to the city for a fixed pedestal permit for each news rack box in each fixed pedestal news rack to which the newspaper or other publication seeks access. The permit holder shall be responsible for payment of all fees due under this section. Once a permit has been granted pursuant to this section, and if the permit has not subsequently been revoked, the permit holder shall not be required to renew or reapply for another fixed pedestal permit for the same news rack box.

(3) Application. Application for a fixed pedestal permit shall be made in writing on a form and in a manner provided by the city and filed with the director.

(4) Fees. The director is hereby authorized and directed to collect an application fee for each newsrack box in the amount of twenty-five dollars (\$25.00). This fee shall be used to cover the costs for application, permitting and

inspection required by this section and shall not be a revenue-generating source for the city.

(5) Permit issuance. The director shall issue the fixed pedestal permit unless the director finds one or more of the following grounds for denial to exist, in which case the director shall deny the application for a permit. The grounds for denial of an application for a fixed pedestal permit are:

- (a) The application is incomplete;
- (b) The required fee was not submitted;
- (c) Adequate space in the fixed pedestal zones is unavailable;
- (d) The proposed fixed pedestal news rack does not meet the requirements set out herein.

(6) Violations. Failure to comply with any requirement of this section shall constitute a violation of this section.

(7) Permit revocation. Any fixed pedestal permit issued pursuant to this section confers a non-transferable revocable privilege upon the permit holder. The permit shall be revoked if the news rack is abandoned. Further, the mayor and board of aldermen may at any time, in its exclusive legislative discretion, elect to repeal or amend this section and thereby render null and void any permits issued pursuant to this section.

(8) Content-based discrimination prohibited. The director shall not consider the content or viewpoint of the material to be distributed through fixed pedestal units in administering or enforcing this section. (as added by Ord. #1519, April 2006)

16-705. Location and placement of fixed pedestal news racks.

(1) General. The director shall monitor the installation and maintenance of fixed pedestal news racks in fixed pedestal zones.

(2) Physical characteristics and appearance of fixed pedestal news racks. (a) The maximum height of any news rack shall be fifty-seven inches (57"). The maximum width of any such news rack shall be ninety-seven inches (97"). The maximum depth of any such news rack shall be seventeen inches (17").

(b) News racks shall be constructed of metal materials with clear plastic or glass panels through which publications therein are viewed and which are unbroken and reasonably free of cracks, dents, blemishes and discoloration.

(c) News racks shall be black.

(d) News racks may not display any cardholders or advertising, but may display the trademark name or logo of the newspaper or other periodical being dispensed therefrom on the sides and back of the news rack, but only within an area the maximum height of which is two (2) inches, and only in letters or symbols which are white or off-white in color.

(e) Each news rack used to sell newspapers or other written matter shall be equipped with a coin return mechanism in good working order so as to permit a person to secure a refund in the event that the news rack malfunctions.

(f) The owner or person in control of each news rack shall affix his or her name, address, telephone number, and e-mail address, if any, on the news rack in a readily visible location and shall inform the director if the information changes from that which was included in the application for permit. In no event shall a post office box be considered an acceptable address for purposes of this paragraph.

(g) Within a fixed pedestal zone, the following limitations shall apply. A news rack shall not be placed, installed or maintained:

(i) Within fifteen (15) feet of any fire hydrant;

(ii) In any driveway or within close proximity of any driveway;

(iii) In any curb cut designed to facilitate street access by disabled persons or within two (2) feet of any such curb;

(iv) Within a crosswalk area;

(v) Within a corner area or within five (5) feet of any corner area;

(vi) On any surface where such installation or maintenance will cause damage to or will interfere with the use or maintenance of any public utilities, including but not limited to water/sewer pipes, telephone or electrical cables, or natural gas pipes;

(vii) On, in or over any part of the roadway of any public street;

(viii) Within any portion of the sidewalk, unless five (5) feet of sidewalk width is preserved for unobstructed pedestrian passage;

(ix) On any area of lawn, flowers, shrubs, trees or other landscaping, or in such a manner that use of the news rack would cause damage to such landscaping; or

(x) Where placement, installation, or maintenance endangers the safety of persons or property.

(3) In addition to the location restrictions set forth in subsection (2)(g) above, news racks shall be limited in number to no more than five (5) per fixed pedestal zone.

(4) No news rack shall be located directly in front of any display window of any building abutting the sidewalk, without the written consent of the person or entity legally in occupancy or otherwise in control of the premises on which the display window is located. If such consent is withdrawn, any news rack placed in front of a display window shall be removed within fourteen (14) days of the date of written notice to the owner of such news rack.

(5) Every news rack shall be placed or installed in a manner that will ensure that such news rack cannot be tipped over. (as added by Ord. #1519, April 2006)

16-806. Compliance for previously placed or installed news racks within thirty (30) days. Where a news rack has been placed or installed before the effective date of this chapter, the owner or person in control of such news rack shall, within thirty (30) days after such effective date, comply with the provisions of this chapter. (as added by Ord. #1519, April 2006)

16-807. Indemnification and insurance. (1) Each person who owns or controls a news rack placed or installed on any sidewalk shall indemnify and hold harmless the City of McMinnville from any and all losses, costs, damages, expenses, claims, judgments or liabilities that city may incur by reason of the placement, installation or maintenance of such news rack, except to the extent such damage results from the negligence or intentional act of the City of McMinnville.

(2) Each person who owns or controls a news rack on any sidewalk shall maintain a general liability insurance policy naming the City of McMinnville as an additional insured for the specific purpose of indemnifying and holding harmless the City of McMinnville from and against any and all losses, costs, damages, expenses, claims, judgments, or liabilities that result from or arise out of the placement, installation and/or the maintenance of any news rack. Each such person shall keep in force such policy or policies of general liability insurance during such time as he or she continues to place or install or maintain any news rack under the terms of this section. The minimum limits of such insurance coverage shall be no less than three hundred thousand dollars (\$300,000.00) combined single limit for bodily injury, including death, and property damage. An insurance certificate demonstrating compliance with the requirements of this subdivision must be maintained and readily available for public inspection by the person who owns or controls such insured news rack. Should said policy be called upon to satisfy any liability for damages covered by said policy, the policy must be of such a nature that the original amount of coverage is restored after any payment of damages under the policy. Failure to maintain satisfactory insurance policy pursuant to this subdivision or failure to maintain an insurance certificate demonstrating compliance shall be deemed a violation of this section. (as added by Ord. #1519, April 2006)

16-808. Maintenance, continuous use, repair and removal. (1) Any person who owns or is in control of a news rack shall properly and regularly maintain it and shall use his/her best efforts to repair, restore or replace news racks damaged or defaced by intentional or unintentional acts, including ordinary wear and tear, graffiti or other unauthorized writing or drawing.

(2) Any person who owns or is in control of a news rack shall use best efforts to ensure that each news rack under his or her ownership or control is not used as a depository for the placement of refuse and shall be required to remove any refuse placed within such news rack within forty-eight (48) hours of receipt of a notice of such condition.

(3) Any news rack that has been damaged or is in need of repair shall be repaired, replaced or removed by the owner or person in control of such news rack within seven (7) business days of receipt of a notice of such condition. If such news rack has been damaged, or if it is in a state of disrepair, such that it constitutes a danger to persons or property, it shall be made safe within a reasonable time following receipt of notice of such condition.

(4) Any damage to property of the City of McMinnville resulting from the placement, installation, maintenance or removal of a news rack shall be repaired promptly by the owner or person in control of such news rack. If a news rack is removed from its location on a sidewalk, upon removal, withdrawal or abandonment of any news rack, the owner shall be liable for all costs and expenses, including reasonable attorney fees, associated with restoring the right-of-way to the condition that would have existed had the news rack not been installed. (as added by Ord. #1519, April 2006)

16-809. Enforcement. (1) Whenever any news rack is found to be in violation of any provision of §§ 16-803 through 16-808 above, inclusive, the director may issue a notice of correction specifying the date and nature of the violation and may send written notification, by regular mail, to the owner or person in control of the news rack. In addition, the director may send a copy of such notice of correction to a person designated by such owner or person to receive such notice. However, failure to send a copy will not extend the time period within which such owner or other person is required by any provision of this section to take action. Except as otherwise provided for the removal of refuse in § 16-808(2), such person shall within seven (7) business days from the date of receipt of notification via regular mail cause the violation to be corrected. For the purposes of this section, a notice of correction shall be deemed to have been received three (3) days from the date on which it was mailed by the director.

(2) If an owner or other person in control of a news rack fails to comply with a notice of correction issued pursuant to § 16-809(1) herein, or an order by the director to remove served pursuant to § 16-809(4) herein, a notice of violation/citation shall be served on such owner or person in control of such news rack.

(3) If the director issues a notice of violation/citation for a violation of this section and the violation is not remedied within seven (7) days of receipt of the citation, the director is authorized to provide for the removal of the news rack and any contents thereof to a place of safety. For purposes of this subparagraph, a citation shall be deemed to have been received three (3) days

from the date on which it is mailed. If such news rack and any contents thereof are not claimed within thirty (30) days after their removal by a person entitled to their return, they shall be deemed to be abandoned and may be disposed of in the manner provided by law regarding abandoned property, and the owner or person in control shall be liable to the City of McMinnville for the costs of removal and storage and shall be subject to a civil penalty pursuant to § 16-809(9). News racks and the contents thereof that are removed pursuant to this subparagraph shall be released to the owner or other person lawfully entitled to possession upon payment of the costs for removal and storage and any civil penalty.

(4) The director may, upon notice, serve an order upon the owner or other person in control of a news rack requiring such person to remove or cause to be removed such news rack within seven (7) business days of receipt of such order where such removal is required because the site or location at which such news rack is placed is used or is to be used for public utility purposes, public transportation, or public safety purposes, or when such news rack unreasonably interferes with construction activities in nearby or adjacent buildings or if removal is required in connection with a capital project or improvement. If such person does not remove such news rack within seven (7) business days of receipt of such order, the provisions contained in this section regarding issuance of a notice of violation and alternatives for removal, storage, abandonment, disposal and release shall apply.

(5) Notwithstanding any other provision of law to the contrary, if a news rack has been deemed to have been abandoned, the director is authorized to provide for the removal of such news rack and it may either be sold at public auction, the proceeds thereof being paid into the general fund, used or converted for use by the, department or any other department or agency of the City of McMinnville, or otherwise disposed of.

(6) Where emergency circumstances exist and the director gives notice to the owner or other person in control of a news rack to remove such news rack, such person shall comply with such notice. For the purposes of this section, emergency circumstances shall mean circumstances which present an imminent threat to public health or safety.

(7) If any owner or other person in control of a news rack does not remove such news rack when directed to do so pursuant to the provisions of this section, or if circumstances are such that public safety requires the immediate removal of a news rack and it is not reasonable to give the owner or other person in control of such news rack notice prior to the removal, the director may provide for the removal of such news rack to a place of safety. Such owner or other person in control of such news rack may be charged with the reasonable costs of removal and storage payable prior to the release of such news rack and the contents thereof.

(8) If an owner or other person in control of a news rack fails to comply with a notice issued pursuant to this section to remove such news rack, a notice

of violation/citation shall be served on such owner or person in control of such news rack. If the news rack has been removed by the City of McMinnville pursuant to § 16-809(3), such notice of violation/citation shall be served immediately after removal. If such news rack and any contents thereof are not claimed within thirty (30) days after the date of removal by a person entitled to their return, such news rack and any contents thereof shall be deemed abandoned and may be either sold at a public auction, the proceeds thereof being paid into the general fund, used or converted for use by the department of public works or otherwise disposed of.

(9) Any owner or other person in control of a news rack found to be in violation of any provision of this chapter shall be liable for a civil penalty in the amount of fifty dollars (\$50.00) per day for each news rack determined to be in violation.

(10) The director shall remove or cause to be removed from any sidewalk for a period of three (3) consecutive months, every news rack and the contents thereof under the ownership or control of any person who repeatedly violates any provision or provisions of this section. For purposes of this section, a person shall be deemed to have repeatedly violated this section if such person has violated the provisions of this section five (5) or more times within any six (6) month period. For purposes of this subsection, a person shall also be deemed to have repeatedly violated this section if such person has failed to accurately demonstrate that such person repainted or used best efforts to remove graffiti and other unauthorized writing, painting, drawing, or other markings or inscriptions as required by such section three (3) times in any two-year period. In the event that the director removes or causes to be removed all news racks and the contents thereof under the ownership or control of any person based upon this paragraph, such person shall be permitted to replace all such news racks at the locations from which they were removed upon payment in full of all outstanding civil penalties imposed for violations of this section and the reasonable costs of removal and storage, provided that such news racks meet the requirements of this section. If any news racks or contents thereof removed pursuant to this paragraph are not claimed within thirty (30) days after the expiration of the three-month removal period, such news racks or the contents thereof shall be deemed abandoned and may be either sold at public auction, the proceeds thereof being paid into the general fund, used or converted for use by the department of public use or otherwise disposed of. (as added by Ord. #1519, April 2006)

16-810. Notices. In giving any notice or correction or serving any director's order required under this section, except as otherwise provided by law, the director may rely on the validity of any address posted on the news rack pursuant to § 16-805(2)(f) as the address of the owner or other person in control of a news rack, and shall provide such notice by regular mail. (as added by Ord. #1519, April 2006)