

TITLE 14

ZONING AND LAND USE CONTROL

CHAPTER

1. MUNICIPAL PLANNING COMMISSION.
2. ZONING ORDINANCE.
3. STORMWATER ORDINANCE.

CHAPTER 3

STORMWATER ORDINANCE

SECTION

- 14-301. General provisions.
- 14-302. Definitions.
- 14-303. Authority.
- 14-304. Water quality management.
- 14-305. NPDES permits.
- 14-306. Record drawings/design certification.
- 14-307. Inspections and maintenance.
- 14-308. Permit controls and stormwater system integrity.
- 14-309. Severability.
- 14-310. Responsibility.
- 14-311. Variances.
- 14-312. Penalties and appeals.

14-301. General provisions. (1) Purpose. It is the purpose of this ordinance to:

(a) Apply to all areas located within the jurisdiction of the City of Johnson City, Tennessee.

(b) Protect, maintain, and enhance the environment of the City of Johnson City, Tennessee, and the public health, safety and the general welfare of the citizens of the city, by controlling discharges of pollutants to the public stormwater system, with the intent of maintaining and improving 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.

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

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

(i) Exercise general regulation over the planning, location, construction, and operation and maintenance of water quality management 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;

(iii) Establish standards to regulate stormwater contaminants as may be necessary to protect water quality;

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

(v) Issue permits for stormwater discharges or for the construction, alteration, extension, or repair of water quality management 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) Expend funds to remediate or mitigate the detrimental effects of contaminated land or other sources of stormwater contamination, whether public or private.

(2) Administration. The city manager and the staff under the city manager's supervision shall administer provisions of this ordinance. (as added by Ord. #4293-07, Feb. 2008)

14-302. Definitions. For purposes of this chapter, 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.

For the purpose of this chapter, the following definitions shall apply:

(1) "Best Management Practices (BMP or BMPs)." Schedules of activities, prohibitions of practices, maintenance procedures, water quality management facilities, structural controls and other management practices designed to prevent or reduce the pollution of waters of the United States. Water quality BMPs may include structural devices, such as water quality management facilities, or non-structural practices such as buffers or natural open spaces.

(2) "CFR." Code of Federal Regulations.

(3) "Channel." A natural or man-made watercourse of perceptible extent, with definite bed and banks to confine and conduct continuously or periodically flowing water.

(4) "City." City of Johnson City, Tennessee.

(5) "City manager." The City Manager of the City of Johnson City, Tennessee, or his/her designee.

(6) "Construction." Any placement, assembly, or installation of facilities or equipment (including contractual obligations to purchase such facilities or equipment) at the premises where such equipment will be used, including preparation work at such premises.

(7) "Covenants for permanent maintenance of water quality facilities and best management practices." A legal document executed by the property owner, or a homeowners' association as owner of record, and recorded with the Register of Deeds in Sullivan, Carter, and Washington County, Tennessee which guarantees perpetual and proper maintenance of water quality management facilities and best management practices.

(8) "Development." Any land change that alters the hydrologic or hydraulic conditions of any property. Often referred to as "site development." Development includes, but is not limited to, providing access to a site, clearing of vegetation, grading, earth moving, providing utilities, roads and other services such as parking facilities, water quality management facilities and erosion control systems, potable water and wastewater systems, altering land forms, or construction or demolition of a structure on the land.

(9) "Development plan." Detailed engineered/architectural drawing(s) of a commercial, industrial, institutional or residential development project, showing existing site conditions and proposed improvements with sufficient detail (e.g., technical reports, specifications, survey) for city review, approval, and then subsequent construction. The contents of a development plan are further defined by the city zoning ordinance, subdivision regulations, building code and other city departmental standards for constructing developments and public works projects.

(10) "Existing stormwater facility." Any existing structural feature that slows, filters, or infiltrates runoff after a rainfall event.

(11) "Hotspot." An area where the land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in stormwater.

(12) "Lake." An inland body of standing water, usually of considerable size.

(13) "NPDES." National Pollutant Discharge Elimination System. NPDES is the program administered by the United States Environmental Protection Agency to eliminate or reduce pollutant discharges to the waters of the United States.

(14) "Owner or property owner." The legal owner of the property as recorded in the register of deeds office for Sullivan, Carter, and Washington County, Tennessee.

(15) "Person." Any individual, firm, corporation, partnership, association, organization or entity, including governmental entities, or any combination thereof.

(16) "Pond." An inland body of standing water that is usually smaller than a lake.

(17) "Redevelopment." The improvement of a lot or lots that have been previously developed.

(18) "Sediment." Solid material, either mineral or organic, that is in suspension, is being transported, or has been moved from its site of origin by erosion.

(19) "Stormwater." Also "stormwater runoff" or "runoff." Surface water resulting from rain, snow or other form of precipitation, which is not absorbed into the soil and results in surface water flow and drainage.

(20) "Stream." For the specific purpose of vegetated buffers, a stream is defined as a linear surface water conveyance that can be characterized with either perennial or ephemeral base flow and:

(a) Is regulated by the city as a Special Flood Hazard Area (SFHA); or

(b) Is or has been identified by the city, the United States Army Corps of Engineers, or the Tennessee Department of Environment and Conservation as a stream.

(21) "Structure." Anything constructed or erected such that the use of it requires a more or less permanent location on or in the ground. Such construction includes, but is not limited to, objects such as buildings, towers, smokestacks, overhead transmission lines, carports and walls.

(22) "TMDL." Total Maximum Daily Load. A TMDL is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the source(s) of the pollutant.

(23) "Transporting." Any moving of earth materials from one place to another, other than such movement incidental to grading, as authorized on an approved plan.

(24) "Vegetated buffer." A use-restricted vegetated area that is located along the perimeter of streams, ponds, lakes or wetlands, containing natural vegetation and grasses, or enhanced or restored vegetation.

(25) "Water quality BMP manual." A document prepared and maintained by the city, which contains policies, design standards and criteria, technical specifications and guidelines, maintenance guidelines, and other supporting documentation to be used as the policies and technical guidance for implementation of the provisions of this ordinance.

(26) "Water quality management facilities." Structures and constructed features designed to prevent or reduce the discharge of pollution in stormwater runoff from a development or redevelopment. Water quality management facilities can often be referred to as BMPs.

(27) "Water quality management plan." An engineering plan for the design of water quality management facilities and best management practices within a proposed development or redevelopment. The water quality management plan includes a map showing the extent of the land development activity and location of water quality management facilities and BMPs, design calculations for water quality management facilities and BMPs, and may

contain record drawings/certifications and covenants for permanent maintenance of water quality facilities and best management practices.

(28) "Water quality volume reduction." A decrease in the water quality volume for one or more areas of a proposed development which is obtained only for specific site development features or approaches that can reduce or eliminate the discharge of pollutants in stormwater runoff. Water quality volume reductions can only be obtained when specific guidelines presented in the water quality BMP manual are met.

(29) "Water quality volume reduction areas." Areas with the proposed development or redevelopment for which a water quality volume reduction can be obtained.

(30) "Wetland." An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetland determination shall be made by the United States Army Corps of Engineers, and/or the Tennessee Department of Environment and Conservation, and/or the Natural Resources Conservation Service. (as added by Ord. #4293-07, Feb. 2008)

14-303. Authority. (1) The city manager is authorized to adopt additional policies, criteria, specifications and standards for the proper implementation of the requirements of this ordinance in a water quality BMP manual. The policies, criteria and requirements of the water quality BMP manual shall be enforceable, consistent with other provisions of this ordinance.

(2) The city manager shall have the authority to prepare, or have prepared, master plans for drainage basins and to establish regulations or direct capital improvements to carry out said master plans.

(3) In the event that the city manager determines that a violation of any provision of this ordinance has occurred, or that work does not have a required plan or permit, or that work does not comply with an approved plan or permit, the city manager may issue a notice of violation to the permittee or property owner and/or any other person or entity having responsibility for construction work performed at a site development. (as added by Ord. #4293-07, Feb. 2008)

14-304. Water quality management. (1) General requirements.

(a) Owners of land development activities not exempted under subsection (3) must submit a water quality management plan. The water quality management plan shall be submitted as part of the Development plan, as required by the city zoning ordinance, subdivision regulations, building code and other standards for development plans.

(b) The water quality management plan shall include the specific required elements that are listed and/or described in the water

quality BMP manual. The city manager may require submittal of additional information in the water quality management plan as necessary to allow an adequate review of the existing or proposed site conditions.

(c) The water quality management plan shall be subject to any additional requirements set forth in the minimum subdivision regulations, zoning ordinance, or other city ordinances and regulations.

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

(e) The approved water quality management plan shall be adhered to during grading and construction activities. Under no circumstance is the owner or operator of land development activities allowed to deviate from the approved water quality management plan without prior approval of a plan amendment by the city manager.

(f) The approved water quality management plan shall be amended if the proposed site conditions change after plan approval is obtained, or if it is determined by the city manager during the course of grading or construction that the approved plan is inadequate.

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

(h) Water quality management facilities, BMPs, vegetated buffers and water quality volume reduction areas shown in water quality management plans shall be maintained through the declaration of a protective covenant, entitled Covenants for Permanent Maintenance of Water Quality Facilities and Best Management Practices (Covenant). The covenants must be approved and shall be enforceable by the city. The covenant shall be recorded with the deed and shall run with the land and continue in perpetuity.

(i) Water quality management facilities, BMPs, vegetated buffers and water quality volume reduction areas shall be placed into a permanent water quality easement that is recorded with the deed to the parcel and held by the city.

(j) A maintenance right-of-way or easement, having a minimum width of twenty feet (20') shall be provided to all water quality management facilities, BMPs, vegetated buffers and water quality volume reduction areas from a driveway, public road or private road.

(k) Owners of land development activities not exempted from submitting a water quality management plan may be subject to additional watershed or site-specific requirements than those stated in subsection (2) of this section in order to satisfy local or state NPDES, TMDL or other regulatory water quality requirements. Areas subject to additional requirements may also include developments, redevelopments or land uses that are considered pollutant hotspots or areas where the city manager has determined that additional restrictions are needed to limit adverse impacts of the proposed development on water quality or channel protection.

(l) The city manager may waive or modify any of the requirements of § 14-304 of ordinance if adequate water quality treatment and channel protection are suitably provided by a downstream or shared off-site water quality management facility, or if engineering studies determine that installing the required water quality management facilities or BMPs would actually cause adverse impact to water quality or cause increased channel erosion or downstream flooding.

(m) This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, deed restrictions, or existing ordinances and regulations. However, where the provisions of this ordinance and another regulation conflict or overlap, that provision which is more restrictive or imposes higher standards or requirements shall prevail. It is required that the city manager be advised of any such regulatory conflicts by the owners required to submit the water quality management plan.

(2) Design criteria. (a) All owners of developments or redevelopments who must submit a water quality management plan shall provide treatment of stormwater runoff in accordance with the following requirements:

(i) The stormwater runoff site must be treated for water quality prior to discharge from the development or redevelopment site in accordance with the stormwater treatment standards and criteria provided in the water quality BMP manual.

(ii) The treatment of stormwater runoff shall be achieved through the use of one or more water quality management facilities and/or BMPs that are designed and constructed in accordance with the design criteria, guidance, and specifications provided in the water quality BMP Manual.

(iii) Methods, designs or technologies for water quality management facilities or BMPs that are not provided in the water quality BMP manual may be submitted for approval by the city manager if it is proven that such methods, designs or technologies will meet or exceed the stormwater treatment standards set forth

in the water quality BMP manual and this ordinance. Proof of such methods, designs, or technologies must meet the minimum testing criteria set forth in the water quality BMP manual.

(iv) BMPs shall not be installed in public rights-of way or on property without prior approval of the city manager.

(b) All owners of developments or redevelopments who are required to submit a water quality management plan shall provide downstream channel erosion protection in accordance with design criteria stated in the water quality BMP manual. Downstream channel erosion protection can be provided by an alternative approach in lieu of controlling the channel protection volume subject to prior approval by the city manager. Sufficient hydrologic and hydraulic analysis that shows that the alternative approach will offer adequate channel protection from erosion must be presented in the water quality management plan.

(c) All owners of developments or redevelopments who must submit a water quality management plan shall establish, protect and maintain a vegetated buffer in accordance with the policies, criteria and guidance set forth in the water quality BMP manual along all streams, ponds, lakes and wetlands. Exemptions from this requirement are as follows:

(i) Vegetated buffers are not required around the perimeter of ponds that have no known connection to streams, other ponds, lakes or wetlands.

(ii) Vegetated buffers are not required around water quality management facilities or BMPs that are designed, constructed and maintained for the purposes of water quality and/or quantity (i.e., stormwater drainage) control, unless expressly required by the design standards and criteria for the facility that are provided in the water quality BMP manual.

(d) In addition to the above requirements, all owners of developments or redevelopments who must submit a water quality management plan shall:

(i) Provide erosion prevention and sediment control in accordance with the ordinances and regulations of the city;

(ii) Control stormwater drainage and provide peak discharge/volume control in accordance with the ordinances and regulations of the city; and

(iii) Adhere to all local floodplain development requirements in accordance with ordinances and regulations of the city.

(3) Exemptions. (a) Owners of developments and redevelopments who conform to the criteria in § 14-304(3)(c) are exempt from the requirements

of this chapter, unless the city manager has determined that treatment of stormwater runoff for water quality is needed to order to satisfy local or state NPDES, TMDL or other regulatory water quality requirements, or the proposed development will be a pollutant hotspot, or to limit adverse water quality or channel protection impacts of the proposed development.

(b) The exemptions listed in § 14-304(3)(c) shall not be construed as exempting these owners of developments and redevelopments from compliance with stormwater requirements stated in the minimum subdivision regulations, zoning ordinance, or other city ordinances and regulations.

(c) The following developments and redevelopments are exempt from the requirements for a water quality management plan:

(i) Developments or redevelopments that disturb less than one (1) acre of land. No exemption is granted if the development or redevelopment is part of a larger common plan of development or sale that would disturb one (1) acre or more and the stormwater runoff is not treated for water quality via a downstream or regional water quality management facility or BMP that meets the requirements of this ordinance;

(ii) Minor land disturbing activities such as residential gardens and residential or non-residential repairs, landscaping, or maintenance work;

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

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

(v) Installation of posts or poles;

(vi) Farming activities;

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

(4) Performance bonds. (a) A performance bond that guarantees satisfactory completion of construction work related to water quality management facilities, channel protection, and/or the establishment of vegetated buffers may be required.

(b) Performance bonds shall name the City of Johnson City, Tennessee, as beneficiary and shall be guaranteed in the form of a surety bond, cashier's check, or letter of credit from an approved financial

institution or insurance carrier. The surety bond, cashier's check, or letter of credit shall be provided in a form and in an amount to be determined by the city manager. The actual amount shall be based on submission of plans and estimated construction, installation or potential maintenance and/or remediation expenses.

(c) The city manager may refuse brokers or financial institutions the right to provide a surety bond, letter of credit, or cashier's check based on past performance, ratings of the financial institution, or other appropriate sources of reference information.

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

(i) Vehicle, truck or equipment maintenance, fueling, washing or storage areas including but not limited to: automotive dealerships, automotive repair shops, and car wash facilities;

(ii) Recycling and/or salvage yard facilities;

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

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

(v) Other producers of pollutants identified by the city manager as a pollutant hotspot using information provided to or collected by him/her or his/her representatives, or reasonably deduced or estimated by him/her or his/her representatives from engineering or scientific study.

(b) A special pollution abatement plan may be required for land uses or activities that are not identified by this ordinance as hotspot land uses, but are deemed by the city manager to have the potential to generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in stormwater.

(c) The special pollution abatement plan shall be submitted as part of the water quality management plan, and the BMPs submitted on the plan shall be subject to all other provisions of this ordinance. Technical requirements for the plan shall be based on the provisions and guidelines set forth in the water quality BMP manual.

(d) Best management practices specified in the special pollution abatement plan must be appropriate for the pollutants targeted at the site and must be approved with the water quality management plan.

(e) A special pollution abatement plan will be valid for a period of five (5) years, at which point it must be renewed. At the time of renewal, any deficiency in the pollutant management method must be corrected. (as added by Ord. #4293-07, Feb. 2008)

14-305. NPDES permits. Persons or entities who hold NPDES general, individual and/or multi-sector permits shall provide either a copy of such permit or the permit number assigned to them by the Tennessee Department of Environment and Conservation to the city manager no later than sixty (60) calendar days after issuance of the permit. (as added by Ord. #4293-07, Feb. 2008)

14-306. Record drawings/design certification. (1) Prior to the release of a bond, record drawings shall be provided to the city manager, certifying that all water quality management facilities and BMPs comply with the design shown on the approved water quality management plan(s). Features such as the boundaries of vegetated buffers and water quality volume reduction areas shall be provided to verify approved plans. Other contents of the record drawings must be provided in accordance with guidance provided in the water quality BMP manual.

(2) Record drawings shall include sufficient design information to show that water quality management facilities required by this ordinance will operate as approved. This shall include all necessary computations used to determine percent pollutant removal and the flow rates and treatment volumes required to size water quality management facilities and BMPs.

(3) The record drawings shall be stamped by the appropriate design professional required to stamp the water quality management plan, as stated in § 14-304(1) of this chapter and/or a registered land surveyor licensed to practice in the State of Tennessee. (as added by Ord. #4293-07, Feb. 2008)

14-307. Inspections and maintenance. (1) Right of entry.

(a) During and after construction, the city manager may enter upon any property which has a water quality management facility, BMP, vegetated buffer or water quality volume reduction area during all reasonable hours to inspect for compliance with the provisions of this ordinance, or to request or perform corrective actions.

(b) Failure of a property owner to allow such entry onto a property for the purposes set forth in section 10.1(a) shall be cause for the issuance of a stop work order, withholding of a certificate of occupancy, and/or civil penalties and/or damage assessments in accordance with § 14-312 of this chapter.

(2) Requirements. (a) The owner(s) of existing stormwater facilities, water quality management facilities, BMPs, vegetated buffers and water quality volume reduction areas shall at all times inspect and properly operate and maintain all facilities and systems of water quality treatment and drainage control (and related appurtenances), and all vegetated buffers and water quality volume reduction areas in such a manner as to maintain the full function of the facilities or best management practices

which are installed or used by the property owner(s) to achieve compliance with this ordinance.

(b) Inspection and maintenance of privately-owned existing stormwater facilities, water quality management facilities, best management practices, vegetated buffers and water quality volume reduction areas shall be performed at the sole cost and expense of the owner(s) of such facilities/areas.

(c) Inspections and maintenance shall be performed in accordance with specific requirements and guidance provided in the water quality BMP manual. Inspection and maintenance activities shall be documented by the property owner (or his/her designee), and such documentation shall be maintained by the property owner for a minimum of three (3) years, and shall be made available for review by the city manager upon request.

(d) The city manager has the authority to impose more stringent inspection requirements as necessary for purposes of water quality protection and public safety.

(e) Prior to release of the performance bond, the property owner shall provide the city with an accurate record drawing of the property and an executed protective covenant for all BMPs, vegetated buffers, and areas that receive water quality volume reductions. The property owner shall record these items in the office of the register of deeds where the property is situated for Washington, Sullivan, or Carter Counties, Tennessee, as the case may be. The location of the best management practices, water quality management facilities, vegetated buffers and water quality volume reduction areas, and the water quality easements associated with these facilities/areas, shall be shown on a plat that is also recorded where the property is situated in the office of the Register of Deeds for Washington, Sullivan, or Carter Counties, Tennessee, as the case may be.

(f) The removal of sediment and/or other debris from existing stormwater facilities, water quality management facilities and best management practices shall be performed in accordance with all city, state, and federal laws. Guidelines for sediment removal and disposal are referenced in the water quality BMP manual. The city manager may stipulate additional guidelines if deemed necessary for public safety.

(g) The city manager may order corrective actions to best management practices, existing stormwater facilities, water quality management facilities, vegetated bugger areas and/or water quality volume reduction areas as are necessary to properly maintain the facilities/areas within the city for the purposes of water quality treatment, channel erosion protection, adherence to local performance standards, and/or public safety. If the property owner(s) fails to perform

corrective action(s), the city manager shall have the authority to order the corrective action(s) to be performed by the city or others. In such cases where a performance bond exists, the city shall utilize the bond to perform the corrective actions. In such cases where a performance bond does not exist, the property owner shall reimburse the city for double its direct and related expenses. If the property owner fails to reimburse the city, it is authorized to file a lien for said costs against the property and to enforce the lien by judicial foreclosure proceedings.

(h) This ordinance does not authorize access to adjoining private property by the property owner or site operator. Arrangements concerning removal of sediment or pollutants on adjoining property must be settled by the owner or operator with the adjoining landowner. (as added by Ord. #4293-07, Feb. 2008)

14-308. Permit controls and stormwater system. (1) Any alteration, improvement, or disturbance to water quality management facilities, vegetated buffers or water quality volume reduction areas shown in certified record drawings shall be prohibited without authorization from the city manager. This does not include alterations that must be made in order to maintain the intended performance of the water quality management facilities or BMPs.

(2) Other state and/or federal permits that may be necessary for construction in and around streams and/or wetlands shall be approved through the appropriate lead regulatory agency prior to approval of a water quality management plan by the city. (as added by Ord. #4293-07, Feb. 2008)

14-309. Severability. (1) Each separate provision of this ordinance is deemed independent of all other provisions herein so that if any provision or provisions of this ordinance shall be declared invalid, all other provisions thereof shall remain enforceable.

(2) If any provisions of this ordinance and any other provisions of law impose overlapping or contradictory regulations, or contain any restrictions covering any of the same subject matter, that provision which is more restrictive or imposes higher standards or requirements shall govern. (as added by Ord. #4293-07, Feb. 2008)

14-310. Responsibility. This ordinance does not imply a warranty or the assumption of responsibility on the part of the city for the suitability, fitness or safety of any structure with respect to flooding, water quality, or structural integrity. This ordinance is a regulatory instrument only, and is not to be interpreted as an undertaking by the city to design any structure or facility. (as added by Ord. #4293-07, Feb. 2008)

14-311. Variances. (1) Variances to the requirements of this ordinance shall be handled by the city manager as defined under § 14-302.

(2) The city manager shall not approve variances that cause the city to be in violation of any state or federal NPDES permit, TMDL, or other applicable water quality regulation. (as added by Ord. #4293-07, Feb. 2008)

14-312. Penalties and appeals. (1) Violations of this ordinance shall be cause for the requirement for corrective action(s), the issuance of a stop work order, withholding of a permit, withholding of permit inspections, withholding of a certificate of occupancy, and/or civil penalties and/or damage assessments as set forth below.

(2) Any person who violates the provisions of this ordinance shall be subject to a civil penalty of not less than fifty dollars (\$50.00) or more than five thousand dollars (\$5,000.00) per day for each day of each violation. Each day of violation may constitute a separate violation. The city shall give the alleged violator reasonable notice of the assessment of any civil penalty. The city may also recover all damages proximately caused to the city by such violations.

(3) In assessing a civil penalty, the following factors may be considered:

- (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 city;
- (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) In addition to the civil penalty in subsection (2) above, the city may also assess damages proximately caused by the violator to the city which may include any reasonable expenses incurred in investigating and enforcing violations of this part, or any other actual damages caused by the violation.

(5) Notice of damage assessment and civil penalty shall be served upon the alleged violator by personal delivery or certified mail, return receipt requested. Service by mail shall be deemed complete upon mailing. If the alleged violator is dissatisfied, the alleged violator may appeal said civil penalty or damage assessment to the board of commissioners of the City of Johnson City. Said appeal must be received by the city manager's office within thirty (30) days after service of the notice of damage assessment and civil penalty. The appeal shall be heard by Board of commissioners of the City of Johnson City within

thirty (30) days following receipt of the appeal. The board of commissioners may continue the hearing and allow continuances to either the city or the alleged violator for good cause shown. If a timely appeal of the damage assessment or civil penalty is not filed with the city manager's office, the violator shall be deemed to have consented to the damage assessment or civil penalty and it shall become final. If the alleged violator files a timely appeal with the city manager's office and the violator is dissatisfied with the decision of the board of commissioners of the City of Johnson City, the alleged violator may appeal the decision of the board of commissioners of the City of Johnson City pursuant to the provisions of Tennessee Code Annotated, title 27, chapter 8.

(6) Whenever any damage assessment or penalty has become final because person's failure to appeal the assessment or civil penalty, the city may apply to the appropriate chancery court for a judgment and seek execution of such judgment. The court, in such proceedings, shall treat the failure to appeal such damage assessment or civil penalty as a confession of judgment. (as added by Ord. #4293-07, Feb. 2008)