

TITLE 18

WATER AND SEWERS¹

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CHAPTER 8

EROSION AND SEDIMENT CONTROL ORDINANCE

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18-801. Purpose. The purposes of this ordinance are to:

(1) Protect, maintain, and enhance the environment of the City of Johnson City and the public health, safety and general welfare of the citizens of the city, by preventing soil erosion and sediment discharges and construction related wastes that occur as a result of residential, commercial, industrial, and other construction related activities from reaching the city's storm water system.

(2) Maintain and improve the quality of the receiving waters into which storm water runoff flows, including without limitation, lakes, rivers, streams, ponds, and wetlands.

(3) Comply with the State of Tennessee National Pollutant Discharge Elimination System (NPDES) general permit for discharges from small municipal separate storm sewer systems. (Ord. #4064-04, Dec. 2004)

18-802. Definitions. For the purposes of this ordinance, the following definitions shall apply. Words used in the singular shall include the plural, and the plural shall include the singular. Words used in the present tense shall include the future tense. The words "shall" and "must" are mandatory and not discretionary. The word "may" is permissive.

(1) "Best Management Practices (BMP)." Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to the municipal separate storm sewer system. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage, or leaks, sludge or waste disposal, or drainage from raw material storage.

(2) "City." The City of Johnson City, TN.

(3) "Clearing." In the definition of discharges associated with construction activity, clearing does not refer to clearing of vegetation along roadways, highways or power lines for sight distance or other maintenance and/or safety concerns, or cold planing, milling, and/or removal of concrete and/or bituminous asphalt roadway pavement surfaces. Clearing typically refers to removal of vegetation and disturbance of soil prior to grading or excavation in anticipation of construction activities. Clearing may also refer to wide area land disturbance in anticipation of non-construction activities; for

instance, cleared forested land in order to convert forest land to pasture for wildlife management purposes.

(4) "Commencement of construction" or "commencement of land disturbing activities." The initial disturbance of soils associated with clearing, grading or excavating activities or other construction activities.

(5) "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.

(6) "Construction related wastes." Refuse or unused materials that result from construction activities. Construction related wastes can include, but are not limited to, unused building and landscaping materials, chemicals, litter, sanitary waste, and concrete truck washout.

(7) "Development." Any man-made change to improved or unimproved property including, but not limited to, construction of buildings or other structures, clearing, dredging, drilling operations, filling, grading, paving, excavation, or storage of equipment or materials.

(8) "Director." The director of public works of the city or his/her designee, who is responsible for the approval of development and redevelopment plans, grading permits, and implementation of the provisions of this ordinance.

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

(10) "Erosion and sediment control plan." A written plan (including drawings or other graphic representations) that is designed to eliminate and/or reduce erosion and off-site sedimentation from a site during construction activities.

(11) "Filling." Any deposit or stock-piling of dirt, rock, stumps, or other natural or man-made solid waste material.

(12) "Final stabilization." When all soil disturbing activities at the site have been completed, and a perennial vegetative cover sufficient to prevent erosion has been well established on all unpaved areas, or when equivalent permanent stabilization measures have been employed.

(13) "Grading." Any excavation, filling (including hydraulic fill), or stockpiling of earth materials or any combination thereof, including the land in its excavated or filled condition.

(14) "Grading permit." A permit issued by the city authorizing the commencement of land disturbing activities.

(15) "High quality waters." Surface waters of the State of Tennessee that are identified by TDEC as high quality waters. Characteristics of high quality waters are listed at Rule 1200-4-3-.06 of the "official compilation--rules and regulations of the State of Tennessee." Characteristics include waters designated by the Water Quality Control Board as Outstanding National Resources Water (ONRW); waters that provide habitat for ecologically significant populations of certain aquatic or semi-aquatic plants or animals;

waters that provide specialized recreational opportunities; waters that possess outstanding scenic or geologic values; or waters where existing conditions are better than water quality standards. High quality waters are sometimes referred to as Tier II or Tier III (ONRW) waters.

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

(17) "Municipal separate storm sewer system (MS4)." A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) that is:

(a) Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the state;

(b) Designed or used for collecting or conveying storm water;

(c) Which is not a combined sewer; and

(d) Which is not part of a publicly owned treatment works (POTW) as defined at 40 CFR § 122.2.

(18) "Owner" or "operator." Any party associated with a construction project that meets either of the following two criteria:

(a) The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications (this will typically be the owner or developer); or

(b) The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a storm water pollution prevention plan for the site or other permit conditions, e.g., the party is authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other permit conditions. (This will typically include the general contractor and would also include erosion control contractors.)

(19) "Plan." An erosion and sediment control plan, or a small lot erosion and sediment control plan.

(20) "Priority construction activity." Construction activities that discharge directly into or immediately upstream from waters the state recognizes as impaired for siltation or those waters designated as high quality waters. A property is considered to have a direct discharge if storm water runoff from the property does not cross any other property before entering the water of the state.

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

(22) "Small lot erosion and sediment control plan." A plan that is designated to eliminate and/or reduce erosion and off-site sedimentation from a site during construction activities, applicable to development and redevelopment sites that disturb less than one acre and are not part of a larger plan of development.

(23) "Subdivision." The division, subdivision, or resubdivision of any lot or parcel of land as defined in the Subdivision Regulations of the Johnson City Regional Planning Commission and by the State of Tennessee.

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

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

(26) "Waters" or "waters of the state." Any and all water, public or private, on or beneath the surface of the ground, which are contained within, flow through or border upon Tennessee or any portion thereof except those bodies of water confined to and retained within the limits of private property in single ownership which do not combine or effect a junction with natural surface or underground waters. (Ord. #4064-04, Dec. 2004)

18-803. General requirements. (1) Applicability. (a) Land disturbing or construction activities that cause off-site sedimentation or sediment discharges to waters of the state shall be in violation of this ordinance.

(b) No owner or operator of any property within the city shall commence land-disturbing activities unless an erosion and sediment control plan is submitted to and approved by the director.

(c) For construction resulting in less than one acre of disturbed area, excluding single family residential construction that is part of an approved plan for a larger development or sale where best management practices are continuing to be implemented on site, a small lot erosion and sediment control plan shall be submitted to and approved by the director prior to commencement of any land disturbing activity.

(d) The issuance of a grading permit shall be conditioned upon the approval of the erosion and sediment control plan by the director. The city shall serve as the plan approval agency only, and in no instance are its regulations to be construed as designing erosion and sediment control or other storm water systems.

(e) No building permit shall be issued until the owner or operator has obtained a grading permit and is in compliance with the grading permit, where the same is required by this ordinance.

(f) All land disturbing activities including activities exempted from plans submittals shall employ adequate erosion and sediment control best management practices.

(2) Exemptions from plans submittal. (a) The following activities shall not require submittal and approval of an erosion and sediment control plan, or small lot erosion and sediment control plan:

(i) Minor land disturbing activities such as home gardens and individual home landscaping, repairs or maintenance work;

(ii) Additions or modifications to existing, individual, single family structures;

(iii) Emergency work to protect life, limb or property, and emergency repairs, provided that the land area disturbed shall be shaped and stabilized in accordance with the requirements of this regulation;

(iv) Nursery and agricultural operations conducted as a permitted main or accessory use; and

(v) State and federal projects subject to the submission requirements of TDEC.

(vi) Land disturbances comprising an area smaller than the smallest lot allowed in the Zoning Code of the City of Johnson City, Tennessee.

(b) All other provisions of this ordinance shall apply to the exemptions noted in § 18-803(2)(a) above. (Ord. #4064-04, Dec. 2004)

18-804. Erosion and sediment control design standards.

(1) Adoption of standards. (a) The city adopts as its erosion and sediment control design standards and best management practices manual the TDEC Erosion & Sediment Control Handbook, as amended. This manual is incorporated by reference into this ordinance. This manual includes a list of acceptable BMPs, including the specific design performance criteria and operation and maintenance requirements for each BMP.

(b) Design, operation and maintenance criteria presented in the manual may be updated and expanded upon, at the discretion of the director, based on improvements in engineering, science, monitoring, and local maintenance experience.

(c) Erosion and sediment control BMPs that are designed, constructed and maintained in accordance with the BMP criteria presented in the manual shall be presumed to meet the minimum water quality performance standards required by the city.

(2) General criteria and requirements. The following requirements are in keeping with the performance standards set forth in the Tennessee Construction General Permit, and the TDEC Erosion & Sediment Control Handbook, as amended:

(a) Erosion and sediment controls shall be designed to retain sediment on-site.

(b) All control measures must be properly selected, installed, and maintained in accordance with the manufacturer's specifications and good engineering practices. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the owner/operator must replace or modify the control for site situations. Modifications to the approved E & SC plan or the small site plan will require a plan modification.

(c) Sediment shall be removed from sediment traps, silt fences, sedimentation ponds, and other sediment controls as necessary, and must be removed when design capacity has been reduced by 50%.

(d) Construction related waste, litter, construction debris, and construction chemicals exposed to storm water shall be removed, covered or properly stored prior to anticipated storm events (e.g., forecasted by local weather reports), or otherwise prevented from becoming a pollutant source for storm water discharges (e.g., screening outfalls, daily pick-up, etc.). After use, silt fences should be removed or otherwise prevented from becoming a pollutant source for storm water discharges.

(e) Offsite material storage areas (also including overburden and stockpiles of dirt, etc.) used solely by the permitted project are considered part of the project and shall be addressed in the plan.

(f) Pre-construction vegetative ground cover shall not be destroyed, removed, or disturbed more than 20 calendar days prior to grading or earth moving unless the area is seeded or mulched or other temporary cover is installed.

(g) Clearing and grubbing shall be held to the minimum necessary for grading and construction equipment.

(h) Construction shall be sequenced to minimize the exposure time for graded or denuded areas.

(i) Construction shall be phased for projects in which over 50 acres of soil will be disturbed. Areas of the completed phase must be stabilized within 21 days after another phase has been initiated.

(j) Erosion and sediment control measures shall be in place and functional before commencement of land disturbing activities, and must be constructed and maintained throughout the construction period. Temporary measures may be removed at the beginning of the work day, but must be replaced at the end of the work day or prior to a rain event, whichever is sooner.

(k) The following records shall be maintained on site:

(i) The dates when major grading activities occur;

(ii) The dates when construction activities temporarily or permanently cease on a portion of the site; and

(iii) The dates when stabilization measures are initiated.

(1) The director has the discretion to require BMPs that conform to a higher than minimum standard for priority construction activities, for high quality waters, or where deemed necessary.

(3) Stabilization practices. The plan shall include a description of interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. Plans shall ensure that existing vegetation is preserved where feasible and that disturbed portions of the site are stabilized. Stabilization practices may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures. Use of impervious surfaces for stabilization should be avoided.

(a) Stabilization measures shall be initiated as soon as practicable on portions of the site where construction activities have temporarily or permanently ceased, but in no case more than seven days after the construction activity in that portion of the site has temporarily or permanently ceased, except in the following two situations:

(i) Where the initiation of stabilization measures by the seventh day is precluded by snow cover or frozen ground conditions, stabilization measures shall be initiated as soon as practicable;

(ii) Where construction activity on a portion of the site is temporarily closed, and land disturbing activities will be resumed within 15 days, temporary stabilization measures do not have to be initiated on that portion of the site.

(b) Temporary or permanent soil stabilization shall be accomplished within 15 days after final grading or other land disturbing activity. Permanent stabilization with perennial vegetation (using native herbaceous and woody plants where practicable) or other permanently stable, non-eroding surface shall replace any temporary measures as soon as practicable.

(c) Areas immediately adjacent to natural watercourses and sinkholes shall be left undisturbed.

(4) Structural practices. The plan shall include a description of structural best management practices to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the maximum degree attainable. Such best management practices may include silt fences, earth dikes, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Structural controls shall not be placed in streams or wetlands except as authorized by a section 404 permit or a Tennessee Aquatic Resource Alteration Permit.

(a) Erosion and sediment control best management practices shall be designed according to the size and slope of disturbed or drainage areas to detain runoff and trap sediment. In addition, best management

practices shall be designed to control the rainfall and runoff from a 2-year, 24-hour storm, as a minimum.

(b) When temporary or permanent sediment basins are used to control sedimentation at a site, the basin must provide storage for a calculated volume of runoff from a 2-year, 24-hour storm and runoff coefficient from each disturbed acre drained until final stabilization of the site. Where no such calculation has been performed, a temporary (or permanent) sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measure, shall be provided until final stabilization of the site. When computing the number of acres draining into a common location, it is not necessary to include flows from offsite areas and flows from onsite areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the disturbed area and the sediment basin.

(c) Discharges from sediment basins and traps must be through a pipe or in a ditch lined with rip rap or other stabilized spillway so that the discharge does not cause erosion.

(d) Muddy water to be pumped from excavation and work areas must be held in settling basins or filtered prior to its discharge into surface waters. Water must be discharged onto a stabilized outlet point so that the discharge does not cause erosion and sedimentation.

(5) Other guidelines. (a) No solid materials, including building materials, shall be discharged to waters of the state, except as authorized by a section 404 permit or Tennessee Aquatic Resource Alteration Permit.

(b) Off-site vehicle tracking of sediments is prohibited.

(c) Dust generation shall be minimized.

(d) For installation of any waste disposal systems on site, or sanitary sewer or septic system, the plan shall provide for the necessary sediment controls. Owners/operators must also comply with applicable state and/or local waste disposal, sanitary sewer or septic system regulations for such systems to the extent that these are located within the permitted area. (Ord. #4064-04, Dec. 2004)

18-805. Erosion and sediment control plans. (1) Requirements.

(a) The erosion and sediment control plan shall present in detail the best management practices that will be employed to reduce erosion and control sedimentation.

(b) The plan shall be sealed by a registered professional licensed in the State of Tennessee.

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

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

(e) The plan submitted shall comply with any additional requirements set forth in the city's subdivision regulations, zoning ordinance, or other city ordinances and regulations.

(f) Construction of the site in accordance with the approved plan must commence within one year from the issue date of the grading permit, or the grading permit will become null and void and the plan must be resubmitted for approval.

(2) Plan contents. At a minimum, erosion and sediment control plans shall include the following:

(a) A project description, discussing the intended development or redevelopment, number of units and structures to be constructed, and the infrastructure required;

(b) A map presented at a scale sufficient to reveal:

(i) Topographic contours at a 2-foot interval.

(ii) Existing and proposed topography including soil types, wetlands, water courses, water bodies and sink holes, including intermittent and wet-weather conveyances.

(iii) Proposed area alterations including property lines, existing and proposed structures, utilities, driveways and roads.

(iv) Limits of proposed clearing, grading, filling and/or other land disturbing activities.

(v) Boundaries of designated floodplains and floodways.

(vi) Outfall points for storm water discharges from the site.

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

(d) A general description of existing soil types and characteristics, and any anticipated soil erosion and sedimentation problems resulting from existing characteristics.

(e) The calculations for peak discharges for existing storm water runoff leaving any portion of the site for the 2-year, 24-hour storm event. Include an estimate of the runoff coefficient of the site before construction.

(f) The calculations for peak discharges for storm water runoff leaving any portion of the site after construction is complete for the 2-year, 24-hour storm event. Include an estimate of the runoff coefficient of the site after construction is complete.

(g) The design, construction and maintenance details for: soil erosion and sediment control BMPs, including sediment basins, silt fencing, check dams, construction entrances and other BMPs as included in the TDEC Erosion & Sediment Control Handbook, as amended.

(h) Location(s) of any existing and proposed storm water management structures or facilities.

(i) Seeding and stabilization specifications, including temporary and permanent groundcovers, mulching rates, and methods for anchoring mulch. If proprietary sediment and/or erosion control products are used, include the manufacturer's installation and maintenance guidance.

(j) A construction sequence addressing the following:

(i) All major construction activities indicating the anticipated start and completion of development.

(ii) The sequence of land disturbance activities and subsequent stabilization.

(iii) Installation and maintenance of all erosion and sediment control BMPs.

(iv) The perimeter measures that will be installed prior to commencing land-disturbing activities.

(k) A description of other construction related waste controls that are expected to be implemented on-site. Such details should include, but are not limited to:

(i) The construction/location of vehicle wash pads;

(ii) Litter and waste materials control;

(iii) Sanitary and chemical waste control; and concrete truck washout areas.

(l) A copy of the Tennessee Construction General Permit Notice of Intent and Storm Water Pollution Prevention Plan submitted to the TDEC for the land disturbing activities detailed in the erosion and sediment control plan;

(m) Any other information deemed necessary and appropriate by the owner or operator or requested by the director.

(3) Small lot erosion and sediment control plan contents.

(a) Requirements. (i) Land disturbing activities that affect less than one acre and are not part of a larger common plan of development with an approved plan shall submit and obtain approval of a small lot erosion and sediment control plan prior to obtaining a building permit.

(ii) The plan shall include the following information:

(A) Address/location of land disturbing activity;

(B) Owner/operator name and contact information;

(C) Building permit application number (if available);

(D) Locations of streams, wetlands, ponds, sinkholes, easements, existing drainage structures with respect to the site;

(E) A description of other construction related waste controls that are expected to be implemented on-site. Such details should include, but are not limited to:

- (1) The construction/location of vehicle wash pads;
- (2) Litter and waste materials control;
- (3) Sanitary and chemical waste control;
- and
- (4) Concrete truck washout areas.
- (F) Approximate disturbed area limits; and
- (G) Location of stabilized construction entrance/egress.

(iii) The small site erosion and sediment control plan will be included with the building permit and must be followed by the building permit holder and the owner or operator.

(iv) The director has the discretion to require a fully engineered erosion and sediment control plan as set forth in § 18-805(2). (Ord. #4064-04, Dec. 2004)

18-806. Compliance. (1) Conformity to approved plan. (a) The owner or operator is responsible for maintaining compliance with the approved plan and grading permit.

(b) The approved erosion and sediment control plan shall be followed during the entire duration of construction at the site;

(c) The director may require reports or records from the permittee or person responsible for carrying out the plan to ensure compliance.

(d) No land disturbing activity shall be allowed to commence without prior plan approval by the director.

(2) Amends to the approved plan. (a) Applicability. The owner or operator must amend the plan for any of the following conditions:

(i) Whenever there is a change in the scope of the project, which would be expected to have a significant effect on the discharge of pollutants to the municipal separate storm sewer system and which has not otherwise been addressed in the plan;

(ii) Whenever inspections or investigations by site operators or local officials indicate the plan is ineffective in eliminating or significantly minimizing erosion or off-site sedimentation or discharge of other construction related wastes, or is otherwise not achieving the general objectives of controlling pollutants in storm water discharges associated with construction activity;

(iii) To identify any new contractor and/or subcontractor that will implement a measure of the plan;

(iv) To include measures necessary to prevent a negative impact to legally protected state or federally listed or proposed threatened or endangered aquatic fauna.

(b) The plan shall be amended and resubmitted for approval by the director.

(c) Revisions or modifications on amended plans must be presented on plans submitted to and approved by the director.

(3) Maintenance. (a) Maintenance and inspections of the best management practices shall be implemented in the manner specified by the TDEC Erosion & Sediment Control Handbook, as amended by qualified personnel who are provided by the owner/operator of the land disturbing activity.

(b) The owner/operator shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the owner/operator to achieve compliance with this ordinance. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by an owner/operator only when necessary to achieve compliance with the conditions of this ordinance.

(c) Any inadequate control measures or control measures in disrepair shall be replaced or modified, or repaired as necessary, before the next rain event if possible, but in no case more than seven days after the need is identified. If maintenance prior to the next anticipated storm event is impracticable, maintenance must be scheduled and accomplished as soon as practicable.

(4) Inspections by the city. (a) The director or his/her designee shall have the right to enter onto private properties for the purposes of conducting unrestricted periodic inspections of all land disturbing activities to verify compliance with the approved plan or to determine whether such a plan is necessary.

(b) The director or his/her designee shall have the right to enter onto private properties for the purposes of investigating a suspected violation of this ordinance.

(c) Failure on the part of the owner or operator to allow such inspections by the director or his/her designee shall be cause for the issuance of a stop work order, withholding of a certificate of occupancy, and/or civil penalties.

(5) Enforcement, penalties, and liability. (a) Any person failing to have an approved erosion and sediment control plan prior to starting a land disturbing activity violates this ordinance.

(b) Any owner or contractor who fails to follow an approved erosion and sediment control plan shall have violated this ordinance and shall be subject to a civil penalty, a stop work order, withholding of a certificate of occupancy, and civil damages.

(c) If sediment escapes the permitted property, off-site accumulations of sediment that have not reached a stream shall be removed at a frequency sufficient to minimize offsite impacts. For example, fugitive sediment that has escaped the construction site and has

collected in the street must be removed so that it is not subsequently washed into storm sewers and streams by the next rain or so that it does not pose a safety hazard to users of public streets. Removal of fugitive sediments shall be done by the owner/operator at the owner/operator's expense. This ordinance does not authorize remediation/restoration of a stream without consultation with TDEC, nor does it authorize access by the owner/operator to other private property.

(d) The owner and/or contractor shall allow periodic inspections by the city of all land disturbing activities. Failure to allow such inspections shall be considered a failure to follow the approved plan, and shall be subject to civil penalties, a stop work order, and withholding of a certificate of occupancy.

(e) In order to gain compliance, the director may notify other departments to deny service to the property until the site has been brought into compliance with this ordinance.

(f) Any person who violates any provision of this ordinance may also be liable to the city in a civil action for damages.

(g) The remedies provided for in this ordinance are cumulative and not exclusive, and shall be in addition to any other remedies provided by law.

(h) Neither the approval of a plan under the provisions of this ordinance nor compliance with the conditions of such plan shall relieve any person of responsibility for damage to other persons or property or impose any liability upon the city for damage to other persons or property.

(i) The City of Johnson City, pursuant to Tennessee Code Annotated, § 68-221-1106, hereby declares that any person who violates this ordinance is 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 violations. Civil penalties for any person who violates this ordinance involving property used or to be used solely as a single family residence, situated or to be situated on one (1) acre or less, shall be not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500.00) per day for each day of violation. Each day of violation constitutes a separate violation.

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

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

(ii) Whether or not the civil penalty imposed will be a substantial economic deterrent to the illegal activity;

(iii) The economic benefit gained by the violator from the violation;

(iv) The amount of effort put forth by the violator to remedy this violation;

(v) Any unusual or extraordinary enforcement costs incurred by the City of Johnson City;

(vi) Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.

(k) The City of Johnson 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 ordinance or any actual damages caused by the violation.

(l) Appeal from any assessment of civil penalty or damages or both shall be to the Board of Commissioners of the City of Johnson City. A written petition for review of such damage assessment or civil penalty shall be filed by the aggrieved party in the office of the City Manager of the City of Johnson City within thirty (30) days after the damage assessment or civil penalty is served upon the violator either personally or by certified mail, return receipt requested. Failure on part of the violator to file a petition for appeal in the office of the City Manager of the City of Johnson City shall be deemed consent to the damage assessment or civil penalty and shall become final.

(m) Whenever any damage assessment or civil penalty has become final because of a violator's failure to appeal the city's damage assessment or civil penalty, the city may apply to the chancery court for a judgment and seek execution of the same. (Ord. #4064-04, Dec. 2004)