

ORDINANCE 2014-104

AN ORDINANCE OF THE CITY OF SMITHS STATION FOR CONSTRUCTION, POST CONSTRUCTION, EROSION AND SEDIMENT CONTROL

SECTION 1. JURISDICTION

The provisions of this ordinance shall apply to all lands within the corporate limits of the City of Smiths Station.

SECTION 2. PURPOSE/INTENT

During the construction process, soil is most vulnerable to erosion by wind and water. Eroded soil endangers water resources by reducing water quality and causing the siltation of aquatic habitat for fish and other desirable species. Eroded soil also necessitates repair of sewers and ditches, dredging of watercourses, and causes air quality impacts when sediment particles become entrapped in the atmosphere. In addition, clearing and grading during construction causes the loss of native vegetation. Vegetation holds the soil in place, holds and filters storm water, provides habitat for terrestrial and aquatic life, and provides a healthy living environment for Smiths Station citizens.

This local regulation further purposes to safeguard persons, protect property, prevent damage to the environment and promote the public welfare by guiding and regulating the design, construction, use, and maintenance of land disturbances in the City of Smiths Station. To ensure the prompt development, restoration, replanting and effective erosion control of property after land clearing and grading.

SECTION 3. DEFINITIONS

For the purposes of this ordinance, the following shall mean:

Accidental Discharge – A discharge prohibited by this ordinance into the municipal separate storm sewer system that occurs by chance and without planning or consideration prior to occurrence.

ADEM - The Alabama Department of Environmental Management.

Alabama Handbook – The most recent edition of the *Alabama Handbook for Erosion Control, Sediment Control and Stormwater Management on Construction Sites and Urban Areas* - Volume 1 and Volume 2 from the Alabama Soil and Water Conservation Committee provides guidance for the prevention or minimization of problems related to erosion, sedimentation and stormwater management on construction site and erodible urban areas. *The Alabama Handbook* provides a basis for developing sound plans implementing appropriate measures for construction and post construction best management practices (BMPs).

Adverse Impact – Any harmful effect on waters or wetlands, including their quality, quantity, surface area, species composition, aesthetics or usefulness, for human or natural uses which are

ORDINANCE 2014-104

or may be potentially harmful or injurious to human health, welfare, safety or property or to biological productivity, diversity or stability, or which would unreasonably interfere with the enjoyment of life or property.

Authorized Personnel - Any employee or designee of the City designated by the Mayor to enforce this ordinance.

Authority – The City of Smiths Station and its authorized representatives.

Best Management Practices (BMPs) - Schedules of activities and practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site stormwater runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

BMP Minimum Requirements - Those basic and standard practices, devices and/or policies as set forth within the Sediment Control Practices section of the most recent version of the *Alabama Handbook for Erosion Control, Sediment Control and Stormwater Management on Construction Sites and Urban Areas* - Volume 1 and Volume 2 from the Alabama Soil and Water Conservation Committee, to serve as a minimal (but not inclusive) level of protection on all sites requiring a land disturbance permit.

BMP Minimum Requirements must be approved by the Authority and require: (a) Site specific perimeter controls needed. These may include sediment barriers installed around the perimeter of the site (brush barriers, straw bale barriers and silt fencing), stabilized berms and channels around the site and may include settling structures (temporary sediment traps) constructed along the site perimeter. (b) gravel construction exit pad using D.O.T. #1 course aggregate, properly installed. Details can be found in the Alabama Handbook.

Buffer - Undisturbed, natural vegetative setback from streams, rivers, watercourses and regulatory floodways. Minimum buffer requirements within the City limits are set forth in the most current zoning ordinance of the City of Smiths Station.

CBMPP - Construction Best Management Practices Plan.

Commercial - Developments within commercial and industrial zoning districts. For the purpose of this ordinance it shall also include utility facilities, utility boards and authorities, Person, contractor; installation, expansion and repair of existing underground components regardless of zoning districts where land disturbance is necessary.

Construction Best Management Practices Plan (CBMPP) (BMP Plan, Construction Best Management Practices Plan or CBMPP) - A detailed schedule of activities and practices to be implemented on the specific site showing proposed erosion and sedimentation controls. This plan should include location of silt fence and hay bales, construction entrance, protection of existing and proposed catch basins, maintenance procedures, and other management practices to

ORDINANCE 2014-104

prevent the discharge of pollutants in stormwater to the maximum extent practicable. This plan identifies site specific measures and sequencing to be used on a development site for erosion and sediment control before, during and after construction.

Control Measures - Those BMP devices as specified on the site Construction Best Management Practices Plan (CBMPP) (also known as BMP plan), as well as those specified in the City of Smiths Station "BMP Minimum Requirements" guideline. Control measures may include, but are not limited to hay bales, silt fences, earthen berms, retaining walls temporary or permanent ditch checks, check dams, riprap dams, stormwater retention devices or sediment traps, and any measure certified by an Alabama Professional Engineer or Qualified Credentialed Professional (QCP).

Critical Areas - Environmentally and ecologically sensitive areas to include but not limited to high risk areas for erosion and/or those within 100' of floodways, floodplains, wetlands, water courses and gullies, whether applicable to a single family dwelling or otherwise.

Drainage Way - Any channel that conveys surface runoff through the site, whether intermittent or permanent.

Discharge – shall have the meaning set out in Alabama Administrative Code Section 335-6-6-.02.

Erosion and Sediment Controls – The application of measures to reduce Erosion of land surfaces and Discharges of sediment from a development site.

Erosion Control - Measures that prevent erosion (process by which the land surface is worn away).

Grading - Altering the shape of ground surfaces to a predetermined condition; this includes, but is not limited to clearing or stripping, excavation (digging, scooping or other methods of removing earth materials), cutting, filling, stockpiling and shaping or any combination thereof, and shall include the land in its cut or filled condition.

Land Disturbance - For purposes of this ordinance, any grading, filling, draining, excavating, ditching or other earthmoving operation which could result in damage to adjacent lands, public or private, from erosion thereto and/or siltation shall be deemed land disturbance activity. The cutting of trees (i.e. silviculture) that does not create soil disturbance or aggravate erosion shall not be deemed land disturbing.

Land Disturbance Permit - A permit issued by the City of Smiths Station prior to land disturbing activity within the City.

NOI - Notice of Intent. The application that must be submitted to ADEM to obtain coverage under the agency's general permit regulating Land Disturbing Activities, applicable to discharges from sites that result in total land disturbance of one acre or greater sites and sites less than one acre but are a part of a common plan of development or sale.

ORDINANCE 2014-104

NPDES - National Pollutant Discharge Elimination System. The national program of issuing, modifying, revoking, etc., permits under Sections 307, 318, 402 and 405 of the federal Clean Water Act (CWA), as well as the state permitting program implemented and administered by ADEM.

Perimeter Control - A barrier that prevents sediment from leaving a site either by filtering sediment - laden runoff or diverting it to a sediment trap or basin.

Permit – Any permit issued pursuant to this ordinance, permitting Discharges to the MS4 under the NPDES.

Person - Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

Permittee – Any Applicant that receives a Permit to Discharge under the NPDES.

Phasing - Land disturbance of a parcel of land in distinct phases, with the stabilization of each phase before the clearing of the next.

Pollutant - Includes but not limited to, dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, silt, sediment and industrial, municipal and agricultural waste discharged into water.

Post-Construction Strategies –BMPs and other measures for activities that take place after construction occurs, including structural and non-structural controls to obtain permanent stormwater management over the life of the property's use.

QCI - Qualified Credentialed Inspector - An operator, operator employee, or operator designated qualified person who has successfully completed initial training and annual refresher Qualified Credentialed Inspection Program (QCIP) training, and holds a valid certification from an ADEM approved cooperating training entity.

QCP - Qualified Credentialed Professional - Any staff member of ADEM, designated by the Director of ADEM, a Professional Engineer, an Alabama Natural Resources Conservation Service professional designated by the State Conservationist, or a Certified Professional in Erosion and Sediment Control (CPESC). A QCP includes a registered landscape architect, a registered land surveyor, a Professional Geologist, a registered forester, a registered Environmental Manager as determined by the national Registry of Environmental Professionals (NREP), and a Certified Professional Soil Scientist (CPSSC) as determined by ARCPACS, and other Department accepted professional designations, certifications, and/or accredited university programs that can document requirements regarding proven training, relevant experience, and continuing judgments regarding Alabama NPDES rules, the requirements of this chapter, planning, design implementation, maintenance, and inspection of construction sites, receiving waters, BMPs, remediation/cleanup of accumulated offsite pollutants from the regulated site, and reclamation or effective stormwater quality remediation of construction associated land

ORDINANCE 2014-104

disturbances, that meet or exceed recognized technical standards and guidelines, effective industry standard practices, and the requirements of this chapter. The QCP shall be in good standing with the authority granting the registration or designation.

Sediment Control - Measures that prevent and/or minimize eroded sediments from leaving the site.

Silviculture - The care and cultivation of trees; forestry.

Stabilization - Practices that prevent exposed soils from eroding.

Start of Construction - Beginning with the first land disturbance activity associated with a development, including installation of BMPs and followed by land preparation such as grading (see definitions).

Stormwater Management – The incorporation of a variety of activities and equipment into a plan to address concerns associated with Stormwater for the purpose of preventing pollution, improving water quality, keeping Pollutants out of the runoff, and the implementation of BMPs.

Variance – The modification of the minimum Stormwater Management requirements in situations in which exceptional circumstances, applicable to the Site with respect to which the variance is requested, exist so that strict adherence to the provisions of this ordinance would result in unnecessary hardship and the granting of such modification would not result in a condition contrary to the intent of this ordinance.

Watercourse - means gullies, rivers, streams, intermittent streams, ephemeral streams, ditches, brooks, channels, lakes, ponds, manmade ponds, estuarine waters, swamps, bogs, vernal pools, and all other bodies of water, natural and artificial, public or private which have defined banks and carry water at least a portion of each year.

Waterway - A channel that directs surface runoff to a watercourse, or to the public storm drain.

Wetland - Areas and waters that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated conditions.

SECTION 4. PERMITS

A. Prior to any construction, land disturbing activities, or local approvals, any Person disturbing greater than or equal to one acre and sites less than one acre but are part of a common plan of development or sale shall apply for an NPDES permit and provide to the City (1) completed ADEM Notice of Registration (NOI) (2) CBMPP (3) ADEM Notice of Receipt of Registration. An Initial BMP Inspection is required prior to commencing land disturbing activity (except that which is necessary to install such BMPs) to ensure conformance with the CBMPP.

ORDINANCE 2014-104

B. Non excluded land disturbing activities less than one acre in size, although not required to obtain an NPDES permit, are prohibited from land disturbing activity within the City until the landowner or agent has obtained a permit therefore from the City. Upon receipt of a the complete permit application, permittee should immediately install those control measures (BMPs) specified in the Construction Best Management Practices Plan (CBMPP), if any, as well as the BMP Minimum Requirements. Furthermore, land disturbance activity (except that which is necessary to install such BMPs) shall not commence until an Initial BMP Inspection is completed, to ensure conformance with the developer's plan as approved by the QCP and/or the City of Smiths Station BMP Minimum Requirements.

C. The land disturbance permit review period shall be within thirty (30) days of the City's receipt of a completed land disturbance permit application.

D. The City may require the applicant to post a bond in the form of a government security, cash, irrevocable letter of credit, or any combination thereof up to but not exceeding three thousand dollars (\$3,000) per acre of the proposed land disturbing activity. If the applicant fails to comply with the conditions of his NPDES permit or the requirements as outlined in the approved CBMPP, the bond may be called by the authority and used to bring the site into compliance.

E. The following land disturbing activities are excluded from the requirement of this policy:

- (1) Any emergency activity that is immediately necessary for the protection of life, property, or natural resources. Immediately upon completion of emergency activity the contractor shall install all control measures and initiate restoration/cleanup activities as required by this policy.
- (2) Any land change on property about which the owner of the property submitted information and proved to the satisfaction of the authority that such property does not drain to the MS4.
- (3) Silviculture.
- (4) Agriculture.
- (5) Such minor land disturbing activities as home gardens, landscaping on individual residential lots (excluding landscaping performed by, on behalf of, a developer or builder, who builds a house on any such lot), home repairs, home maintenance work, minor additions to houses, the construction, maintenance or repair of accessory structures and other related activities which result in minor soil disturbance.
- (6) Minor land disturbing activities such as individual connections for utility services and sewer services for single or two-family residences, minor grading for driveways, yard areas and sidewalks, excluding grading done by, or on behalf of, a developer or builder in connection with the construction of a residence.
- (7) Minor maintenance, minor repair, and minor extension of an existing underground public utility, except sewer lines; provided, that the utility company which owns such lines has received approval from the authority for such maintenance, repair and extension; and provided further, that any utility company making a minor extension in connection with which the land disturbed consists of less than one thousand (1,000) linear feet must give written notice of such extension prior to the commencement of such minor extension.
- (8) The construction, repair or rebuilding of railroad tracks.
- (9) Minor subsurface exploratory excavations under the direction of soils engineers, engineering geologists, or soil scientists.

ORDINANCE 2014-104

- (10) The opening of individual burial site in property which has been approved for such use by all necessary governmental authorities.
- (11) The construction of water wells or environmental monitoring wells.

Although not required to submit a CBMPP for review and approval, Persons engaged in activities subsection (2) through (11) shall remain responsible for otherwise conducting such activities in accordance with the provisions of this ordinance and any other applicable regulation, including the proper control of sediment and runoff to the MS4.

If monitoring or complaints indicate a stormwater pollution problem, the exclusion can be revoked and all permitting requirements will be met.

SECTION 5. CONSTRUCTION BEST MANAGEMENT PRACTICES PLAN (CBMPP)

- A. Applicable for developments classified as multifamily (3 units or more), subdivisions, commercial, and industrial construction, and/or those in critical areas.
- B. Plan shall be prepared by a certified erosion and sediment control specialist, such as a QCP and designed in accordance with the most recent version of the Alabama Handbook for Erosion Control, Sediment Control, and Stormwater Management on Construction Sites.
- C. All engineering plans shall be subject to the more restrictive requirements of these provisions, or the Lee County Stormwater Management Program Plan and the City's and Lee County Subdivision and Land Development Regulations.
- D. The plan shall at a minimum include the following:
 - (1) Map identifying topography, natural features such as watercourses, waterways, wetlands, buffers, and proposed construction areas.
 - (2) Buffers shall be in accordance with the requirements of the Natural Resource Protection Standards, Stream Buffers and Buffers along zoning district boundaries and property lines established in the current City of Smiths Station Zoning Ordinance.
 - (3) Sequence (and timeline) of construction of the development, such as BMP installation, phasing, clearing and grading, drainage installation, utility installation, infrastructure and building construction and landscaping.
 - (4) Erosion and sediment controls used throughout all phases of construction and details of permanent stabilization methods to be used at completion.
 - (5) Provisions for maintenance of erosion and sediment controls, as well as daily and rain event inspections for effectiveness of controls.
- E. Submittal, review and approval procedures.
 - (1) CBMPP shall be submitted in conjunction with the land disturbance permit application.
 - (2) Review of the CBMPP shall be within thirty (30) days of submittal to determine the plan's conformance with these provisions
 - (3) The City shall:

ORDINANCE 2014-104

- a. Review the plan with reasonable, justifiable conditions to accomplish objectives and ensure that the plan meets or exceeds the provisions of the City BMP minimum requirements and the Alabama Handbook.
- b. City may elect to require a third party review for sites in or near critical areas.

F. Modifications to the Plan

- (1) Major modifications to the CBMPP, such as the redesign of BMPs or removal of BMPs, shall be submitted to the City administration/planning department and shall be processed and approved, or disapproved, in the same manner as the original plan.
- (2) Minor modifications to the CBMPP, such as the use of additional temporary BMPs, may be addressed on site as needed to ensure compliance with the provisions.
- (3) If a BMP failure occurs, as deemed by the City code enforcement officer and/or staff with QCI certification, the City may require that the CBMPP be modified and resubmitted.

G. All sites, including single and two-family residential, shall comply with the City BMP minimum requirements, as well as the CBMPP (if any).

SECTION 6. DESIGN REQUIREMENTS

Erosion control practices, sediment control practices, and waterway crossings shall meet the design criteria set for in the most recent version of the Alabama Handbook and shall be adequate to prevent transportation of sediment from the site.

A. Clearing and Grading

- (1) Clearing and grading of natural resources, such as wetlands, waterways, and watercourses, shall not be permitted, except when in compliance with all provisions of this ordinance, the most current version of the City's zoning ordinance, United States Army Corps of Engineers, ADEM and any and all federal, state and local regulations and permitting requirements.
- (2) Clearing techniques that retain natural vegetation, natural drainage patterns are strongly encouraged. Required compliance in accordance with the Natural Resource Protection Standards, Stream Buffers and buffers between zoning district boundaries and property lines established in the City's most current zoning ordinance.
- (3) Phasing shall be required on all sites, with the size of each phase to be established by the QCP and approved by the Authority or Authorized Personnel. The City planning commission may allow exceptions on a case by case basis for a justifiable reason and with the approval of the Authority or Authorized Personnel. A BMP or erosion control plan shall be required for each phase of clearing.
- (4) Clearing, except as is necessary to install BMPs, shall not begin until the a land disturbance permit has been issued by the City.
- (5) Cut and fill slopes shall be no greater than 3:1, except as approved by the Authority or Authorized Personnel.

B. Erosion Control

- (1) **Stabilization Requirements** - Any area of land from which the natural vegetative cover has been either partially or wholly cleared or removed by development activities shall be revegetated within ten (10) days from the substantial completion of such clearing and construction. The following criteria shall apply to revegetation efforts: Reseeding must be done with an annual or perennial cover crop accompanied by placement of a mulch material or its equivalent of

ORDINANCE 2014-104

sufficient coverage to control erosion until such time as the cover crop is established over ninety percent (90%) of the seeded area.

(2) If vegetative erosion control methods, such as seeding, have not germinated to a coverage of at least ninety percent within ten (10) days, the City may require that the site be reseeded, sodded or stabilized with alternative cover.

(3) Replanting with native woody and herbaceous vegetation must be accompanied by placement of mulch material or its equivalent of sufficient coverage to control erosion until the plantings are established and are capable of controlling erosion. Revegetation sites must exhibit a survival rate of at least seventy-five percent (75%) of the cover crop throughout the year immediately following the revegetation. Revegetation must be repeated in successive years until the minimum seventy-five percent survival rate for one (1) year is achieved.

(4) On steep slopes or in drainage ways, special techniques that meet or exceed design criteria outline in the Alabama Handbook shall be used to ensure stabilization

(5) Soil stockpiles must be stabilized at the end of each work week or if a rain event is predicted.

(6) Techniques, as referenced in the Alabama Handbook shall be employed to prevent the blowing of dust or sediment from the site onto adjacent properties. The use of chemical agents in or near critical areas is discouraged.

(7) Right of way disturbances shall be stabilized with sod or a combination of sod and seed/mulch. Seed and mulch alone shall not be acceptable.

(8) Techniques shall be employed to divert upland runoff past or around disturbed slopes.

C. Sediment Controls

(1) Sediment controls shall be provided in the form of perimeter controls.

(2) Where possible, sediment basins shall be designed in a manner that allows adaptation to provide long term stormwater management.

(3) Adjacent properties shall be protected.

D. Waterways and watercourses

(1) All residential and nonresidential development shall be preceded by the identification and delineation of wetlands and required stream buffers as established in the City's current zoning ordinance. Required stream buffer boundaries shall be protected by installing environmental fence, or the like, along the boundary of the buffer prior to any land disturbance. Marking by paint or stakes alone will not be accepted.

(2) When a watercourse must be crossed regularly during construction, a temporary stream crossing shall be provided, and an approval obtained from the United States Army Corps of Engineers, state and federal agencies and copies of approvals provided to the City.

(3) When in-channel work is conducted, the channel shall be stabilized after the work is completed.

(4) Any construction of a crossing of a waterway or watercourse in a floodway must be engineered with a no-rise certificate and shall have a minimal temporary or permanent disturbance of the floodways bottom condition.

(5) All on-site stormwater conveyance channels shall be designed according to the criteria outlined in the Alabama Handbook.

(6) Outlets of all pipes and paved channels shall have adequate stabilization to prevent erosion. Riprap may be required for stabilization if vegetative measures prove to be ineffective at controlling erosion in waterways and watercourses.

ORDINANCE 2014-104

E. Construction site exit pad

- (1) A stabilized construction exit pad shall be required on all development and construction sites, including single and two family residences, in order to ensure sediment is not tracked on to public streets from the construction site.
- (2) Sediment accumulation and tracking on public rights-of-ways, such as streets, alleys, ditches and sidewalks, is not allowed and shall be removed daily.

F. Completion of construction activities

- (1) All open channels and ditches shall be permanently vegetated upon final BMP inspection. Seed and mulch shall not be accepted. If sod is used on slopes, corners will need to be pinned per the Alabama Handbook.
- (2) Common areas, such as detention basins, shall be permanently stabilized upon final inspection. Seed and mulch shall not be accepted.
- (3) Prior to final BMP inspection, all construction waste and debris, silt fences, hay bales, inlet protection, and other BMPs shall be removed, except those required for the next phase of construction, or those deemed necessary for continued stabilization by Authorized Personnel.

SECTION 8. RIGHT OF ENTRY

The property owner shall grant to the City of Smiths Station and their Authorized Personnel the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection. This includes the right to enter a property when it when it has a reasonable basis to believe that a violation of this ordinance is occurring or has occurred, and to enter when necessary for abatement of a public nuisance or correction of violation of this ordinance.

SECTION 9. INSPECTIONS

A. The City of Smiths Station shall conduct unannounced and scheduled BMP inspections of the construction activity and shall determine compliance or non-compliance with the provisions of this ordinance. The following inspections shall be performed at a minimum on development and construction sites within the corporate City limits:

- (1) Initial BMP inspection.
- (2) Regular inspections shall take place approximately once every month of all active construction sites to monitor BMPs and note any maintenance needed to existing BMPs or the need for additional BMPs.
- (3) Within 24 hours of a qualifying rain event (0.75 inch).
- (4) Final BMP inspection prior to the issuance of a certificate of occupancy.
- (5) City BMP inspections in no way supersede or replace any state or federal inspection requirements.

B. The Person/owner/contractor/permittee shall make daily and rain event inspections of all control measures throughout the construction process to ensure the overall effectiveness of the CBMPP.

ORDINANCE 2014-104

SECTION 10. ENFORCEMENT

A. It shall be unlawful to violate any provision(s) of this ordinance.

B. Whenever the development is determined to be in noncompliance, the owner, contractor, and/or permittee shall be notified of the violations and/or deficiencies. Upon notification, the owner/contractor/permittee shall have 72 hours to bring the site into compliance. If rainfall is predicted within the 72 hours, then the site must be in compliance prior to that rainfall event. If the Person/owner/contractor/permittee fails to respond within the required timeframe and/or fails to take corrective action within the specified time, the Authority may proceed with the following enforcement action:

1. Compliance Order: The Authority may issue a compliance order to the violator, directing that, within a specified time period, adequate structures and devices be installed, or procedures implemented, and properly operated, or other action be taken, to remedy such violation. Compliance orders may also contain such other requirements as may be reasonably necessary and appropriate to address such violation, including the construction of appropriate structures, installation of devices and self-monitoring and management practices.
2. Cease and Desist Orders: When the Authority finds that any Person has violated, or continues to violate, this ordinance or any order issued under this ordinance in such a manner as to materially adversely affect the health, welfare, environment, or safety of persons residing or working in the neighborhood or development site so as to be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood; the Authority may issue an order to such Person to cease and desist all Land Disturbance Activities immediately, and direct such Person in violation of this ordinance to:
 - a. comply with this ordinance forthwith; or
 - b. take such appropriate remedial or preventive action as may be required to address properly a continuing or threatened violation of this ordinance.

C. The City may also issue a Compliance Order, as well as cause the suspension of construction and building inspections for the following reasons:

- a. Violations of the terms of the permit.
- b. Site development which may adversely affect the health, welfare, or safety of persons residing near, working in or adjacent to the development.
- c. Site development that is detrimental to the public welfare or injurious to property or improvements of adjacent lands.

ORDINANCE 2014-104

- d. Violations that are detrimental to the environment, including sensitive habitats and aquatic resources.
- e. Any offsite sedimentation
- f. Any water quality impact, as defined by State and/or Federal agencies.

D. Additionally, whenever the City determines that off site sedimentation is occurring or has occurred as a result of a land disturbance activity, despite application and maintenance of protective practices, the Person responsible for maintenance will be required to take additional protective action. Furthermore, if it is determined that sedimentation has occurred off site onto right-of-way, or into manmade stormwater drainage systems, the sediment shall be removed in its entirety. In stream and/or wetland sedimentation removal shall be determined by appropriate State and Federal agencies.

E. It shall be unlawful for any Person to:

1. Violate any provision of this ordinance;
2. Violate the provisions of any Permit issued pursuant to this ordinance; or
3. Fail or refuse to comply with any lawful notice to abate or take corrective action issued by the Authority.

Any Person who violates this ordinance or any permit issued pursuant to this ordinance and fails or refuses to comply with any lawful notice issued as set forth herein, shall be guilty of a violation and upon conviction, upon conviction thereof, be fined not less than \$100 or more than \$500 and in addition shall pay all costs and expenses involved in the case, including those penalties set forth in Code of Alabama 1975 Section 11-45-9. Each day during which any violation of any of the provisions of this ordinance is committed, continued, or permitted shall constitute a separate offense. Nothing herein contained shall prevent the City from taking such other lawful actions as are necessary to prevent or remedy of any violation.

- a. Should the City, or any agent thereof, undertake needed remedies due to contractor negligence, the City shall bill the Person/owner/contractor/permittee for an amount based on actual costs of hourly labor and materials, and at a minimum of two (2) hours and a minimum of \$150/hour. This fee shall apply to, but not be limited to, street, sidewalk, right of way and storm drain clean up of sedimentation and/or other pollutants.
- b. The Authority may initiate proceedings in any court of competent jurisdiction against any Person who has, or who, the Authority has reason to believe, is about to:
 - a. Violate any provision of this ordinance;
 - b. Violate any provision of a Permit; or
 - c. Fail or refuse to comply with any lawful order issued by the Authority.

ORDINANCE 2014-104

- c. The Authority may also initiate civil proceedings in any court of competent jurisdiction seeking monetary damages for any damages caused to public Stormwater facilities by any Person, and may seek injunctive or other equitable relief to enforce compliance with the provisions of this ordinance or to force compliance with any lawful orders of the Authority.

F. Discharge to the MS4 made in violation of this ordinance or of any condition of a Permit issued pursuant to this ordinance shall be subject to correction and/or abatement in accordance with applicable law.

G. ALR040036, Alabama's Phase II MS4 NPDES Permit allows the Authority to rely upon ADEM for the enforcement of certain violations of this ordinance. The Authority hereby expresses its intent to rely upon ADEM for enforcement of violations of this ordinance, as allowed ALR040036, Alabama's Phase II MS4 NPDES Permit, and agrees to promptly notify ADEM upon observing evidence of any known or suspected violations. Furthermore, no enforcement action will be taken by the Authority for a violation of the terms of this ordinance if any of the following has occurred:

1. ADEM has issued a notice of violation with respect to the same alleged violation and is proceeding with an enforcement action with respect to such alleged violation;
2. ADEM has issued an administrative order with respect to the same alleged violation and is proceeding with an enforcement action with respect to such violation; or
3. ADEM has commenced, and is proceeding with, an enforcement action, or has completed any other type of administrative or civil action, with respect to such alleged violation.

Any determination or resolution made by ADEM with respect to an alleged violation shall be final, and the alleged violation will not be made the subject of any additional enforcement action by the Authority for any alleged violations of this ordinance and/or provisions of any Permit issued pursuant to this ordinance. However, for violations that have not been appropriately corrected and/or abated pursuant to ADEM's enforcement action, an enforcement action may be pursued by the Authority.

H. Notwithstanding any other provision in this ordinance to the contrary, in the event of an immediate threat to the public health or welfare, the Authority may take all appropriate measures to remove or alleviate such threat.

I. In the event of any Accidental Discharge of a hazardous substance or a significant spill of a hazardous substance to the MS4 which could constitute a threat to human health or the environment, the Permittee of the Site shall give notice to the Authority and the local Emergency Management Authority in the same manner and within the same time as is required by State regulations for notice to ADEM.

Absent a compelling public interest to the contrary, it shall not be a defense for the Permittee in an enforcement action that it would have been necessary to halt or reduce the business or activity of the Site, or any project or facility thereon, to maintain water quality and minimize any adverse impact that the discharge may cause.

ORDINANCE 2014-104

SECTION 11. PERMIT FEES

The Permit Fee for a Land Disturbance Permit is as follows:

Residential (One and Two Family - single site)	\$25
Commercial, Multi-Family and Other Developments	
.....	\$100 up to 5 acres plus
.....	\$75 for each additional 1-5 acre increments.

SECTION 12. VARIANCES AND APPEALS

The Authority may grant a Variance from the requirements of this ordinance if there exist exceptional circumstances applicable to a Site such that strict adherence to the provisions of this ordinance will result in unintended consequences. The Applicant shall prepare a written request for a Variance stating the specific Variance sought and the reasons, with supporting data, for granting such Variance. This request shall include descriptions, drawings, calculations, and any other information necessary to evaluate the proposed Variance. The Authority will review the submitted material and make a written determination to approve or disapprove the Variance within ten (10) working days after receipt of such a request. There shall be no appeal process for the Variance request. The Authority is the final arbiter of the Variance request.

SECTION 13. LIABILITY

Neither the issuance of a Permit pursuant to this ordinance, nor compliance with the provisions of this ordinance, shall relieve any Person/owner/contractor/permittee of the responsibility for damage to any person or property otherwise imposed by law.

Nothing herein shall be construed to require the City or its officials, employees, agents or attorneys to restore or cause the restoration of property damaged by Erosion or Sedimentation in violation of this ordinance or to otherwise seek or assist others in seeking compensation to private property owners for any such damage caused by a violation of this ordinance. The City and its officials, employees, agents and attorneys shall not be liable for any condition or damages that result from any failure to observe or recognize a hazardous condition, any failure of an approved plan to prevent Erosion or Sedimentation, or any failure of the City to cause owners and builders to adhere to the terms of this ordinance. Nothing herein shall be construed to expand the liability of the City or its officials, employees, agents or attorneys nor shall it create any additional, further, different or expanded claim or cause of action.

Nothing in this ordinance shall be construed to limit the Authority to enforce rules and regulations regarding: (a) charges, limits and restrictions on the Discharge of waste into the sanitary sewerage system in the City; (b) health or sanitation ordinances of the City enforced by

ORDINANCE 2014-104

the Lee County Health Department; or (c) ordinances governing the sanitation of premises where animals are kept. This ordinance shall be cumulative to and in furtherance of any statutory, common law, or other legal right, duty, power, or authority possessed by the City. Compliance with this ordinance shall not excuse any Person from compliance with any other federal, state or local law, ordinance, regulation, rule or order.

It shall be unlawful for any Person to provide false information to the Authority when such Person knows or has reason to know that the information provided is false, whether such information is required by this ordinance or any approval granted under this ordinance.

SECTION 14. SEVERABILITY

The provisions of this ordinance are declared to be severable, and if any provision of this ordinance is declared to be invalid by a court of competent jurisdiction, this determination shall not affect, impair, or invalidate the remainder of this ordinance, but shall be confined in its operation to the section, paragraph, subparagraph, clause or phrase of this ordinance in which such determination shall have been made.

Approved and adopted this the _____ day of _____ 2014.

LaFaye Dellinger, Mayor

ATTEST:

Jerry Bentley, City Clerk