Ord. #5446

AN ORDINANCE TO AMEND CHAPTER 33, ARTICLE IV, OF THE CITY OF MEMPHIS CODE OF ORDINANCES TO CREATE THE MEMPHIS STORMWATER BOARD AND MODIFY PROVISIONS RELATED TO CIVIL PENALTIES

WHEREAS, the City of Memphis is authorized to regulate storm water discharges in accordance with applicable state law in order to protect the public health; and

WHEREAS, the City of Memphis is further authorized to impose a civil penalty and assess damages against any person who violates the provisions of the City's storm water ordinance; and

WHEREAS, the imposition of such civil penalties and assessment of damages by the City are subject to review by a board established to hear appeals by any person incurring a damage assessment or civil penalty; and

WHEREAS, the administration seeks to amend Chapter 33, Article IV, of the existing City Code of Ordinances to establish such board and make additional changes deemed necessary to further enhance the City's compliance with the NPDES permit issued by the Tennessee Department of Environment and Conservation ("TDEC") and applicable regulations which govern storm water discharges into the City of Memphis MS4 Storm Water System.

SECTION 1. NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Chapter 33, Article IV, is hereby amended as follows:

(1) By deleting the language set forth in Section 33-249 and replacing such language to read as follows:

Section 33-249 – Civil Penalty for Violation

A. Any person who violates the provisions of this chapter shall be subject to a civil penalty of not less than fifty dollars ($50.00) or more than five thousand dollars ($5,000) per day for each day of violations. Each day of violation may constitute a separate violation. The imposition of a civil penalty under this section may be in addition to the recovery of damages as provided in subsection D, below.

B. The City shall give the violator thirty-days (30) notice of the assessment of any penalty.

C. In assessing a civil penalty, the City may consider the following factors:

1. The harm done to the public health or the environment;

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2. Whether the civil penalty imposed will be substantial economic deterrent to the illegal activity;

3. The economic benefit gained by the violator;

4. The amount of effort put forth by the violator to remedy this violation;

5. Any unusual or extraordinary enforcement costs incurred by the City;

6. The amount of penalty established by ordinance or resolution for specific categories of violations, if applicable; and

7. Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.

D. 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 chapter, or any other actual damages caused by the violation.

E. The violator may appeal the civil penalty or damage assessment by filing a petition for review with the Memphis Stormwater Board in accordance with Section 33-255. If a petition for review of such damage assessment or civil penalty is not filed within thirty (30) days after the damage assessment or civil penalty is served in any manner authorized by law, the violator shall be deemed to have consented to the damage assessment or civil penalty and it shall become final.

F. An appeal of a decision of the Memphis Stormwater Board shall be made pursuant to title 27, chapter 9 of the Tennessee Code Annotated.

G. Whenever any damage assessment or civil penalty has become final because of a person's failure to appeal the damage assessment or civil penalty, the City may apply to the appropriate chancery court for a judgment and seek execution of such judgment. In accordance with TCA 68-221-1106(e) the court, in such proceedings, shall treat the failure to appeal such damage assessment or civil penalty as a confession of judgment.

(2) By deleting Section 33-250 in its entirety.

(3) By revising Section 33-252 to read as follows:

Section 33–252 Damages – Disposition of funds.

All damages and civil penalties collected under the provisions of Section 33-249, following the adjustment for the expenses incurred in making

such collections shall be allocated and appropriated to the Storm Water Management Program for its administration.

(4) By deleting Section 33-254 in its entirety.

SECTION 2. BE IT FURTHER ORDAINED THAT Chapter 33, Article IV, Section 33-222 (3) is hereby amended to state as follows:

SECTION 2. BE IT FURTHER ORDAINED THAT Chapter 33, Article IV, Section 33-222 (3) is hereby amended to state as follows:

(3) - Best Management Practices for Construction and Other Activities

The minimum standards for controlling erosion and sedimentation to prevent or minimize the discharge of stormwater from a construction activity, shall be set forth in the Tennessee Department of Environment and Conservation's "Erosion and Sediment Control Handbook" as adopted and amended from time to time. These erosion and sediment control best management practices ("BMPs") apply to all construction activity regardless if there is a discharge of stormwater from the construction site. The City subject to its sole discretion may waive these BMPs for any construction less than 1 acre.

In addition to construction activities, other activities that shall implement BMPs to prevent or minimize runoff from the site include, but is not limited to: (a) stockpile soil, sand, mulch, etc. that is potentially exposed to rainfall (such as, but not limited to landscape supply yards and nurseries); (b) "contaminants" as defined in Section 33-207 of Ordinance #4538 flowing from a business site onto any surface with the potential for the contaminants to enter the Storm Water System, and c) any other situation as identified by the Director of Public Works or his designee. BMPs may include those set forth in the "Erosion and Sediment Control Handbook" or other BMPs designed to prevent runoff from the site.

SECTION 3. BE IT FURTHER ORDAINED THAT, Chapter 33, Article IV, is further amended by adding the following:

Section 33-255. Memphis Stormwater Board – Created.

(a). There is hereby created and established the Memphis Stormwater Board (hereafter "board") to hear appeals filed by any person relating to an order, permit or such other

actions deemed appropriated by the Director or incurring a civil penalty or damage assessment imposed by the City pursuant to the City of Memphis Stormwater Ordinance .

(b). The board may issue subpoenas requiring attendance of witnesses and production of such evidence as requested, administer oaths, and take testimony as the board deems necessary to fulfill its purpose.

(c). The membership of the board shall consist of five members and two alternate members as follows:

Representative Group (# of members)	**Initial Length of Term**	**Subsequent Length of Term**
Development or Industrial Community (1)	1	2
Development or Industrial Community (1)	2	2
Private Citizenry (1)	2	2
Civil or Environmental Engineers (2)	1	2
Civil or Environmental Engineers (1)	2	2
Public Interest Group/University (1)	2	2

(1) The members and the alternates shall be appointed by the Mayor and confirmed by the Council.

(2) Each member and alternate member appointed by the Mayor must have been a resident of Memphis for not less than one (1) year, and shall continue to maintain such residency throughout such member's term.

(3) Each member shall serve without compensation and may be reappointed, but do not succeed themselves automatically.

(4) Each member shall serve for a term of two (2) years. However, the initial term of two of the original members representing the Civil or Environmental Engineers Group and one of the original members representing the Development or Industrial Community Group shall expire after one (1) year and the term of the remaining original members shall expire after two (2) years. Subsequent terms for every group shall expire after two (2) years.

(d). The board shall annually select one of its members to serve as chair and another member to serve as vice chair for a period of one year upon a majority vote of all members.

(e). The board shall keep complete and accurate records of the proceedings of all meetings and the Director of Public Works or his designee shall serve as the board's technical secretary.

(f). No member shall participate in the appeal of any matter in which the member has a direct personal or financial interest.

(g). Three members shall constitute a quorum, and the concurrence of a majority of the board present and voting in any matter shall be required for a determination.

(h). Members may be removed from the board for continued absence from meetings or other just cause in accordance with the procedure for removal of Board or Commission members set forth within Home Rule Ordinance No. 1852 of the City Charter.

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

(j). Each member of the board shall take an oath to faithfully perform the duties imposed upon him without fear or favor, and in full accordance with the constitution and laws of the state and the ordinances of the City of Memphis.

SECTION 4. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that the provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases, or parts is held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

SECTION 5. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that this Ordinance shall take effect from and after the date it shall have been passed by the Council, signed by the Chairman of the Council, certified and delivered to the Office of Mayor in writing by the comptroller and become effective as otherwise provided by law.

THE FOREGOING ORDINANCE
#5446 PASSED
1st Reading 3-6-12
2nd Reading 3-20-12
3rd Reading 4-3-12

Approved Bill Morrison
Chairman of Council

Date Signed: 4-17-12

Approved:
Mayor, City of Memphis

Date Signed: 4/24/2012

I hereby certify that the foregoing is a true copy, and said document was adopted by the Council of the City of Memphis as above indicated and approved by the Mayor.

Valerie C. Snipes
Comptroller