

# ***STORM WATER MANAGEMENT AND CONTROL REGULATIONS***

## **SECTION 1. Title; purpose**

(1) The provisions of this Resolution shall constitute and be known as the "Storm Water Management and Control Regulations of Montgomery County, Tennessee".

(2) The purpose of this Resolution is to protect, maintain, and enhance the public health, environment, safety, and general welfare by establishing minimum requirements and procedures to control the adverse effects of storm water runoff (quality and quantity) associated with development within Montgomery County Tennessee outside the Corporate Limits of the City of Clarksville, Tennessee.

(3) The application of this Resolution and the provisions expressed herein shall be the minimum storm water management requirements and shall not be deemed a limitation of any other pertinent resolution, regulation or law or repeal of any other powers granted by State statute.

(4) The Clarksville Montgomery County Regional Planning Commission and The County Building Commissioner or Qualified designee shall be responsible for the coordination and enforcement of the provisions of this Resolution and regulations.

## **SECTION 2. Definitions**

For the purpose of this Resolution, the following terms, phrases and words, and their derivatives, shall have the meaning given herein:

“County Commission” shall mean the board of elected Legislative officials of Montgomery County, Tennessee. The County shall mean Montgomery County, Tennessee and The City shall mean the City of Clarksville, Tennessee, and the Clarksville Montgomery County Regional Planning Commission is the Regional Planning Commission (RPC).

“Designer” shall mean a professional who is licensed by the State of Tennessee to prepare plans and studies required by the by Standard Building, Housing and Fire Codes, and all technical codes adopted by reference as well as the Stormwater Management and Control regulations herein.

“Develop” shall (to the extent permitted by law) mean any of the following actions undertaken by a public or private individual or entity:

- the division of a lot, tract or parcel of land into two (2) or more lots, plots, sites, tracts, parcels or other divisions by plat or deed,

- any land change, including, without limitation, clearing, tree removal, grubbing, stripping, dredging, grading, excavating, transporting and filling of land.

“Disturb” shall mean the modification or removal of existing natural or manmade ground cover that results in soils being dislocated from its natural location.

“Drainage easement” shall mean a grant or reservation by the owner of land for the use of such land by others for the conveyance of storm water runoff, and which must be included in the transfer of land affected by such easement.

“Grading, drainage and erosion control plan” shall mean a plan consisting of a narrative description and appropriate maps and plans that detail the methods, techniques and procedures to be followed to control erosion and manage storm water runoff from the site during and after construction. A detailed list of required information shall be provided and shall be made available through the Building and Codes Department.

“Land development activities” shall mean construction and related activities that are performed with the intent to alter the existing use of land resulting in an increase in the rate or volume of storm water runoff from the property.

“Land disturbing activities” shall mean those activities that modify or remove natural or manmade ground cover and result in soil being dislocated from its natural location.

“Maintenance” shall mean any action necessary to preserve storm water drainage systems in proper working condition, in order to serve the intended purposes set forth in Section 1 of this Resolution and to prevent structural failure of such systems. Maintenance shall not include actions taken solely for the purpose of enhancing the aesthetics associated with storm water drainage systems.

“Public storm water drainage system” shall mean those storm water drainage systems owned by the governmental entity and/or located within the public road right-of-way.

“Private storm water drainage system” shall mean those storm water drainage systems privately owned and located outside the public road right-of-way.

“Storm water concept plan” shall mean a concept drawing and supporting documentation that describes how erosion and storm water runoff will be handled during and after construction. A detailed list of required information will be provided by the Montgomery County Building Commissioner and made available in the Montgomery County Building and Codes Office.

“Storm water drainage system” shall mean natural or manmade structures or facilities that are intended for the collection, conveyance, storage, treatment and disposal of storm water runoff. Storm water drainage systems include but are not limited to ditches, streams, inlets, curb and gutters, detention/retention facilities, storm sewers, culverts, bridges, and sub-surface drainage courses.

“Storm water master plan” shall mean a plan developed for a watershed or part thereof which has been approved by the Montgomery County Building Commissioner to guide the design and development of the drainage system covered in the plan.

**“Tennessee Erosion and Sediment Control Handbook”** shall mean the manual of regulations and design, performance, and review criteria for storm water management practices to be adopted by Montgomery County Government. Copies of this manual shall be made available through the Montgomery County Building and Codes Department.

“Sub-surface drainage course” shall mean a closed topographic depression, generally elliptical or circular in a real view, resulting from the settlement or collapse of surface materials into solution openings beneath the surface such as caves or enlarged joints.

“Surface drainage course” shall mean a natural or manmade watercourse or swale of perceptible extent to confine and continuously or intermittently convey storm water.

### **SECTION 3. Scope of the Resolution.**

No person shall develop or disturb any land within the boundaries of Montgomery County (outside the limits of the City of Clarksville), Tennessee without having provided for adequate storm water management measures that control erosion and storm water runoff quantity and quality, in compliance with this Resolution.

### **SECTION 4. Land Disturbing Activities**

(1) All land disturbing activities shall employ erosion control features to control erosion to the maximum extent practicable in order to prevent sediment from leaving the site by storm water runoff, vehicular traffic, or construction related activities. Acceptable erosion control practices, procedures, and requirements are documented in the **Tennessee Erosion and Sediment Control Handbook**.

(2) Grading permits shall be required for all land disturbing activities with the following exemptions:

- a. Construction within a subdivision or PUD where there exists an approved grading, drainage, and erosion control plan so long as the construction is performed in a manner consistent with the approved plan.

- b. Finish grading or excavation below finished grade for retaining walls, swimming pools, human or animal cemeteries.
- c. Construction of accessory structures related to single family residences or duplex dwellings.
- d. Additions or modifications to single family residences or duplex dwellings or their accessory structures.
- e. Agricultural practices such as plowing, cultivation, construction of agricultural structures, nursery operations, tree cuttings at or above ground level, and logging operations leaving the stump, ground cover, and root mat intact.
- f. Grading associated with maintenance, landscaping, excavation, or placement of fill so long as 100 cubic yards or less of soil is disturbed.
- g. Other exemptions as deemed appropriate by the Montgomery County Building Commissioner or Qualified Designee.

(3) Prior to the issuance of a grading permit, the developer and other pertinent project-related individuals shall meet with the Building Commissioner and/or Qualified Designee for a Pre-construction Conference, during which the developer will designate the point-of-contact for grading, drainage and erosion control issues for the permitted site, designated as the Storm Water Contact Person.

(4) The exemptions listed above shall not relieve the owner, contractor, or other legal representative of the responsibility to employ acceptable erosion and pollution control measures in compliance with Section 4(1) and Section 8(3).

(5) The County Building Commissioner or Qualified Designee may revoke exemptions under this section when, in his/her opinion, erosion from the proposed land disturbing activities will adversely affect adjacent property owners or will create an undue burden on existing storm water drainage systems.

(6) Under no circumstances shall excavated or fill material be placed where contact with storm water would result in sediment being conveyed to a storm water drainage system or cause adverse affect (s) to adjacent property owners.

## **SECTION 5. Land Development Activities**

(1) All land development activities that require a grading permit shall employ storm water detention and related conveyance features to limit or mitigate any adverse impacts from increased runoff with the following exemptions:

- a. Developments that do not disturb more than ten thousand (10,000) square feet of land area in total
- b. Developments whose storm water runoff drains directly into a recognized floodplain without crossing a parcel of separate ownership

c. Developments whose storm water runoff drains directly into a sub-surface drainage course without crossing a parcel of separate ownership, entering into a public storm water drainage system, or creating and/or increasing a flooding condition

d. Developments located within areas identified by storm water master plans as areas where storm water detention should not, or need not, be constructed

e. Other exemptions as deemed appropriate by the Montgomery County Building Commissioner or Qualified Designee

(2) The Montgomery County Building Commissioner or Qualified Designee may revoke exemptions under this section when, in his/her opinion, storm water runoff from the proposed land development activities will adversely affect adjacent property owners or will create an undue burden on existing storm water drainage systems or if contamination is discovered at the site.

## **SECTION 6. Drainage Course Modification**

No person may modify the size, location, composition, or capacity or cause the size, location, composition, or capacity to be modified of any surface or subsurface drainage course outside the public right-of-way without the written consent of the Montgomery County Building Commissioner or Qualified Designee and permission from the State of Tennessee if applicable.

## **SECTION 7. Drainage Course Obstruction**

No person may obstruct or cause to be obstructed through the placement of natural or manmade materials or structures any surface or subsurface drainage courses outside the public right-of-way without the written consent of the Montgomery County Building Commissioner or Qualified Designee and permission from the State of Tennessee if applicable.

## **SECTION 8. Non-Storm Water Discharges**

(1) Illicit Discharges. Except as otherwise provided in this section, all non-storm water discharges into public or private storm water drainage systems are prohibited.

(2) Allowable Discharges. Unless identified by the Montgomery County Building Commissioner or Qualified Designee as a source of pollution, the following non-storm water discharges into public or private storm water drainage systems are permitted:

- a. Water line flushing;
- b. landscape irrigation;
- c. diverted stream flows permitted by the State of Tennessee;
- d. rising ground waters;
- e. uncontaminated ground water infiltration as defined at 40 CFR 35.2005(20);

- f. uncontaminated pumped ground water;
- g. discharges from potable water sources;
- h. foundation drains;
- i. air conditioning condensate;
- j. irrigation water;
- k. springs;
- l. water from crawl space pumps;
- m. footing drains;
- n. lawn watering;
- o. individual residential car washing;
- p. flows from riparian habitats and wetlands;
- q. dechlorinated swimming pool discharges;
- r. street wash waters resulting from normal street cleaning operations
- s. discharges or flows from emergency fire fighting activities;
- t. discharges pursuant to a valid and effective NPDES permit issued by the State of Tennessee; and
- u. other discharges as determined by the Montgomery County Building Commissioner or Qualified Designee and/or documented in the *Tennessee Erosion and Sediment Control Handbook* or its appendices.

(3) Illegal Dumping. It shall be illegal for any person, business, or organization to intentionally dump liquids or solids that are considered priority pollutants by the EPA on the ground where there is potential exposure to rain or storm water runoff and potential for the pollutant to reach a public or private storm water drainage system.

(4) Implementation. The County Building Commissioner or Qualified Designee shall have authority to implement the prevention of non-storm water discharges by appropriate regulations. Such regulations may include but are not limited to provisions for inspection of points of origin of known or suspected non-permitted discharges.

## **SECTION 9. The Tennessee Erosion and Sediment Control Handbook**

To assist in the design and evaluation of storm water drainage systems in Montgomery County, the *Tennessee Erosion and Sediment Control Handbook* shall be adopted for use by the Montgomery County Building Commissioner. The manual shall be adopted by reference upon passage of this Resolution, and subsequent changes to the manual shall be adopted by the Montgomery County Commission prior to implementation and enforcement of its provisions. The manual shall describe design procedures and establish minimum requirements for the hydrologic and hydraulic analysis and design of storm water drainage systems. The manual may be appended to address any and all other storm water management issues that are deemed necessary by the Montgomery County Building Commissioner or Qualified Designee to meet the intent of this Resolution. The Montgomery County Building Commissioner or Qualified Designee may approve engineering procedures not contained in the manual if the designer demonstrates that the procedures produce a similar or superior result to those recommended in the manual.

## **SECTION 10. Storm Water Master Plans**

(1) The Montgomery County Building Commissioner or Qualified Designee shall have the authority to prepare, or have prepared, or cause to be prepared, storm water master plans for drainage basins. For those areas that have been or will be selected for master planning, storm water master plans shall serve to guide development as it affects the quantity and quality of storm water runoff from the contributing drainage area. The Montgomery County Building Commissioner or Qualified Designee shall require that all development within a watershed for which a master plan exists follow the general and specific recommendations in the master plan or the terms of this Resolution, whichever is more stringent.

(2) The County Building Commissioner or Qualified Designee shall have the authority to approve and adopt drainage studies that define floodway and floodplain boundaries and associated elevations where such studies are based on best available data. Upon adoption, the drainage studies may be used by the County Building Commissioner or Qualified Designee as the basis for determining compliance with this Resolution, the *Tennessee Erosion and Sediment Control Handbook*, and the Montgomery County Subdivision Regulations as adopted by the Regional Planning Commission.

## **SECTION 11. Storm Water Concept Plans**

(1) For all development activities for which a grading permit is required, the Montgomery County Building Commissioner or Qualified Designee is hereby authorized and directed to require a storm water concept plan prior to submission of construction plans for the development, or any portion thereof.

(2) The Montgomery County Building Commissioner or Qualified Designee shall develop written technical requirements and review procedures for storm water concept plans. At a minimum, such plans shall be consistent with the storm water master plan if available for the area in question and shall contain a plan view of the existing and proposed storm water drainage systems on the site.

(3) The Montgomery County Building Commissioner or Qualified Designee shall review the storm water concept plan with the designer within five (5) working days of receipt where it will be approved, approved with changes, or rejected. If rejected, changes, additional analysis, or other information needed to approve the next submittal of the concept plan shall be identified.

## **SECTION 12. Grading, drainage and erosion control plans**

(1) For all land development or land disturbance activities for which a grading permit is required, the Montgomery County Building Commissioner or Qualified Designee is directed to require a grading, drainage, and erosion control plan. Three (3) copies of the grading, drainage, and erosion control plan must be submitted to the Montgomery County Building Commissioner or Qualified Designee and approved prior to commencement of land disturbing activities.

(2) The Montgomery County Building Commissioner or Qualified Designee shall develop or approve and adopt written technical requirements and review procedures for grading, drainage and erosion control plans. At a minimum, such plans shall be consistent with the storm water master plan if available for the area in question and shall contain details of storm water drainage systems and erosion control methods.

(3) Within fifteen (15) working days from and after the receipt of the grading, drainage and erosion control plan, the Montgomery County Building Commissioner or Qualified Designee shall issue a decision approving, rejecting or conditionally approving the plan with modification.

(4) A grading permit shall be issued to the applicant by the Building Commissioner or Qualified Designee upon the completion of a Pre-construction Conference, payment of applicable fees and approval of the grading, drainage and erosion control plan. Terms and conditions of the grading permit shall be developed and will be available for review at the Montgomery County Building & Codes Department office.

### **SECTION 13. Permit requirements**

(1) The Building and Codes Department shall not issue a Certificate of Occupancy without written certification from the Stormwater Codes Enforcement Officer that construction is exempted from, or in compliance with, the terms of this Resolution and that erosion and sediment control measures are constructed and maintained in accordance with the *Tennessee Erosion and Sediment Control Handbook*.

(2) In order to ensure compliance, the Montgomery County Building Commissioner or Qualified Designee may obtain a court order and notify the Utilities Districts, Electrical, Gas, Water and Sewer Department who shall deny utility services for any property that does not conform with this Resolution and/or the *Tennessee Erosion and Sediment Control Handbook* and no certificate of occupancy may be issued.

(3) In addition to the plans and permits required by the County, applicants shall obtain all applicable, state and federal permits. A copy of all permit applications submitted to state and federal agencies shall be submitted to the Montgomery County Building Commissioner for public record. Within ten (10) working days of the receipt of a state or federal permit, a copy of the permit must be submitted to the Montgomery County Building Commissioner.

### **SECTION 14. Fees**

A schedule of fees for plans review and inspections or other pertinent fees associated with this Resolution will be developed by the Montgomery County Building Commissioner or Qualified Designee and submitted to the County Commission for approval by resolution.

## **SECTION 15. Building/Grading Permit suspension and revocation**

A Building/Grading Permit may be suspended or revoked upon submission of a certified letter to the owner or authorized representative stating that one of the following violations has been committed:

- a. violation(s) of the conditions of the grading, drainage and erosion control plan approval
- b. errors and/or omissions in the grading, drainage and erosion control plan or associated calculations, analyses, or reports
- c. construction not in accordance the approved plans
- d. non-compliance with correction notice(s) or stop work order(s) and the owner fails to correct the violation within the time limit specified on the notice of violation

If in the judgment of the Montgomery County Building Commissioner or Qualified Designee there exists an immediate danger to the public's life or property or to adjacent private property due to a permitted construction site, a Building/Grading Permit may be immediately suspended and may be revoked upon submission of a certified letter to the owner or authorized representative.

## **SECTION 16. Professional registration requirements**

Grading, drainage and erosion control plans shall be prepared by a qualified registered professional in compliance with **Tennessee Code Annotated, Title 62, Chapters 2 and 18,** using acceptable standards and practices.

## **SECTION 17. Ownership and maintenance of storm water drainage systems**

(1) The property owner shall maintain storm water drainage systems that convey water solely from the property on which they are contained.

(2) For new construction, permanent drainage easements shall be dedicated for all drainage systems downstream from the point where storm water runoff from two or more properties combine. It shall be the responsibility of property owners to maintain storm water drainage systems within drainage easements in accordance with the approved maintenance requirements.

(3) The County shall be responsible for the maintenance of all regional detention or retention facilities designed or constructed with public monies outside the Corporate limits of the City of Clarksville in Montgomery County except those maintained by federal or state agencies.

(4) The County Highway Department shall be responsible for the maintenance of all storm water drainage systems within the public (County Road List) road right-of-way outside of the City of Clarksville and not so maintained by state or federal agencies.

(5) The Montgomery County Building Commissioner may cause to be performed storm water maintenance activities beyond the public road right-of-way where conditions exist that compromise the natural or engineered function of publicly owned or maintained storm water drainage systems.

### **SECTION 18. Maintenance of pre-existing private storm water drainage systems**

(1) All private storm water drainage systems in existence in the county on the effective date of this Resolution shall be maintained by the owner(s) thereof in such a manner as to maintain and enhance the public health, safety and general welfare, in a manner to be assured that such systems are safe and will not result in injury or harm to persons or property, to reduce and minimize damage to public and private property, to reduce and minimize the impact of such systems on land and stream channel erosion, to assist in the attainment and maintenance of water quality standards, to reduce local flooding, and to maintain, as nearly as possible, the pre-developed runoff characteristics of the area. All maintenance of such systems shall be at the sole cost and expense of owner(s) thereof. Upon modification of pre-existing systems, a maintenance plan in accordance with this Resolution shall be developed by the owner of such system in coordination with and for the approval of the Montgomery County Building Commissioner or Qualified Designee.

(2) It shall be unlawful for the owner of any property upon which a pre-existing private storm water drainage system is located, to maintain such system in a manner that the system creates a danger to the public health, environment, safety and general welfare.

(3) The Montgomery County Building Commissioner may take all legal actions necessary to correct any dangers to the public health, safety or general welfare including actions that are necessary to remove from the property such objectionable conditions constituting the danger and is hereby authorized to charge the cost and expense thereof to the owner(s) and/or the person(s) in possession in accordance with Section 20.

### **SECTION 19. Maintenance of new private storm water drainage systems**

(1) A proposed inspection and maintenance agreement shall be submitted to the Montgomery County Building Commissioner or Qualified Designee for all new private storm water drainage systems prior to approval of the grading, drainage, and erosion control plan. Such agreement shall be IAW with State permitting requirements and in a form and content acceptable to the Montgomery County Building Commissioner or Qualified Designee and shall be the responsibility of the private owner.

(2) Failure to maintain private storm water drainage systems in accordance with the terms of the inspection and maintenance agreement shall constitute a violation of this Resolution.

(3) The inspection and maintenance agreement shall provide that if the condition of the drainage system presents a danger to the public health, safety, environment, or general welfare because of unsafe conditions or improper maintenance, Montgomery County shall have the right,

but not the duty, to take such action as may be necessary to protect the public and make the drainage system safe. The owner as set forth in Section 20 has the duty to make such corrections and shall pay the cost incurred by Montgomery County should Montgomery County find it necessary to take such action in the public interest.

(4) The agreement shall be recorded by the owner in the Montgomery County Register of Deeds prior to final inspection and approval the issuance of the Certificate of occupancy by the Montgomery County Building Commissioner.

## **SECTION 20. Reimbursement of maintenance costs**

To remove dangers to the public health, environment, safety or general welfare and recover the costs incurred by the County in accordance with Sections 18(3) and 19(3) to remove said dangers; the following procedure is established:

a. The Montgomery County Building Commissioner shall, by inspection, make a preliminary investigation to determine the existence of a danger to the public health, environment, safety or general welfare (including a meeting with the property owner or representative as appropriate). Upon determination that a danger to the public health, environment, safety or general welfare exists, the Montgomery County Building Commissioner shall provide written notice to the owner or the person in possession, charge or control of such property stating that in the judgment of the Montgomery County Building Commissioner the conditions existing upon the property constitute a violation of this Resolution. The written notice shall further state that the owner or the person in possession, charge or control of the property will be granted a hearing with the Montgomery County Building Commissioner within ten (10) working days if he/she believes the preliminary investigation of the Montgomery County Building Commissioner to be in error.

b. If, after the notice and hearing as above prescribed, the Montgomery County Building Commissioner determines that a danger to the public health, environment, safety or general welfare does, in fact, exist on the property, he/she shall state in writing the findings of fact in support of the determination and shall provide a final written notice setting forth action to be taken to eliminate the objectionable conditions, and requesting that such action be undertaken within the number of days specified in the notice. The notice shall further state that unless the objectionable conditions are voluntarily removed or remedied within the time specified, the Montgomery County Building Commissioner may take appropriate actions to eliminate the objectionable conditions and may bill the property owner for all costs incurred.

c. If the charges and costs provided for in subsection 2 remain unpaid by the owner for a period of thirty (30) days after notice thereof to the owner or occupant of the property upon which such conditions exist, the Montgomery County Building Commissioner may cause an execution to be issued against the owner(s) of the property for those charges. The execution may be a lien on the specific, involved property in execution from the date of such recording.

## **SECTION 21. Drainage complaints**

The Building and Codes Department shall develop and implement a complaint logging and filing system for storm water drainage and shall become the depository for all drainage complaints received by the County. A prioritization system for drainage complaints shall be developed and implemented and shall become the basis for all non-routine or non-emergency maintenance activities initiated by the Montgomery County Building Commissioner or Qualified Designee.

## **SECTION 22. Right-of-entry**

(1) The Montgomery County Building Commissioner, Employed or Contracted Engineer, the Codes Enforcement Officers, or any of their duly authorized representatives may enter upon the premises of any land within the County for the purpose of inspecting the storm water drainage system in order to determine compliance with this Resolution and that erosion and sediment measures are constructed and maintained in accordance with the *Tennessee Erosion and Sediment Control Handbook*.

(2) The Montgomery County Building Commissioner, or any of their duly authorized representatives may enter upon the premises of any land within the County for the purpose of collecting information on the storm water drainage system.

(3) The Montgomery County Building Commissioner or any duly authorized representative may enter upon the premises of any land within the County for the purpose of maintaining the storm water drainage system upon the determination by the Montgomery County Building Commissioner or Qualified Designee that a threat exists to the public health, environment, safety, and general welfare.

## **SECTION 23. Waiver of requirements**

The Storm Water Board of Appeals upon request in writing may grant a waiver of the requirements of this Resolution when the intent of this Resolution would be violated without such waiver. In doing so the Storm Water Board of Appeals in consultation with the Montgomery County Building Commissioner or Qualified Designee will consider the following:

- a. the minimum waiver necessary to afford relief;
- b. that good and sufficient cause has been provided;
- c. that failure to grant the waiver would result in exceptional hardship or not fulfil the intent of this Resolution; and
- d. that granting a waiver will not increase a threat to public health, environment, safety, or general welfare, will not result in great public expense, create a nuisance, cause fraud or victimization of the public, or conflict with other existing laws or resolution or ordinances.

## **SECTION 24. Storm Water Board of Appeals**

(1) Creation. There is hereby created a **Storm Water Board of Appeals** that shall consist of five members and two alternate members appointed by the County Executive. The Board shall be comprised of the following members:

- a. Four members and two alternate members from the community at large with an interest in land development and/or land disturbing activities and
- b. One technical member who shall be a civil engineer registered in the State of Tennessee.

(2) Appointment. Appointees shall serve for a term of two (2) years. To be eligible to serve, appointees shall have been residents of Montgomery County for not less than one year. Appointees shall notify the County Executive within 10 working days of a change in their residency status, if the change of residency is outside of Montgomery County. The County Executive may allow the non-resident appointee to complete his/her term or shall nominate a replacement within sixty (60) days. The terms of office of the initial appointees shall be staggered as follows:

- a. one technical member, two lay members, and one alternate for a term of two (2) years, and
- b. two lay members, and one alternate for a term of one (1) year.

(3) Organization. Within sixty (60) days after its appointment, the Board shall organize itself by election of one of its members as chairman and another as vice chairman. The Montgomery County Building Commissioner shall appoint a secretary to the Board who shall be the custodian of the minutes and records of the proceedings of the Board. The County Attorney shall serve as legal adviser to the Board.

(4) Compensation. All appointees to the Board shall serve without compensation and may be removed from membership on the Board by the County Executive for continued absence from meetings of the Board, physical disability or other just cause.

(5) Replacement of Members. Replacement of any appointed member of the Board resigning or dismissed from the Board shall be appointed by the County Mayor. Any member appointed as a replacement shall serve only for the remainder of the term of the member replaced, unless subsequently reappointed for an additional term.

(6) Procedures. The Board shall adopt such rules of procedure, as it may deem necessary, to conduct its business in conformance with this Resolution.

(7) Meetings. The Board, in open meeting, shall hear all appeals, under the provisions of this Resolution. The Board shall meet each month at least 5 business days prior to the regular Planning Commission meeting. The chairman shall determine the day and time of the Board meetings. In the event no appeals have been filed and there is no business pending, the chairman may cancel the meeting ten (10) days before its scheduled date. In every case, the Board shall meet within thirty (30) days after a notice of appeal has been received. Notification of the

hearing shall be sent to the appellant and shall appear in the newspaper of general circulation in Clarksville at least ten (10) working days before the date set for the hearing.

(8) Quorum, Voting and Conflict of Interest. Three (3) members of the Board shall constitute a quorum. A majority vote of members present shall be required for actions by the Board. No member of the Board shall act in any case in which they have a personal interest. An alternate member shall replace any member who has a conflict of interest or is unable to attend.

## **SECTION 25. Variances**

(1) Application for a variance. Any property owner or authorized agent thereof, may make application for a variance from the following decisions of the Montgomery County Building Commissioner or Qualified Designee:

- a. Rejection of a grading, drainage, and erosion control plan;
- b. Revocation of a land disturbing exemption according to Section 4(4); and
- c. Revocation of a land development exemption according to Section 5(2).

An application for a variance shall be made using forms supplied by the Montgomery County Building Commissioner or Qualified Designee must be filed with the Building and Codes Department within (90) days of the written decision of the Montgomery County Building Commissioner or Qualified Designee. The application for a variance shall be filed by the first business day of the month to be considered by the Storm Water Appeals Board at that month's meeting.

(2) Deferral or Withdrawal of an Application for a Variance. Any property owner, or authorized agent thereof, may petition to defer or withdraw an application for a variance. The petition to defer or withdrawal must be made in writing to the Montgomery County Building Commissioner at least 72 hours prior to the scheduled meeting of the Storm Water Board of Appeals.

(3) Decisions. A decision of the Storm Water Board of Appeals varying the application of any provision of this section or modifying a decision of the County Building Commissioner or Qualified Designee shall be by resolution of the Board, which shall specify in what manner such variations or modifications shall be made, the conditions upon which they are to be made and the reasons therefor. The Board shall, in every case, render a decision without unreasonable or unnecessary delay. Every decision of the Board shall be final subject however, to such remedy as any aggrieved party or Montgomery County may have at law or in equity.

(4) Standards for Granting Variances. In granting a variance, the Board shall ascertain that all the following conditions are met:

- a. that good and sufficient cause has been provided;
- b. that granting the variance will not increase a threat to public health, safety, or general welfare;
- c. that granting the variance will not be contrary to the public interest;

- d. that granting the variance will not result in public expense;
- e. that granting the variance will not knowingly conflict with other existing laws or ordinances;
- f. that failure to grant the variance would result in unnecessary hardship; and
- g. that by granting the variance, the spirit of this Resolution will be observed.

In granting a variance, the Board shall determine, and only grant, the minimum variance necessary to afford relief.

(5) Records. All decisions of the Board shall be in writing and shall indicate the vote of each member of the Board upon the decision. Every decision shall be promptly entered into the minutes of the meeting of the Board and filed with the Montgomery County Building Commissioner. The records of the Board shall be open to public inspection and a certified copy of each decision shall be sent by mail or otherwise to the appellant.

## **SECTION 26. Penalties**

(1) At the request of the Building Commissioner or the Building and Codes Committee the County Attorney may institute injunctive, mandamus or other appropriate action or proceedings at law or equity for the enforcement of this Resolution or to correct violations of this Resolution thereof.

(2) The Montgomery County Building Commissioner, or any duly authorized representative may issue an order to stop work on land disturbing and land development activities that are determined to be in non-compliance with the provisions of this Resolution.

(3) As permitted by state law TCA 68-221-1106, any person who violates the provisions of this Resolution shall be subject to a civil penalty of not less than \$50.00 or more than \$5000.00 per day for each day in violation. Each day of violation shall constitute a separate violation.

(4) Non-compliance with an order to stop work issued pursuant to subsection (2) shall constitute a violation of this Resolution and shall be grounds for arrest.

## **SECTION 27. Grandfather clause**

(1) Any development of a parcel of land who has met the following conditions before the effective date of this Resolution, shall be exempt from the requirements of this Resolution:

- a. Received from the Montgomery County Building Commissioner construction plan approval and/or received a building permit; and
- b. Submitted a notice in writing to the Montgomery County Building Commissioner or Qualified Designee claiming the exemption and
- c. Approval of the site plan by the Regional Planning Commission.

If corrective action is required as a result of non-conformity the property owner must assure such corrective action and bare the cost of such repairs in accordance with Sections 17 through 20.

**SECTION 28. Severability**

If any term, requirement or provision of this Resolution or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Resolution or the application of such terms, requirements and provisions to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term, requirement or provision of this Resolution shall be valid and be enforced to the fullest extent permitted by law.

If any provision of this Resolution overlaps or conflicts with any existing regulations or Resolutions, the terms and intent of this Resolution and the Tennessee Erosion and Sediment Control Handbook shall prevail.

**SECTION 29. Effective date**

Upon adoption of this Resolution, a notice shall appear in the newspaper of general circulation in Montgomery County informing the public of the subsequent promulgation of these rules and regulations. This Resolution and Montgomery County’s adoption of the Tennessee Erosion and Sediment Control Handbook shall be effective ninety (90) days following the public notice.

**BE IT RESOLVED** that this resolution and said included Storm Water Management Codes shall take effect and be enforced and specified in section 29 above, the public welfare requiring it.

Duly passed and approved the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

Sponsor \_\_\_\_\_

Commissioner\_\_\_\_\_

Approval\_\_\_\_\_ County Mayor

Attested\_\_\_\_\_ County Clerk

