TITLE 14

ZONING AND LAND USE CONTROL

CHAPTER
1. MUNICIPAL PLANNING COMMISSION.
2. ZONING ORDINANCE.
3. STORM WATER MANAGEMENT AND POLLUTION CONTROL.

CHAPTER 1

MUNICIPAL PLANNING COMMISSION

SECTION
14-102. Organization, rules, staff, and finances.
14-103. Powers and duties.

14-101. Creation and membership. Pursuant to the provisions of Tennessee Code Annotated, § 13-4-101 there is hereby created a municipal planning commission, hereinafter referred to as the planning commission. The planning commission shall consist of nine (9) members: One (1) of the members shall be the Mayor of Arlington. One (1) shall be a member of the board of mayor and aldermen selected by the said board, and the seven (7) remaining members shall be citizens appointed by the mayor. The terms of the seven (7) appointive members shall be for (3) years, excepting that in the appointment of the first planning commission under the terms of this chapter, one (1) of said seven (7) members shall be appointed for a term of three (3) years, three (3) or terms of two (2) years, and three (3) for terms of one (1) year. Any vacancy in an appointive membership shall be filled for the unexpired term by the mayor, who shall have the authority to remove any appointive member at his pleasure. The terms of the mayor and the member selected from the board of mayor and aldermen shall run concurrently with their terms of office. All members shall serve without compensation. (1994 Code, § 11-101)

14-102. Organization, rules, staff, and finances. The planning commission shall elect its chairman from among its appointive members. The term of the chairman shall be one (1) year with eligibility for re-election. The planning commission shall adopt rules for its transactions, findings, and determinations, which record shall be a public record. The planning commission

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1Municipal code reference
Air pollution control: title 20, chapter 1.
may appoint such employees and staff as it may deem necessary for its work and may contract with city planners and other consultants for such services as it may require. The expenditures of the planning commission, exclusive of gifts, shall be within the amounts appropriated for the purpose by the board of mayor and aldermen. (1994 Code, § 11-102)

14-103. Powers and duties. From and after the time when the planning commission shall have organized and selected its officers, together with the adoption of its rules or procedures, then said commission shall have the powers, duties, and responsibilities as set forth in all applicable provisions of Tennessee Code Annotated, title 13 or other acts relating to the duties and powers of the municipal planning commissions adopted subsequent thereto. (1994 Code, § 11-103)
CHAPTER 2

ZONING ORDINANCE

SECTION

14-201. Land use to be governed by zoning ordinance.

14-201. Land use to be governed by zoning ordinance. Land use within the Town of Arlington shall be governed by the Town of Arlington Zoning Ordinance and any amendments thereto.¹

¹The Town of Arlington Zoning Ordinance, and any amendments thereto, are published as separate documents and are of record in the office of the recorder.

Amendments to the zoning map are of record in the office of the recorder.
CHAPTER 3

STORM WATER MANAGEMENT AND POLLUTION CONTROL

SECTION
14-301. Definitions.
14-302. Abbreviations.
14-303. Illicit discharges.
14-304. Construction activity and erosion and sediment control.
14-305. Storm water management infrastructure.
14-306. Storm water discharges from regulated industrial sources.

4-301. Definitions. For the purpose of this chapter, unless specifically defined below, words or phrases shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most effective application. Words in the singular shall include the plural, and words in the plural shall include the singular. Words used in the present tense shall include the future tense. The word "shall" connotes mandatory and not discretionary; the word "may" is permissive.

(1) "Accidental discharges" means a discharge prohibited by this chapter into the Town of Arlington Ms4 that occurs by chance and without planning or consideration prior to occurrence.

(2) "Best management practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce the pollution of storm water runoff. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

(3) "Clean Water Act" or "The Act" means the Federal Water Pollution Control Act, as amended, codified at 33 U.S.C. 1251, et seq..

(4) "Commercial" means property devoted in whole or part to commerce, that is, the exchange and buying and selling of commodities or services. The term shall include, by way of example, but not be limited to the following businesses: amusement establishments, animal clinics or hospitals, automobile service stations, automobile dealerships for new or used vehicles, automobile car washes, automobile and vehicular repair shops, banking establishments, beauty and barber shops, bowling alleys, bus terminals, and repair shops, camera shops, dental offices or clinics, day care centers, department stores, drug stores, funeral homes, furniture stores, gift shops, grocery stores, hardware stores, hotels, jewelry stores, laboratories, laundries, and dry cleaning establishments, liquor stores, medical offices and clinics, motels, movie theaters, office buildings, paint stores or shops, parking lots, produce markets, professional offices, radio stations, repair establishments,
retail stores, television stations and production facilities, theaters, truck or construction equipment service stations, truck or construction equipment dealerships for new or used vehicles, truck or construction equipment washing facilities and truck or construction equipment repair shops.

(5) "Construction activity" shall mean any clearing, grading, excavating, or equipment usage that will result in the disturbance of the land surface and is subject to storm water permit requirements under the State of Tennessee general permit for storm water discharges associated with construction activity. The term shall not include:

(a) Such minor construction activities as home gardens and individual home landscaping, home repairs, home maintenance work and other related activities that result in minor soil erosion;

(b) Individual service and sewer connections for single or two family residences;

(c) Agricultural practices involving the establishment, cultivation or harvesting of products of the field or orchard, preparing and planting of pasture land, forestry land management practices including harvesting, farm ponds, dairy operations, and livestock and poultry management practices and the construction of farm buildings;

(d) Any project carried out under the technical supervision of the Natural Resources Conservation Service of the United States Department of Agriculture;

(e) Installation, maintenance, and repair of any underground public utility lines when such activity occurs in an existing hard surface road, street or sidewalk, provided the activity is confined to the area of the road, street or sidewalk which is hard surfaced and a street, curb, gutter or sidewalk permit has been obtained, and if such area is less than one acre of disturbance;

(6) "Critical design storm" means the design storm specified in the Memphis & Shelby County Drainage Design Manual (MSCDDM).

(7) "Development" means any activity subject to the Tennessee General Permit for Construction Activities.

(8) "Director" means the Town of Arlington Town Superintendent.

(9) "Erosion Prevention and sediment control plan" means a written plan, including drawings or other graphic representations, for the control of soil erosion and sedimentation resulting from a construction activity.

(10) "Impervious" means not allowing the passage of water through the surface of the ground or ground covering or a substantial reduction in the capacity for water to pass through the surface of the ground or ground covering.

(11) "Industrial facility" is a business engaged in industrial production or service, that is, a business characterized by manufacturing or productive enterprise or a related service business. This term shall include but not be limited to the following: apparel and fabric finishers, automobile salvage and junk yards, blast furnace, blueprint and related shops, boiler works, cold storage
plants, contractor's plants and storage facilities, foundries, furniture and household goods manufacturing, forge plants, greenhouses, manufacturing plants, metal fabrication shops, ore reduction facilities, planing mills, rock crushers, rolling mills, saw mills, smelting operations, stockyards, stone mills or quarries, textile production, utility transmission or storage facilities, truck or construction equipment salvage or junkyards, warehousing, and wholesaling facilities.

(12) "Institutional" means an established organization, especially of a public or charitable nature. This term shall include, by way of example, but not be limited to, the following: churches, community buildings, colleges, day care facilities, dormitories, drug or alcohol rehabilitation facilities, fire halls, fraternal organizations, golf courses and driving ranges, government buildings, hospitals, libraries, kindergartens, or preschools, nursing homes, mortuaries, schools, social agencies, synagogues, parks and playgrounds.

(13) "Manager" means the Town of Arlington Town Engineer or his designated representative who is designated to supervise the operation of the storm water management program and who is charged with certain duties and responsibilities by this chapter, or his/her duly authorized representative.

(14) "Memphis & Shelby County Drainage Design Manual (MSCDDM)" means the guidance document adopted for use by Shelby County to replace the current "City of Memphis Design Manual." The manual provides the technical standards and information necessary for proper design and construction of storm water management facilities and the management of storm water management infrastructure as defined in § 30-125.

(15) "Multi-family residential" means an apartment building or other residential structure built for three or more units or lots under common ownership, and condominiums of three or more units.

(16) National Pollutant Discharge Elimination System" or "NPDES permit" means a permit issued pursuant to 33 U.S.C. chapter 26 Water Pollution Prevention and Control, subchapter IV Permits and Licenses, § 1342.

(17) "Notice of Intent or N.O.I." means a written notice by the discharger to the Commissioner of the Tennessee Department of Environment and Conservation, or his designee, that a person wishes his discharge to be authorized under a general permit authorized by state law or regulation.

(18) "Person" means any individual, partnership, co-partnership, firm, company, trust estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. The masculine gender shall include the feminine, the singular shall include the plural where indicated by context.

(19) "Regional facility" means a storm water management facility designed to serve more than two (2) properties and one-hundred (100) or more acres of drainage area. A regional facility typically includes a storm water pond.

(20) "Redevelopment" means any development subject to the Tennessee General Permit for Construction Activities.
(21) "Significant spills" releases of oil or hazardous substances in excess of reportable quantities under section 311 of the Clean Water Act (at 40 CFR 110.10 and CFR 117.21) or section 102 of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), (at CFR 302.4).

(22) "Storm water" refers to water induced or created from precipitation whether rain, snow or ice and either stored, collected, detained, absorbed, or discharged.

(23) "Storm water management facility" means a storm water management control device, structure, or system of such physical components designed to treat, detain, store, convey, absorb, conserve, protect, or otherwise control storm water.

(24) "Storm water management" means the collection, conveyance, storage, treatment and disposal of storm water in a manner to meet the objectives of this chapter and its terms, including, but not be limited to measures that control the increase volume and rate of storm water runoff and water quality impacts caused or induced by man made changes to the land.

(25) "Storm water management plan" or "SWMP" means the set of drawings and other documents that comprise all of the information and specifications for the programs, drainage systems, structures, BMPs, concepts, and techniques for the Town of Arlington and as part of this chapter.

(26) "Storm water pollution prevention plan" or "SWPPP" means a written site specific plan to eliminate or reduce and control the pollution of storm water through designed facilities, natural or constructed, and best management practices.

(27) "Storm water sewer system" means the network of conveyances and storage facilities that collect, detain, absorb, treat, channel, discharge, or otherwise control the quantity and/or quality of storm water.

(28) "Stream" means any river, creek, slough or natural water course in which water usually flows in a defined bed or channel. It is not essential that the flowing be uniform or uninterrupted. The fact that some parts of the bed have been dredged or improved does not prevent the water course from being a stream. For the purposes of this ordinance, a stream is not a "wet weather conveyance" as also defined herein. Typically, as a guideline perennial streams are identified on USGS maps by solid blue lines and intermittent streams are depicted by dashed blue lines.

(29) "Toxic pollutant" means any pollutant or combination of pollutants listed as toxic in 40 CFR part 401 promulgated by the Administrator of the Environmental Protection Agency under the provisions of 33 U.S.C. 1317.

(30) "Variance" means the modification of the minimum storm water management requirements contained in this chapter and the storm water management plan for specific circumstances where strict adherence of the requirement would result in unnecessary hardship and not fulfill the intent of this chapter.
(31) "Water quality" means characteristics that are related to the physical, chemical, biological, and/or radiological integrity of storm water.

(32) "Watershed management program" means a balanced program and plan of controlling the quantity and quality of water resources through comprehensive land and water resource management. Such management includes but is not limited to pollution control, land development controls, best management practices both structural and non-structural, preservation, habitat protection, and well head protection. This program incorporates the State’s NPDES storm water quality permit program.

(33) "Watershed master plan" means the guidance vehicle for implementing the "watershed management program."

(34) "Waterway buffer" means an area including trees, shrubs, and herbaceous vegetation that exists or is established to protect and separate a stream, waterway, lake, reservoir, or pond or other body of water from buildings and/or structures and other land uses that alter habitat, geomorphology, water quality, and hydrology.

(35) "Wet weather conveyance" are defined in Rule 1200-4-3-.04 of the Rules of the Tennessee Department of Environment and Conservation. Wet weather conveyances are man made or natural water courses, including natural water courses that have been modified by channelization, that flow only in direct response to precipitation runoff in their immediate locality, the channels of which are above the groundwater table and which do not support fish or aquatic life and are not suitable for drinking water supplies. Rule 1200-4-3-.02(7) requires that waters designated as wet weather conveyances shall be protective of wildlife and humans that may come in contact with them and maintain standards applicable to all downstream waters. No other use classification or water quality criteria apply to these waters. (Ord. #2004-16, Jan. 2005)

14-302. Abbreviations. (1) CERCLA--means the Comprehensive Environmental Response, Compensation and Liability Act in its original form or as amended.

(2) CFR--Code of Federal Regulations

(3) FEMA--Federal Emergency Management Agency

(4) MS4--Municipal Separate Storm Sewer System means the Town of Arlington separate storm water system both natural and manmade as may be subject to the NPDES Storm Water Permit for the Town of Arlington.

(5) MSCDDDM--Memphis & Shelby County Drainage Design Manual

(6) SWPPP--Storm Water Pollution Prevention Plan

(7) TCA--Tennessee Code Annotated (latest version)

(8) TNGCP--Tennessee Construction General Permit

(9) TMSP--Tennessee Multi-Sector Permit (TMSP) for Storm Water Discharges Associated with Industrial Activity (See section 30-135).

(10) USACE--means United States Army Corps of Engineers
14-303. Illicit discharges. (1) Unauthorized discharge a public nuisance. Discharge of storm water in any manner in violation of this chapter; or any violation of any condition of a permit issued pursuant to this chapter; or any violation of any condition of a storm water discharge permit issued by the State of Tennessee Department of Environment and Conservation is hereby declared a public nuisance and shall be corrected or abated.

(2) Improper disposal and illicit discharges. (a) It shall be unlawful for any person to improperly dispose any contaminant into the Town of Arlington MS4. Contaminants include, but are not limited to the following:

(i) Trash or debris;
(ii) Construction materials;
(iii) Petroleum products including but not limited to oil, gasoline, grease, fuel oil, or hydraulic fluids;
(iv) Antifreeze and other automotive products;
(v) Metals in either particulate or dissolved form;
(vi) Flammable or explosive materials;
(vii) Radioactive material;
(viii) Batteries, including but not limited to, lead acid automobile batteries, alkaline batteries, lithium batteries, or mercury batteries;
(ix) Acids, alkalis, or bases;
(x) Paints, stains, resins, lacquers, or varnishes;
(xi) Degreasers and/or solvents;
(xii) Drain cleaners;
(xiii) Pesticides, herbicides, or fertilizers;
(xiv) Steam cleaning wastes;
(xv) Soaps, detergents, or ammonia;
(xvi) Swimming pool backwash including chlorinated swimming pool discharge;
(xvii) Chlorine, bromine, and other disinfectants;
(xviii) Heated water;
(xix) Animal waste from commercial animal or feeder lot;
(xx) Any industrial and sanitary wastewater, including leaking sewers or connections;
(xxi) Recreational vehicle waste;
(xxii) Animal carcasses;
(xxiii) Food wastes;
(xxiv) Medical wastes;
(xxv) Collected lawn clippings, leaves, branches, bark, and other fibrous materials;
(xxvi) Collected silt, sediment, or gravel;
(xxvii) Dyes, except as stated in subsection (B);
(xxviii) Chemicals, not normally found in uncontaminated water;

(xxix) Any hazardous material or waste, not listed above;
(xxx) Washing of fresh concrete for cleaning and/or finishing purposes or to expose aggregates;

(xxxi) Junk motor vehicles, as defined in subsection (c);
(xxxii) Liquid from solid waste disposal containers.

Penalties for minor discharges that have no significant adverse impact on safety, health, the welfare of the environment, or the functionality of the town’s storm water collection system may be waived at the discretion of the manager.

(b) Dye testing. Dye testing is allowed but requires verbal notification to the manager a minimum of twenty-four (24) hours prior to the date of the test. The City of Memphis and Town of Arlington governmental agencies are exempt from this requirement.

(c) Junk motor vehicles, definition thereof. "Junk motor vehicle" means any vehicle which shall include by way of example but not be limited to the following vehicle types: automobiles, construction equipment, motorcycles, and trucks, which meets all of the following requirements:

(i) Is three years old or older;
(ii) Is extensively damaged, such damage including, but not limited to any of the following: A broken window or windshield or missing wheels, engine or transmission;
(iii) Is apparently inoperable;
(iv) Is without a valid current registration;
(v) Has a fair market value equivalent only to the value of the scrap in it.

(3) Exceptions, allowable discharges. The following types of discharges shall not be considered prohibited discharges for the purpose of this chapter unless the manager determined that the type or quantity of discharge, whether singly or in combination with others, is causing significant contamination of the Town of Arlington MS4.

(a) Potable water;
(b) Potable water line flushing;
(c) Air conditioning condensate;
(d) Discharges from emergency fire fighting activities and exercises (storm water pollution prevention plan should be prepared to address discharges or flows from fire fighting only where such discharges are identified as significant sources of pollutants to waters of the United States);
(e) Uncontaminated water from crawl space, pumps or footing drains;
(f) Lawn watering;
(g) Residential car and boat washing;
(h) De-chlorinated swimming pool water;
(i) Materials placed as part of an approved habitat restoration or bank stabilization project;
(j) Rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, uncontaminated springs, diverted stream flows; riparian habitats and wetlands;
(k) Flows from riparian habitats and wetlands;
(l) Common practices for water well disinfections;
(m) Discharges within the constraints of a National Pollutant Discharge Elimination System (NPDES) permit from the Tennessee Department of Environment and Conservation (TDEC);
(n) Unless otherwise prohibited by this ordinance, any discharge that could be made directly to "waters of the state" without a federal or state permits being required;
(o) Dye testing in compliance with § 14-303(2)(b);
(p) Other types of discharges as determined by the manager.

(4) **Illicit connection, defined.** Any connection, existing or future, identified by the manager, as that which could convey anything not composed entirely of storm water directly to the Town of Arlington MS4 is considered an illicit connection and is prohibited with the following exceptions:

(a) Connections conveying allowable discharges as defined in § 14-303(3);
(b) Connections conveying discharges pursuant to an NPDES permit (other than an NPDES storm water permit).

Existing illicit connections must be stopped, at owner’s expense.

(5) **Monitoring and inspection.** (a) **Monitoring.** The manager shall periodically monitor compliance of the storm water NPDES permit holder.

(b) **Detection of illicit connections and improper disposal.** The manager shall take appropriate steps to detect and eliminate illicit connections to the Town of Arlington MS4, including the adoption of programs to identify illicit discharges and their source or sources and provide for public education, public information and other appropriate activities to facilitate the proper management and disposal of used oil, toxic materials and household hazardous waste.

(c) **Inspections.** (i) The manager or his designee, bearing proper credentials and identification, may enter and inspect properties for inspections, investigations, monitoring, observation, measurement, enforcement, sampling and testing, to effectuate the provisions of this chapter, the storm water management plan, and/or the NPDES storm water permit. The manager or his designee shall duly notify the owner of said property or the representative on site and the inspection shall be conducted at reasonable times.
(ii) Upon refusal by any property owner to permit an inspector to enter or continue an inspection, the inspector shall terminate the inspection or confine the inspection to areas wherein no objection is raised. The inspector shall immediately report the refusal and the circumstances to the manager. The manager may seek appropriate action.

(iii) In the event the manager or his designee reasonably believes that discharges into the Town of Arlington MS4 may cause an imminent and substantial threat to human health or the environment, the inspection may take place at any time and without notice to the owner of the property or a representative on site. The inspector shall present proper credentials upon request by the owner or representative.

(iv) At any time during the conduct of an inspection or at such other times as the manager or his designee may request information from an owner or representative, the owner or representative may identify areas of the facility or establishment, material or processes which contains or may contain a trade secret. If the manager or his designee has no clear and convincing reason to question such identification, the inspection report shall note that trade secret information has been omitted. To the extent practicable, the manager shall protect all information that is designated as a trade secret by the owner or their representative.

(Ord. #2004-16, Jan. 2005)

14-304. Construction activity and erosion and sediment control.
(1) Construction activity. All construction activity, defined below, shall be in compliance with all applicable requirements under this chapter.

If one (1) or more acres of land are disturbed or planned to be disturbed as part of a larger plan by construction activity, an application shall be applied for under the "State of Tennessee’s General Permit for Storm Water Discharges Associated with Construction Activity ." The State of Tennessee utilizes a "notice of intent" for dischargers to obtain coverage under the general permit program for discharges associated with construction activities. These documents are subject to change and amendment and therefore the user should obtain the latest versions directly from the State of Tennessee Department of Environment and Conservation, Division of Water Pollution Control. These may be obtained at the state’s web site.

If a Tennessee General NPDES Permit is applied for, a copy of the Notice of Intent (N.O.I.) shall be sent by certified mail, hand delivered or as directed by the manager to the manager of the storm water management section at least thirty (30) days prior to the commencement of construction activities (i.e. the initial disturbance of soils associated with clearing, grading, excavating, or other construction activities). A copy of the NOI shall also be available for inspection
by the manager or manager’s representative on the construction site at all times during which construction activities are in progress. To seek coverage under the Tennessee Department of Environment and Conservation General Permit, the N.O.I. shall be submitted to the following address:

Tennessee Department of Environment and Conservation
Division of Water Pollution Control, Memphis Environmental Assistance Center
Storm Water NOI Processing
2510 Mt. Moriah, Suite 645
Memphis, TN 38115-1520

The copy of the N.O.I. should be sent to the following address:

Arlington Town Superintendent
Arlington Public Works
11719 Memphis Arlington Road
P. O. Box 507
Arlington, TN 38002

(2) Construction activity, regulated. (a) It shall be unlawful for any person to permit any discharge of storm water from a construction activity originating from land owned or controlled by them on a total land area of one (1) or more acres disturbed by construction activity or less than one (1) acre if part of a larger common plan of development of at least one acre, without a General Permit for Storm Water Discharges Associated with Construction Activity from the Tennessee Department of Environment and Conservation, with a copy of the Notice of Intent (N.O.I.) provided to the storm water management section at the same address listed in § 8-1022.

(b) Exempted construction activity: The following activities may be undertaken without formal notice; however, the persons conducting these exempted activities shall remain responsible for otherwise conducting those activities in accordance with the provisions of this chapter and other applicable law including responsibility for controlling sedimentation and runoff.

(i) Such minor construction activities as home gardens and individual home landscaping, home repairs, home maintenance work and other related activities that result in minor soil erosion;
(ii) Individual service and sewer connections for single or two family residences;
(iii) Agricultural practices involving the establishment, cultivation or harvesting of products of the field or orchard, preparing and planting of pastureland, forestry land management
practices including harvesting, farm ponds, dairy operations, and livestock and poultry management practices and the construction of farm buildings;

(iv) Any project carried out under the technical supervision of the Natural Resources Conservation Service of the United States Department of Agriculture;

(v) Installation, maintenance, and repair of any underground public utility lines when such activity occurs in an existing hard surface road, street or sidewalk, provided the activity is confined to the area of the road, street or sidewalk which is hard surfaced and a street, curb, gutter or sidewalk permit has been obtained.

(c) Best management practices guide for construction activities. The minimum standards for controlling erosion and sedimentation from the discharge of storm water from a construction activity, shall be set forth in the Memphis & Shelby County Drainage Design Manual (MSCDDM) as may be adopted and amended from time to time. Such adoption or amendment shall be by resolution of the board of county commissioners. A copy of this guide will be maintained on file in the offices of the town engineer. Until such time as this guide document is prepared, the guidelines in the most current Tennessee Department of Environment and Conservation’s "Erosion and Sediment Control Handbook" shall be used. The specific application of BMP practices is subject to approval of the town engineer. A copy of the Storm Water Pollution Prevention Plan (SWPPP) required by applicable construction permits shall be provided to the town engineer as a part of the approval process. Approval of the construction project will be subject to a favorable review by the town engineer and the Tennessee Department of Environment and Conservation.

(3) Compliance with permits. Construction shall only be allowed when permitted by applicable construction permits and when construction plans have been approved by the manager, when deemed appropriate by the building permits official and/or the manager. The manager may stop construction on properties, or administer other enforcement actions as defined in this chapter that do not have adequate erosion prevention and sedimentation control measures. (Ord. #2004-16, Jan. 2005)

14-305. Storm water management infrastructure. (1) Infrastructure defined. Storm water management infrastructure consists of the entire physical system of storm water management both publicly and privately owned. This system consists of both man made and natural components as well as rivers, streams, creeks, lakes, reservoirs, ponds, springs, wetlands, wells and including features defined by the State of Tennessee as "waters of the state."
(2) Policy statements for development. Minimum standards and procedures for the design, construction, operation, and maintenance of the storm water management infrastructure shall be set forth in the Memphis & Shelby County Drainage Design Manual (MSCDDM) as may be adopted and amended from time to time. Such adoption or amendment shall be by resolution of the board of mayor and alderman. A copy of the Storm Water Management Manual will be maintained on file in the offices of the manager. Until such time as this document is prepared and adopted, the City of Memphis’ "Drainage Design Manual" as it exists at the final adoption of this ordinance, located in the manager’s office shall be used. The following general policy statements shall apply:

(a) All development in the Town of Arlington shall be subject to the provisions of this chapter.

(b) Proposed plans for construction shall be stamped by a professional engineer licensed in the State of Tennessee. This shall include all proposed improvements or modifications to the existing or new storm water infrastructure, erosion prevention and sediment control practices, and other related improvements or modifications.

(c) A record plan, certified by a licensed professional engineer as appropriate, must be submitted in a format acceptable to the manager upon completion of the public or private storm water management facility. The licensed professional shall certify that the facilities have been constructed in substantial and essential conformance to the design plan.

(d) Each individual project shall be evaluated for consistency with the adopted watershed master plan, when available, for the major watershed or watersheds within which the project site is located. The individual project evaluation will determine if storm water management practices can adequately serve the property and limit impacts to downstream public and private properties. The presence of a regional facility(s) will be considered in determining the extent to which quantity and/or quality controls will be necessary.

(e) In the absence of such a stormwater master plan, a system of uniform requirements shall be applied to each individual project site. In general, these uniform requirements may be based on the criterion that post-development storm water peak runoff, and water quality must not differ significantly from pre-development conditions.

(f) Development will be permitted in the floodplain; however, the developer may be required by the manager to demonstrate "no adverse impact" on upstream or downstream facilities, uses, residences, or related structures. (For example, this may be shown by modification of the USACOE/FEMA model by applying full upstream development criteria and new cross-sections reflecting the development and depiction
of the elevations of all structures, facilities, etc., within the impacted upstream or downstream floodplain.)

(g) Under no circumstances shall a site be graded or drained in such a way as to increase surface runoff to sinkholes, "dry wells" or "drainage wells."

(h) The County encourages regional watershed management practices and facilities. These practices will be encouraged in order to replace or reduce the implementation of on-site storm water management facilities.

(i) Development of properties containing existing on-site storm water management facilities may be permitted, at the discretion of the town engineer, provided the property and downstream public and private properties, infrastructure or "waters of the state" are adequately protected from adverse storm water impacts.

(j) Erosion or sedimentation, or transport of other pollutants or forms of pollution, due to various land development activities must be controlled.

(k) Soil bioengineering, "green" and other "soft" slope and stream bank stabilization methods are encouraged over rip-rap, concrete and other hard armoring techniques. The use of greenway right-of-ways for appropriate properties is encouraged.

(l) A waterway buffer shall be applied to all major waterways serving more than one hundred (100) acres of tributary area or as specified in the Storm Water Management Manual. The minimum buffer width shall be twenty five (25) feet extending from the top of bank of streams and/or twenty five (25) feet from the edge of the normal pool for impoundments, ponds, lakes, and wetlands. Reductions, exemptions or modifications to this requirement may be approved subject to proper technical justification and approval by the town engineer. No new construction of any building or structure shall be permitted in the buffer except as may be permitted by the town engineer and supported with adequate technical and environmental analysis and appropriate mitigation measures. For example, mitigation strategies may include:

   (i) Publicly dedicated greenways;
   (ii) Restoration of impacted waterways with bioengineering or "green" approaches;
   (iii) New and innovative technologies are applied to address water quantity or quality;
   (iv) Modification to density, trees or other development requirements acceptable to the town engineer and planning departments.

3) **Infrastructure maintenance.** It shall be the responsibility of the property owner of record for the maintenance of storm water infrastructure. Maintenance of storm water infrastructure shall consist at minimum but not be
limited to the following items: outlet cleaning, mowing, herbicide spraying, litter control, removal of sediment from basin and outlet control structures, and repair of drainage structures. All such activities will be conducted in an environmentally sound manner and consistent with applicable codes, rules, and standards.

(4) Maintenance responsibility--privately owned infrastructure.
   (a) Any storm water management facility, including buffers, that is privately owned shall receive general routine maintenance (i.e. controlling vegetative growth, removing sediment and debris) provided for by the owner(s).
   (b) The owner(s) shall maintain a perpetual right of access for inspection and emergency access by the town. The town has the right, but not the duty to enter premises for inspection and emergency repairs.
   (c) Any storm water management facility that services commercial and industrial development shall be maintained.
   (d) Maintenance requirements may also be prescribed by a site-specific agreement between the owner or operator and the Town of Arlington. These agreements shall be based on an approved site design, a storm water pollution prevention plan, an inspection program, a long-term maintenance plan, an emergency repair plan, easements, and proof or surety of financial responsibility. The facilities maintenance agreement form is illustrative and not strictly prescriptive. The county may amend its specific provisions as may be appropriate.¹
   (e) If privately owned infrastructure is not maintained, the manager may assess a fine on the private owner(s) as detailed in § 14-307 of this chapter. Such a fine will be used for cost recovery, to abate damages, and to restore impacted areas.

(5) Maintenance responsibility--publicly owned infrastructure.
   (a) All regional storm water management control facilities proposed by the owners, if approved by the Town of Arlington Board of Mayor and Aldermen and accepted by the manager for dedication as a public regional facility, shall be publicly owned and/or maintained.
   (b) All other storm water management control facilities shall be publicly owned and/or maintained only if accepted for maintenance by the town. (Ord. #2004-16, Jan. 2005)

14-306. Stormwater discharges from regulated industrial sources.
(1) Purpose. It is the purpose of this chapter to control storm water runoff from industrial sources in order to minimize, to the maximum extent practicable, pollutants discharged from industrial sources into the Town of Arlington MS4.

¹The Facilities Maintenance Agreement form is of record in the office of the recorder.
This reduction may be achieved by a combination of management practices, control techniques, system design, engineering methods and plan review.

(2) Industry defined. An industrial facility is one defined as industry by EPA rule, or subject to the Tennessee Multi-Sector Permit (TMSP) for storm water discharges associated with industrial activity.

(3) Right of inspection, defined. Right of inspection is defined in § 14-303(4)(c) of this chapter.

(4) Information required. The State of Tennessee utilizes a "notice of intent" for dischargers to obtain coverage under the general permit program for discharges associated with industrial activities. These documents are subject to change and amendment and therefore the user should obtain the latest versions directly from the State of Tennessee Department of Environment and Conservation, Division of Water Pollution Control. These may be obtained at the State’s web site. All industries subject to the TMSP and discharging into the Town of Arlington storm sewer system shall maintain a copy of the Storm Water Pollution Prevention Plan (SWPPP) on the industrial site, available for inspection and copying at reasonable times by the manager.

(5) Storm water pollution prevention plan (SWPPP) requirements. The Storm Water Pollution Prevention Plan (SWPPP) must follow, at a minimum, the outline of the plan listed in the Tennessee Multi-Sector Permit language or a facility’s NPDES Storm Water Permit language, whichever is applicable.

(6) Sampling at industrial facilities. (a) Samples of storm water collected for compliance monitoring shall be representative of the discharge. Sampling locations will be those defined in the Tennessee Multi-Sector Permit or an NPDES Permit. Sampling and analyses shall be in accordance with 40 CFR Part 122.21 and 40 CFR Part 136 and/or applicable permit language.

(b) Samples that may be taken by the manager and/or his designated representatives for the purpose of determining compliance with the requirements of this chapter or rules adopted hereunder may be split with the discharger if requested before the time of sampling.

(c) The manager may require a storm water discharger to install and maintain at the discharger’s expense a suitable manhole or sampling facility at the discharger’s facility or suitable monitoring access to allow observation, sampling, and measurement of all storm water runoff being discharged into the county storm sewer system. Sampling manhole or access shall be constructed in accordance with plans approved by the manager and shall be designed so that flow measurement and sampling equipment can be installed. Access to the manhole or monitoring access shall be available to the manager and/or his designated representatives at all times.
(7) Reporting. (a) Any facility required to sample under either the TMSP or an NPDES Storm Water Permit shall provide a copy of the monitoring report to the manager.

(b) The manager may require reporting by dischargers of storm water runoff to the storm water system, where an NPDES storm water permit is not required, to provide information. This information may include any data necessary to characterize the storm water discharge.

(8) Accidental discharges. (a) In the event of a "significant spill" as defined in "definitions" or any other discharge which could constitute a threat to human health or the environment, the owner or operator of the facility shall give notice to the manager and the local field office of the Tennessee Department of Environment and Conservation as required by state and federal law following the accidental discharge.

(b) If an emergency response by governmental agencies is needed, the owner or operator should also call the Memphis and Shelby County Emergency Management Agency, immediately to report the discharge. A written report must be provided to the manager within five (5) days of the time the discharger becomes aware of the circumstances, unless this requirement is waived by the manager for good cause shown on a case-by-case basis, containing the following particulars:

(i) A description of the discharge, including an estimate of volume.

(ii) The exact dates, times and duration of the discharge.

(iii) Steps being taken to eliminate and prevent recurrence of the discharge, including any planned modification to contingency, SWPPP or maintenance plans.

(iv) A site drawing should be rendered that shows the location of the spill on the impacted property, the direction of flow of the spill in regards to the topographical grade of the property, the impacted watercourse(s), and the property or properties adjacent to the spill site.

(c) The discharger shall take all reasonable steps to minimize any adverse impact to the Town of Arlington MS4, including such accelerated or additional monitoring as necessary to determine the nature and impact of the discharge. The interruption of business operations of the discharger shall not be a defense in an enforcement action necessary to maintain water quality and minimize any adverse impact that the discharge may cause.

(d) It shall be unlawful for any entity, whether an individual, residential, commercial or industrial entity to fail to comply with the provisions of this section.

(9) Fraud and false statements. Any reports required by this chapter or rules adopted hereunder and any other documents required by the town to be submitted or maintained by the discharger shall be signed by a responsible
corporate official and certified as accurate to the best of their personal knowledge after appropriate investigation. It shall be subject to the enforcement provisions of this chapter and any other applicable local and state laws and regulations pertaining to fraud and false statements. Additionally, the discharger shall be subject to the provisions of 18 U.S. Code Section 309 of the Clean Water Act, as amended, governing false statements and responsible corporate officials. (Ord. #2004-16, Jan. 2005)

14-307. Enforcement and abatement. (1) Administrative remedies. The enforcement remedies enumerated herein shall be applicable to all sections of this chapter.

(a) Notice of alleged violation. Prior to the issuance of a Notice of Violation (N.O.V.), the manager may order any person who causes or contributes, or may be a cause or contributor, to a violation of a storm water permit or order issued hereunder to show cause why a proposed enforcement action not be taken. A Notice of Alleged Violation (N.A.V.) shall be served on the person, specifying the time and place for the meeting, the proposed enforcement action and the reasons for such action, and a request that the person show cause why this proposed enforcement should not be taken. The N.A.V. and notice of the meeting shall be served personally or by registered or certified mail, with return receipt, and postmarked at least ten (10) business days prior to the hearing. Such notice may be served on any person, principal executive, general partner, corporate officer, or other person with apparent authority to receive such notice.

(b) Notification of violation. Whenever the manager finds any permittee or person discharging storm water, or other pollutants into the Town of Arlington MS4 or otherwise, has violated or is violating this chapter, conditions of a storm water permit, or order issued hereunder, the manager or his agent may serve upon said user written N.O.V. This notice shall be by personal service, or registered or certified mail with return receipt. Within ten (10) days of the receipt date of this notice, the recipient of this N.O.V. shall provide the manager with a written explanation of the violation. The response shall also include a plan for satisfactory correction and prevention thereof, to include specified required actions and milestones for their completion. Submission of this plan in no way relieves the discharger of liability for any violations occurring before or after receipt of the notice of violation. The manager will render a response within twenty (20) days. If the Town of Arlington deems it necessary a complaint may be filed with the Commissioner of the Tennessee Department of Environment and Conservation pursuant to Tennessee Code Annotated, § 69-3-118.

(c) Consent agreement. The manager is hereby empowered to enter into consent agreements, assurances of voluntary compliance, or
other similar documents establishing an agreement with the person or persons responsible for the non-compliance. Such agreements will include specific action to be taken by the permittee or person discharging storm water to correct the non-compliance within a time period specified by the agreements. Consent agreements shall have the same force and effect as compliance orders issued pursuant to subsection (d) below.

(d) Compliance order. When the manager finds that any person has violated or continues to violate this chapter or any order issued hereunder, he may issue an order to the violator directing that, following a specified time period, adequate structures and/or devices be installed or procedures implemented and properly operated or followed. Orders may also contain such other requirements as might be reasonable necessary and appropriate to address the non-compliance, including the construction of appropriate structures, installation of devices, self-monitoring and related management practices.

(e) Cease and desist orders. When the manager finds that any person has violated or continues to violate this chapter or any permit or order issued hereunder and such action or inaction has or may have the potential for immediate and significant adverse impact on the MS4 or the storm water discharges to it, the manager may issue an order to cease and desist all such violations immediately and direct those persons in non-compliance to:

(i) Comply forthwith; or
(ii) Take such appropriate remedial or preventative action as may be needed to properly address a continuing or threatened violation, including halting operations and terminating the discharge.

(iii) Anyone receiving a cease and desist order that includes instruction to halt operations shall receive an expedited review and appeal of such order within two (2) business days.

(2) Civil penalty. Any person who performs any of the following acts or omissions shall be subject to a civil penalty as set out in part II, chapter 1, §§ 1-4, Code of Shelby County per day for each day, or part thereof, during which the act or omission continues or occurs.

(a) Fails to obtain any required permit;
(b) Violates the terms and conditions of such required permit in subsection (a) above;
(c) Violates a final determination or order of the manager; or
(d) Violates any provision of this chapter.

The manager, with consent of the mayor, may also initiate civil proceedings in any court of competent jurisdiction seeking monetary damages for any damages caused to the Town of Arlington MS4 by any person, and to seek injunctive or other equitable relief to enforce compliance, with any lawful orders of the manager.
(3) Unlawful acts, misdemeanor. It shall be unlawful for any person to knowingly:
   (a) Violate a provision of this chapter;
   (b) Violate the provisions of any permit issued pursuant to this chapter;
   (c) Fail or refuse to comply with any lawful notice to abate issued by the manager, which has not been timely appealed to the director of public works within the time specified by such notice; or
   (d) Violate any lawful order of the manager within the time allowed by such order.

Such person shall be guilty of a misdemeanor; and each day of such violation or failure or refusal to comply shall be deemed a separate offense and punishable accordingly. Any person found to be in violation of the provisions of this chapter shall be punished by a fine as set out in part II, chapter 1, §§ 1-4, Code of Shelby County. Upon learning of such act or omission, the manager may issue a town ordinance citation charging the person, firm, or entity with violating one (1) or more provisions of this ordinance (section) or permit issued thereunder, criminal violation of this chapter (section) may also be the basis for injunctive relief, with such actions being brought and enforced through the Shelby County General Sessions Environmental Court.

(4) Processing a violation. (a) The manager may issue an assessment against any person or permittee responsible for the violation;
   (b) Any person against whom an assessment or order has been issued may secure a review of such assessment or order by filing with the director a written petition setting forth the specific legal and technical grounds and reasons for his objections and asking for a hearing in the matter involved before the director and if a petition for review of the assessment or order is not filed within thirty (30) days after the date the assessment or order is served, the violator shall be deemed to have consented to the assessment and it shall become final;
   (c) Whenever any assessment has become final because of a person's failure to appeal the manager's assessment, the manager may apply to the appropriate court for a judgment and seek execution of such judgment and the court, in such proceedings, shall treat a failure to appeal such assessment as a confession of judgment in the amount of the assessment;
   (d) The director may consider the following factors when reviewing a petition:
      (i) Whether the civil penalty imposed will be an appropriate economic deterrent to the illegal activity by the violator or others in the regulated community;
      (ii) Damages to the town, including compensation for the damage or destruction of the Town of Arlington MS4, and also including any penalties, costs (direct or indirect) and attorneys'
fees incurred by the town as a result of the illegal activity, as well as the expenses involved in enforcing this chapter and the costs involved in rectifying any damages;

(iii) Cause of the discharge or violation;

(iv) The severity of the discharge and its effect on the Town of Arlington MS4;

(v) Effectiveness of action taken by the violator to cease the violation;

(vi) The technical and economic reasonableness of reducing or eliminating the discharge;

(vii) The economic benefit gained by the violator.

(e) Any civil penalty assessed to a violator pursuant to this section may be in addition to any civil penalty assessed by the Commissioner of the Tennessee Department of Environment and Conservation for violations of Tennessee Code Annotated § 69-3-115; however, the sum of penalties imposed by this section and by Tennessee Code Annotated, § 69-3-115 shall not exceed ten thousand dollars ($10,000) per day during which the act or omission continues or occurs.

(f) Any appeal of this final determination shall be made to a court of competent jurisdiction. Such appeal must be filed within fifteen (15) days of the decision by the director.

(5) Appeals judicial proceedings and relief. The manager may initiate proceedings in any court of competent jurisdiction against any person who has or is about to:

(a) Violate the provisions of this chapter.

(b) Violate the provisions of any permit issued pursuant to this chapter.

(c) Fail or refuse to comply with any lawful order issued by the manager that has not been timely appealed within the time allowed by this chapter.

(d) Violates any lawful order of the manager within the time allowed by such order.

Any person who shall commit any act declared unlawful under this chapter shall be guilty of a misdemeanor, and each day of such violation or failure shall be deemed a separate offense and punishable accordingly.

(6) Damages, disposition of funds. All damages collected under the provisions of this ordinance and civil penalties collected under the provisions of § 30-149, following the adjustment for the expenses incurred in making such collections shall be allocated and appropriated to the storm water management program.

(7) Records retention. All dischargers subject to this chapter shall maintain and preserve for no fewer than five (5) years, all records, books, documents, memoranda, reports, correspondence and any and all summaries
thereof, relating to monitoring, sampling, and chemical analyses made by or in behalf of the discharger in connection with its discharge. All records which pertain to matters which are the subject of any enforcement or litigation activities brought by the town pursuant hereto shall be retained and preserved by the discharger until all enforcement activities have concluded and all periods of limitation with respect to any and all appeals have expired.

(8) Facilities Maintenance Agreement.¹ The following "Facilities Maintenance Agreement" is provided as a minimum guideline for agreements between the Town of Arlington and owners/operators of storm water infrastructure not owned by the town. (Ord. #2004-16, Jan. 2005)

¹The "Facilities Maintenance Agreement" is of record in the office of the recorder.