

RESOLUTION

WHEREAS, the Memphis City Council desires to adopt an Ordinance To Amend The Unified Development Code To Create A Well Head Overlay Protection District For The City Of Memphis;

WHEREAS, in accordance with the City's Charter, the UDC and applicable law the Council desires to submit the proposed ordinance to the Land Use Control Board for review and recommendation;

NOW THEREFORE BE IT RESOLVED BY THE MEMPHIS CITY COUNCIL that the Zoning Administrator submit the attached ordinance to the Land Use Control Board for review and recommendation in accordance with its requirements for notice and meeting schedules and that the Zoning Administrator in consultation with MLGW prepare and submit a report to the Land Use Control Board providing an explanation of the ordinance and such recommendation, if any, that the Zoning Administrator and MLGW desires to make for consideration by the Land Use Control Board.

Sponsor: Planning and Zoning Committee

FRANK COLVETT, JR.
CHAIRMAN

ORDINANCE NO. _____

ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT CODE TO
CREATE A WELL HEAD OVERLAY PROTECTION DISTRICT FOR
THE CITY OF MEMPHIS

I. STATUTORY AUTHORITY, FINDING OF FACT, PURPOSES
AND OBJECTIVES.

(A) *Statutory authority.*

(1) The Federal Safe Drinking Water Act, P.L. 93-523 (the “Act”) delegates responsibility to protect public water systems within the United States to the United States Environmental Protection Agency (the “EPA”) and requires each state to adopt and submit to the Administrator of the EPA a state program to protect wellhead areas within their jurisdiction from contaminants which may have any adverse effect on the health of its inhabitants.

Pursuant to the Act, the state of Tennessee adopted the Tennessee Safe Drinking Water Act of 1983, Tenn. Code Ann. §§ 68-221-701, *et seq.* (the “Tennessee Water Act”).

The Tennessee Water Act vests control and responsibility in the Commissioner of the Tennessee Department of Environment and Conservation (“TDEC”), as an agent of EPA to protect all waters of the State and to provide general supervision of all public water systems throughout the state.

The Tennessee Water Act defines waters of the State as all water, public or private, on or beneath the surface of the ground, which are contained within, flow through, or border upon Tennessee, or any portion thereof, and therefore includes waters within or that flow through any aquifers below the boundaries of the City and County;

TDEC adopted rules and regulations for Drinking Water Source Protection, Tenn. Comp. R. & Regs. 0400-45-01-.34 (“TDEC

Regulations”), in which TDEC adopted a state program to protect wellheads in the State.

The EPA approved the State of Tennessee as the entity with primary responsibility for public water systems in Tennessee in accordance with the Tennessee Water Act and the TDEC Regulations.

Memphis Light Gas & Water Division has been authorized under Section 679 of the City’s Charter the power and authority to construct, purchase, improve, operate and maintain a public water plant or system within the City, including, without limitation, wells, pumping plants, reservoirs, pipes, and all accessory apparatus, buildings and lands, rights-of-way and easements, and all other appurtenances usual to such plants or systems, for the purpose of producing, distributing, supplying or selling water to the City of Memphis, or to any person, firm, public or private corporation, or to any other user or consumer, in the City of Memphis or elsewhere in Shelby County.

The MLGW’s Water System is a “public water system” (“PWS”) under the Act, the Tennessee Water Act and the TDEC Regulations; the water system and MLGW as a supplier of water are subject to the provisions of the Act, the Tennessee Water Act and TDEC Regulations;

MLGW as manager of the City’s PWS has developed and submitted to TDEC, from time to time, Well Head Protection Plans as required by the TDEC Regulations; the current well head protection plan has been approved by TDEC and is in full force and effect within MLGW’s areas of operation within the City and County.

TDEC Regulations authorize municipalities in consultation with managers of a public water system to adopt ordinances, subject to TDEC approval, which limit the future location of any potential contamination source or activities within the area designated as Zone 1 of a protection plan.

The Council desires to adopt reasonable regulations to protect the most vulnerable areas surrounding the City’s well heads while

accommodating the constitutional property rights of owners of real property in the City to engage in responsible and proper development activities thereon.

(B) *Finding of facts.*

(1) Protection of ground water supplies can be achieved by designating areas around well heads within which certain land use activities are restricted or prohibited.

(2) An area immediately surrounding a well head is necessary and requires a higher degree of regulation. This area shall be designated Zone 1.

(3) An area incorporating and adjacent to Zone 1, which represents a capture zone, approved by TDEC that is determined on the basis of groundwater flow and direction, is designated as Zone 2 and does not require the highest degree of regulation.

(4) A potential contaminant source inventory has been completed for well head areas and within the corporate limits of the City of Memphis and included in the well head protection plan prepared by MLGW and approved by TDEC.

(C) *Statement of purpose.*

(1) The purpose of this Ordinance is to protect the public water supply for the City of Memphis from land uses at or near City wells within the Wellhead Protection Areas, Zone 1 and 2, which may, as a result of normal or abnormal operation thereof, cause release to the ground waters of the City any pollutant, material or contaminant substance defined in Tennessee Code Annotated 69-3-101 *et seq.* The City of Memphis creates the Well Head Protection Overlay District to implement the stated purposes.

(2) The Wellhead Protection Overlay District shall be deemed an overlay on the existing zoning districts as described and mapped by the Unified Development Code.

(3) This Ordinance is also enacted to create a system for regulation or restriction of land use activities at or near City wells that store, handle or produce hazardous and regulated substances identified in the City's Well Head Protection Plan with an emphasis on providing the highest level of protection for areas designated Zone 1 in said plan.

(4) This Ordinance also requires the use of best management practices for the protection of ground water sources. The City of Memphis designates an officer of Memphis Light Gas and Water Division, who shall be appointed by the Mayor and approved by the City Council, as the responsible agent to act for the City (“Well Head Administrator”) in the administration of this overlay ordinance.

(4) The Wellhead Protection Overlay District is enacted to comply with and carry out the objectives of the Act, the Tennessee Water Act and the TDEC regulations.

II. DEFINITIONS.

For the purpose of this Ordinance, the definitions in the Tennessee Water Act, Tenn. Code Ann § 68-221-703, which are hereby adopted by reference, shall apply in the administration of this ordinance unless the context clearly indicates or requires a different meaning. The following additional definitions shall also apply in the same manner:

AQUIFER. A geologic formation, group of formations or part of a formation capable of storing and yielding groundwater to wells or springs.

BEST MANAGEMENT PRACTICES. Operational procedures for handling, storage and disposal of regulated substances and procedures which are designed to minimize the impact of certain activities or land uses on groundwater quality and quantity.

CERTIFICATE OF CONFORMANCE. A document issued by the Wellhead Administrator for the City of Memphis which certifies that a proposed development meets or exceeds the requirements of this Ordinance and the TDEC regulations.

CONSTRUCTION. Includes building, erecting, moving or any physical operations on the premises which are required for construction. Excavation, fill, paving and the like shall be considered part of construction.

HAZARDOUS/CONTAMINANT MATERIALS. Any pollutant, material or contaminant substance defined in Tennessee Code Annotated §§ 69-3-101, et seq.

POTENTIAL CONTAMINANT SOURCES. Any land uses or activities described in the guidance document published by TDEC and referred to in the TDEC Regulations.

RESPONSIBLE AGENT OF THE CITY. The Well Head Administrator, as the responsible agent for the City, reviews all development applications and plans within the Wellhead Protection Area, makes any necessary interpretation of Wellhead Protection Area, Zone 1 and Zone 2, reviews any other related matters that may arise in the administration of this Ordinance and makes recommendations to the land use control board and/or the applicable governing body regarding proposed land uses within a WPA.

SITE PLAN SUBMISSION AND ADMINISTRATION REQUIREMENTS. The plans to be included in any application for a development and special use permit hereunder, which are specified in this ordinance.

TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION (TDEC). The state agency, authorized by the United States Environmental Protection Agency to adopt and enforce provisions of the Federal Safe Drinking Water Act which mandates the protection of public water supplies that utilize a ground water source.

WELLHEAD PROTECTION OVERLAY MAP. A map generated and maintained by MLGW illustrating the location of Wellhead Protection Areas, Zone 1 and Zone 2. The map is available for inspection at the office of the Wellhead Administrator.

WELLHEAD. The specific location of the source area for water which is withdrawn from a well or spring.

WELLHEAD PROTECTION AREA (WPA). The surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such well or wellfield. The areas of the City of Memphis, designated as Wellhead Protection Area, Zone 1 and Zone 2.

WELLHEAD PROTECTION OVERLAY DISTRICT. An overlay district on the existing zoning districts which represents the area covered by Wellhead Protection Areas, Zone 1 and Zone 2.

III. AUTHORITY AND APPLICABILITY.

(A) *Application*

Except for activities and land uses exempted by this Ordinance or state law, the regulations set forth in this Ordinance shall apply to all land uses and activities located or proposed within the area(s) delineated as the Wellhead Protection Area(s) in the City of Memphis on a map available for inspection at the offices of the Well Head Administrator located at MLGW's main offices.

(B) *Basis for establishing the Wellhead Protection Area.*

(1) The Tennessee Wellhead Protection Regulations (Rule 0400-45-01-.34) require that every Public Water System (PWS) in the state set up a two-zone protection system for its groundwater sources.

(2) MLGW, utilizing the groundwater flow model with the approval of TDEC, has established a two-zone protection system for the City of Memphis's groundwater resources.

(C) *Requirement for development and use permit.*

(1) A special development and use permit shall be required in conformity with this Ordinance prior to the commencement of any development activity within a WPA. No special development and use permit shall be issued without first obtaining a certificate of compliance from the Well Head Administrator.

(2) Prior to site plan approval by the Land Use Control Board, the applicant of a non-exempt project shall obtain a certificate of conformance with this ordinance from the Well Head Administrator in a timely manner for all proposed development and land-use activities in Wellhead Protection Areas (Zone 1 and Zone 2) within the City of Memphis.

(3) If, upon review of the site plan, the Well Head Administrator determines that additional information is necessary to completely evaluate the proposed development, the Well Head Administrator may refer the development plan to MLGW's water division staff for review and investigation prior to making a decision on the plan for a certificate of conformance.

(D) *Compliance.* No structure or use shall hereafter be located, extended, converted or structurally altered in a Well Head Protection Area without full compliance with the terms of this Ordinance and other applicable regulations.

(E) *Interpretation of Wellhead Protection Area.*

(1) Where interpretation is needed as to the exact location of any boundary of Wellhead Protection Area, Zone 1 and Zone 2, the Well Head Administrator shall make the necessary interpretation. The Well Head Administrator shall also be responsible for review of all development plans within Wellhead Protection Areas and other related matters that may arise in the administration of this Ordinance.

(3) The person contesting the location of the Wellhead Protection Area, Zone 1 and Zone 2, shall be afforded reasonable opportunity before the Land Use Control Board to present any technical evidence he or she may wish to support his or her position. Any proposed adjustments shall be based on the same modeling techniques used by MLGW in the latest approved delineation of Zone 1 and Zone 2 by TDEC.

(F) *Conflict with other provisions.*

(1) The requirements of Well Head Protection Areas (Zone 1 and Zone 2) are additional to those contained in the basic underlying zoning districts.

(2) Where any conflicts exist between the provisions of this Ordinance and any other provisions of the Unified Development Code and any other ordinance of the City of Memphis, these provisions shall govern.

(G) *Exempt Land Uses and Activities.* Notwithstanding any provision of this Ordinance or any other Ordinance applicable to the City to the contrary, the requirements of this ordinance shall not apply to existing oil pipelines, including any activities related to the maintenance, repair, or replacement thereof, or construction of new oil pipelines in existing rights-of-way or easements for existing oil pipelines even if such pipelines, easements or rights-of-way are within any existing or future zoning setbacks. This ordinance does not apply to any new or existing pipeline that is located within the property boundaries of an oil refinery, oil terminal, associated docks or processing facilities, or a retail service station and providing service to that oil refinery, oil terminal, associated docks or processing facilities, or retail service station.

(H) *Applicant's responsibility.* It shall be the responsibility of any person owning real property and/or owning or operating a business within the City of Memphis to make a determination of the applicability of Wellhead Protection Area Overlay Districts as it pertains to the property and/or business under his or her ownership or operation before changing the use and development of the property and his or her failure to do so shall not excuse any violations of this ordinance.

(I) *Penalties for violation.* Violation of the provisions of this Ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall be subject to enforcement action by TDEC and/or the City.

(J) *Abrogation and greater restrictions.* This Ordinance is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions.

(K) *Nonconforming and Vested uses.* Nonconforming and/or vested uses may continue in the overlay district in the form in which they exist at the time of the adoption of this ordinance in accordance with state law. In the event such nonconforming and/or vested uses shall pose a

direct hazard to the public water supply, the City of Memphis may take any action permitted by law to abate the hazard.

IV. REVIEW OF APPLICATIONS FOR DEVELOPMENT AND USE PERMITS

Application Requirements

- A. An application for a development and special use permit shall be submitted with a site plan in accordance with Section 9.3.3, Application Requirements of the UDC and Part VI of this Ordinance.
- B. The Zoning Administrator in consultation with the Well Head Administrator shall establish and publish specific submittal requirements for development and special use permits applications.
- A. Upon completion of the technical review, the Well Head Administrator may meet with the applicant to discuss any changes in development design and/or requirements.
- B. The Zoning Administrator shall prepare a report that reviews the application in light of comments provided by the Well Head Administrator, and in light of any plans to be considered and the general requirements of this Ordinance. The report, site plan or outline plan, special use request and any related application materials shall be forwarded to the Land Use Control Board.

1.1.1 Land Use Control Board Action

- A. Not less than 35 or more than 75 days after an application has been determined complete, the Land Use Control Board shall hold a public hearing and give notice in accordance with Section 9.3.4, of the UDC Public Hearings and Notification.
- B. The Land Use Control Board shall, after deliberation and prior to the close of the public hearing, recommend approval, rejection, approval with conditions or take the matter under advisement or defer decision in accordance with Sub-Section C below.
- C. The Land Use Control Board may defer a decision for a period not to exceed three months after the initial public hearing at the request of the applicant. The Board may defer a decision for a

period not to exceed one month without the consent of the applicant.

1.1.2 Governing Body Action

- A. The LUCB's recommendation and conditions of approval shall be forwarded to the appropriate governing body within 14 days from the close of the public hearing, or the receipt of a revised site plan reflecting the LUCB's action, whichever is later; however, in no instance shall the matter be forwarded to the appropriate governing body any more than 60 days after the LUCB's action. If a revised site plan has not been submitted to the Division of Planning and Development within 60 days of LUCB action, the site plan reviewed by the LUCB shall be forwarded to the appropriate governing body. If there is no objection/appeal, no public hearing is required before the governing bodies.
- B. The governing bodies shall approve or disapprove the development and special use permit and shall set forth any conditions imposed.

C. Upon Appeal

- 1. Appeals of Land Use Control Board approval for items that otherwise would not go to the governing bodies may be made by an individual who was either present at the Land Use Control Board meeting and made a vocal objection or submitted written comments to the Division of Planning and Development prior to the Land Use Control Board meeting. A written notice of appeal shall be filed with the Zoning Administrator within 14 days after the date of the close of the public hearing.
- 2. If an appeal is filed by the applicant, or opponents to the proposed development and special use, the governing body shall hold a public hearing and give notice in accordance with Section 9.3.4, Public Hearings and Notification, on the application after receipt of the decision of the Land Use Control Board and the recommendations of the Well Head Administrator. The governing body shall approve or disapprove the development and special use permit and shall set forth any conditions imposed.

1.1.3 Approval Criteria

No development and special use permit shall be approved unless the following findings are made concerning the application:

- A. The project will not be a significant potential contaminant source, which may have an adverse effect on the health of persons in proximity of the proposed use and development.
- B. The project will be constructed, arranged and operated so as to be compatible with the immediate vicinity and not interfere with the development and use of adjacent property in accordance with the applicable district regulations.
- C. The project will use appropriate measures for spill response, notification and prevention and for implementation of best management practices appropriate for the proposed development.
- D. The project will not result in the destruction, loss or damage of any feature determined by the governing bodies to be of significant natural, scenic or historic importance.
- E. The project complies with all additional standards imposed on it by any particular provisions authorizing such use.
- F. The governing body may impose conditions to minimize adverse effects on the neighborhood or on public facilities, and to insure compatibility of the proposed development with surrounding properties, uses, and the purpose and intent of this development code.

1.1.4 Permissible Conditions of Approval by Governing Body

- A. In granting approval of a development and special use permit hereunder, the governing body may impose reasonable conditions on the project if it would be listed on MLGW's potential contaminant source inventory if approved, which serve to assure that the required findings are upheld. Such conditions may require an applicant for such a project to submit and obtain approval from TDEC of a pollution prevention plan, which shall include provisions for spill response, notification and prevention and implementation of best management practices appropriate for the proposed development and use before commencement of any development activities. Any such pollution prevention plan shall be consistent with and subject to TDEC Regulations for Drinking Water Source Protection pertaining to "Prohibitions in Source Water Protection Areas."

B. Any additional condition approved by the governing body shall become a part of the permit and be of equal importance in the responsibility of the applicant or subsequent assigns to adhere to its terms.

a. The Zoning Administrator, following consultation with the Well Head Administrator, if appropriate, shall act on the revised plan within 21 days.

1.1.5 Revisions to Approved Special Use Permits

Revisions to approved Special Use Permits shall be classified as minor modifications, which may be approved by the Well Head Administrator and the Zoning Administrator; major modifications, which may be approved by the Land Use Control Board; and amendments, which require the approval of the governing bodies.

A. Amendments

Any revision to an approved Development and Special Use Permit that does not meet the provisions for Major or Minor Modifications set out below shall be processed as an amendment.

B. Major Modifications

Time extensions (see Sub-Section 9.6.14B) to and requests to exceed the 24-month limitation on discontinuance (see Sub-Section 9.6.14C) of approved special use permits shall be processed as major modifications, subject to the provisions of Chapter 9.16. In addition, revisions to site plans, elevations or conditions approved in accordance with approved development and special use permits that do not meet the standards below set out for minor modifications (see Sub-Section 9.6.12C) shall be processed as major modifications.

C. Minor Modifications

1. Modifications may be approved by the Zoning Administrator in consultation with the Well Head Administrator if they are within the scope and intent of the original approval. Minor modifications shall include, but are not limited to, the following:

- a. A less than five percent increase, or any decrease, in the development area.
 - b. The relocation of any structure, dedicated street, easement or landscape screen in any direction from the location shown on the site plan for the distances specified below based on the size of the development:
 1. Less than 25 feet for site plans of two or less acres;
 2. Less than 50 feet for site plans of more than two but less than eight acres;
 3. Less than 100 feet for site plans of eight acres but less than 20 acres; and
 4. Less than 150 feet for site plans of 20 acres or more.
 5. The correction of drafting errors on the approved plan.
 - c. Modifications to the parking or landscaped areas that meet the provisions of this Code.
2. The following items shall be considered by the Well Head Administrator and the Zoning Administrator in approving minor modifications:
 - a. Compliance with all applicable requirements of this development code;
 - b. That the modification will not have a substantial or undue adverse effect upon adjacent properties, the neighborhood, traffic conditions, parking, public infrastructure, and other matters affecting the public health, safety and general welfare; and
 - c. That the proposed modification will not result in the destruction, loss, or damage of any significant natural, scenic, or historic district, site, or feature.
 3. The Zoning Administrator in consultation with the Well Head Administrator may include conditions to insure compatibility of the proposed modification with surrounding properties, uses, and the purpose and intent of this development code.
 4. The Zoning Administrator shall notify the applicant whether the proposed revision qualifies for administrative approval and the basis for the determination.

5. The Zoning Administrator shall distribute copies of the revised plan to the appropriate agencies.
6. The Zoning Administrator, following consultation with the Well Head Administrator, if appropriate, shall act on the revised plan within 21 days
7. Effect of Special Use Decisions

- A. If the governing body votes to deny an application, there may be no subsequent similar application submitted by any party for any part of the subject property until 5 years have elapsed from the date of denial, or from the date any appeal thereof becomes final, whichever is later. This 5-year period shall also apply to: 1) those cases on which the Land Use Control Board conducts a vote but are withdrawn before the governing body may act and 2) those cases involving modifications (see Sub-Section 9.6.11E and Section 9.6.12) and appeals (see Sub-Section 9.23.1C) on which the Land Use Control Board conducts a vote and no further action by the governing body is taken. The governing bodies may waive the time-lapse requirements of this section where it is in the public interest to do so. For the purpose of this Sub-Section, “similar application” shall be interpreted to include, but is not limited to, those applications requesting a use not permitted in the underlying zoning district or permitted by issuance of a special use permit, a same or similar use, pursuant to the use categories provided in this Code.
- B. Unless otherwise conditioned, the development and special use permit and any conditions imposed, shall run with the land and shall be binding on the original applicant as well as any successors, assigns, and heirs.
- C. A development and special use permit shall be noted on the Wellhead Protection Overlay Map.
- D. The issuance of a development and special use permit for a particular use shall not allow the development of the site for the special use, but shall merely authorize the filing of applications for required permits and approvals, including, but not limited to, building permits and certificates of occupancy.
- E. The Zoning Administrator shall not issue a certificate of construction for a special use permit if any of the conditions imposed by the governing body in the approval have not been met.

1.1.6 Period of Validity

- A. Development and special use permits shall be implemented within 24 months of final approval or such permits shall be void, unless conditioned otherwise. Where applicable, an application for a time extension may be filed as a Major Modification subject to Sub-Section 9.6.12B. An application for a time extension shall be filed before the date of expiration or within 12 months after the date of expiration and shall further be subject to the provisions of Chapter 9.16. Only one 24-month time extension is permitted.
- B. If a development and special use permit has not been in use for any consecutive 24-month period, the permit shall be void. The applicant, at the time of a request for a certificate of occupancy, shall be responsible for providing proof to the Building Official of such continued use.

1.1.7 Revocation of a Special Use Permit or Planned Development

- A. If any conditions of a development and special use permit or other requirements of this ordinance are violated, the governing body may revoke all or a portion of a development and special use permit.
- B. Revocation may occur after an evidentiary hearing is conducted by the governing body. The governing body may refer the matter to the Land Use Control Board for a recommendation on the revocation prior to its evidentiary hearing. All hearings associated with a revocation shall be open to the public with certified notice mailed to the owner of the property that is the subject of the special use permit or planned development. Mailed notice shall be in accordance with Paragraph 9.3.4D(1).
- C. A development and special use permit may be revoked upon a constitutional majority vote of the governing body approving the development.
- D. Violation of a condition of approval shall be considered a violation of this development code and thereby subject to the provisions of Article 11, Enforcement, as well as this section.

1.1.8 Coordination with Variances

An application to the Board of Adjustment for a variance may be submitted concurrently with a request to the Land Use Control

Board for a special use permit. However, decisions shall be rendered separately for any variance and the special use permit.

1.1.9 Coordination with Zoning Change Applications

An application for a special use permit may be reviewed concurrently with a zoning change application. However, decisions shall be rendered with separate votes.

V. VARIANCE REGULATIONS.

(A) The provisions of this section shall apply exclusively to areas of Wellhead Protection Overlay Districts. In applying for a variance, the following provisions apply.

(B) Board of Adjustment:

(1) The Board of Adjustment (the “Board”) shall hear and decide requests for variances from the requirements of this chapter. The Board shall not consider any application for a variance from the provisions of this Ordinance until the Well Head Administrator has had an opportunity to review the application and make a written recommendation to the Board. The Well Head Administrator shall have 45 working days from the filing of any application for a variance from this Ordinance to review and issue its recommendation. The application shall be advertised for public hearing for the next regularly scheduled Board meeting following the expiration of the 45-day period.

(2) Variances may be issued for the use of property upon a determination from the Board that the proposed use will not cause, materially contribute to or create a material risk of any adverse effect upon the municipal water source, under reasonably possible hydrologic or geologic conditions. All technological evidence shall be based on the most recent modeling techniques defined in Wellhead Protection Area, Zone 1 and Zone 2 reports, approved by TDEC.

(3) In reviewing a variance application, the Board of Zoning Appeals shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this Ordinance, and:

(a) The practical difficulty and hardship on the property owner related to the use and enjoyment of the property caused by the regulation or restriction as enacted within the Wellhead Protection Areas, Zone 1 and Zone 2;

(b) When it is alleged there is an error in any requirement, decision or determination made by the Well Head Administrator in the enforcement or administration of this Ordinance;

(c) That no variance may be requested nor granted as a means to circumvent the intentions of this Ordinance or as a remedy for a violation of this Ordinance;

(d) May attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this Ordinance;

(4) In reviewing a variance application, the Board of Adjustment shall consider the recommendation of the Wellhead Administrator.

VI. SITE PLAN SUBMISSION AND ADMINISTRATION REQUIREMENTS.

(A) *Preliminary plan.*

(1) The applicant shall submit a preliminary site plan describing the concept for the development of the entire tract to the Land Use Control Board;

(2) The preliminary site plan shall conform with the site plan requirements set forth in this part and include the following additional requirements:

(a) Be drawn to a scale of one inch equals 100 feet;

(b) Including the following:

1. Location of all existing public water supply wells within 1,000 feet;

2. Location of Wellhead Protection Zone 1 and Zone 2 areas within 500 feet of property; and

3. Location of septic tanks (including size and capacity) and/or sewage lift stations, force mains and grease traps.

(c) Provide the regulations used to control the uses permitted in the project and the uses specifically prohibited;

(d) Provide a complete list of the types and volumes of all hazardous materials (including fuels) used, stored, processed, handled or disposed of, other than those volumes and types associated with normal household use;

(e) Provide a description of the types of wastes generated and method of disposal including: solid wastes, hazardous wastes, sewage and non-sewage wastewater discharges;

(f) Provide plans and documents containing information to show compliance with the performance standards;

(g) Provide other additional information as may be required by reviewing agencies regarding: the proposed use, its potential impact to water quality, hydrogeologic information, monitoring and mitigation measures.

(B) *Final plan.*

(1) After approval of the preliminary plan, but prior to the issuance of any construction permit and/or commencement of construction, the applicant shall have approval of the Memphis City Council and a final plan covering the entire tract or that portion proposed for development.

(2) The final plan shall:

(a) Provide a complete list of the types and volumes of all hazardous materials (including fuel) used, stored, processed, handled or disposed, other than those volumes and types associated with normal household use;

(b) Provide a description of the types of wastes generated and method of disposal including: solid wastes, hazardous wastes, sewage and non-sewage wastewater discharges;

(c) Provide plans and documents containing information to show compliance with the performance standards;

(d) Provide other additional information as may be required by reviewing agencies regarding: the proposed use, its potential impact to water quality, hydrogeologic information, monitoring and mitigation measures.

(3) The applicant may, if desired, submit only one final plan for the purpose of securing approval of the development plan if the plan submitted complies with all the requirements of the final plan. The Memphis City Council may amend or condition the plan and grant final approval of such a plan, as amended or conditioned after only one review.

VII. MISCELLANEOUS

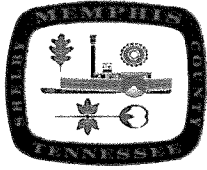
(A) **COMPLIANCE WITH TDEC REGULATIONS.** MLGW shall comply with TDEC's regulations requiring submission of an updated Well Head Protection Plan whenever there are changes in land management issues after adoption of ordinances by the local governing body. Any revision of the existing plan shall modify its provisions to address and incorporate the changes required by this ordinance. A copy of this ordinance shall be attached to any revised Plan.

(B) **SEVERABILITY.** If any clause, section, paragraph, sentence or part of this Ordinance shall be held or declared to be unconstitutional and void, such holding or declaration shall not affect the remaining parts of this Ordinance; it being hereby declared to be the legislative intent to have passed the remainder of this Ordinance notwithstanding the parts so held or declared to be invalid, if any.

(C) **ENACTMENT OF CITY ORDINANCE.** This Ordinance shall take effect from and after the date it shall have passed by the Council, signed by the Chairman of the Council, certified and delivered to the office of the Mayor in writing by the Comptroller, and become effective as otherwise provided by law; provided however if approval by TDEC is required the effective date of this ordinance shall be deferred until the first day of the month next following TDEC's approval.

SPONSOR: Planning and Zoning Committee

FRANK COLVETT, JR.
CHAIRMAN



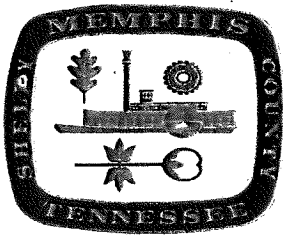
RESOLUTION approving final plat entitled **200 Germantown Parkway PD (PD-16-13)** and authorizing release of the cash bond

WHEREAS, **200 Germantown Parkway, LLC**, the Developer has completed the public improvement with the City of Memphis, located east of Germantown Parkway at Smythe Road in the City of Memphis, as reflected on the final plat entitled **200 Germantown Parkway [CR-5260]** and

WHEREAS, all public improvements required by the standard improvement contract for the project are completed.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Memphis that the engineering plat for **200 Germantown Parkway [CR-5260]** and the completion of the public improvements therein, be and the same are hereby accepted by the City.

BE IT FURTHER RESOLVED, that the **Cash Bond** in the amount of **\$294,700.00** held as security is ordered released.



RESOLUTION approving final plat of entitled **200 Germantown Parkway PD (PD-16-13)**

WHEREAS, **200 Germantown Parkway, LLC** the Developer of certain property within the present limits of the City of Memphis, located east of Germantown Parkway at Smythe Road, as indicated on the final plat entitled **200 Germantown Parkway PD (PD-16-13)**, and

WHEREAS, the developer desires to develop the property reflected on the site plan; and.

WHEREAS, attached hereto is a standard improvement contract entered into by and between **200 Germantown Parkway, LLC** and the City of Memphis covering the public improvements to be constructed as a part of developing the property; and

WHEREAS, the terms and conditions of the contract are in accordance with the policies of the City of Memphis for developing such a project.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Memphis that the final plat for **200 Germantown Parkway PD (PD-16-13)**, be and is hereby approved.

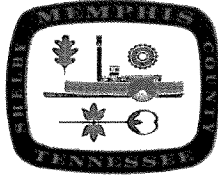
BE IT FURTHER RESOLVED, that the proper officials be and are hereby authorized to execute the attached standard improvement contract on behalf of the City of Memphis.

CR-5260

I hereby certify that the foregoing is a true copy and document was adopted, approved by the Council of the City of Memphis in regular session on

Date AUG 22 2017

Valerie C. Sripes
Deputy Comptroller-Council Records



Memphis City Council Summary Sheet

1. Description of the Item (Resolution, Ordinance, etc.)

Resolution

2. Initiating Party (e.g. Public Works, at request of City Council, etc.)

Engineering

3. State whether this is a change to an existing ordinance or resolution, if applicable.

To **Accept** the final plat and public improvements for 200 Germantown Parkway and to **Release** the Cash Bond in the amount of \$294,700.00.

4. State whether this will impact specific council districts or super districts.

District: 2 Super District: 9

5. State whether this requires a new contract, or amends an existing contract, if applicable.

Existing - CR-5260

6. State whether this requires an expenditure of funds/requires a budget amendment

No

7. If applicable, please list the MWBE goal and any additional information needed

N/A



Board of Light, Gas and Water Commissioners

220 S. Main Street
Memphis, TN 38103
www.mlgw.com

Board Meeting

~ Final Agenda ~

Wednesday, August 4, 2021

Board Room

MLGW ITEMS FOR CITY COUNCIL APPROVAL ON **August 17, 2021.**

1. Resolution awarding a Purchase Order to Technogent, for Splunk Enterprise license subscription renewals in the amount of \$630,000.00
2. Resolution awarding Contract No. 12307, Assessing MLGW Assessment Center Candidates to Alignmark, LLC in the funded amount of \$138,600.00.
3. Resolution awarding Contract No. 12288, Gas Matrix Utility Landscaping to Enlightenment, Inc. dba APS Facility Maintenance in the funded amount of \$398,448.00.
4. Resolution awarding a Purchase Order to LightSpeed Technologies, Inc., for multiprotocol label switching (MPLS) network expansion equipment in the amount of \$365,230.00.
5. Resolution awarding a Purchase Order to Summit Truck Group, for Class 8 Cab / Crew Cab & Chassis in the amount of \$694,284.00.
6. Resolution awarding a Purchase Order to Summit Truck Group, for 6-ton cab and chassis tractors in the amount of \$314,055.00.
7. Resolution awarding a Purchase Order to Elster American Meter Company, for gas smart meters, in the amount of \$1,097,520.00.

Memphis City Council Summary Sheet for MLGW Items

1. **Description of the Item**

Resolution awarding a purchase order to Technologent, for Splunk Enterprise license subscription renewals, in the amount of \$630,000.00.

2. **Additional Information**

The Splunk Enterprise software is a central logging repository that receives system logs from network security devices, network switches, Windows / Linux servers, directory services and applications. It correlates the log data to provide real-time analysis of security alerts generated by applications, servers, and network hardware.

EXCERPT
from
MINUTES OF MEETING
of
BOARD OF LIGHT, GAS AND WATER COMMISSIONERS
CITY OF MEMPHIS
held
August 4, 2021

The Manager of Procurement and Contracts recommends to the Board of Light, Gas and Water Commissioners that it award a three (3) year purchase order to Technologent in the amount of \$630,000.00 for Splunk Enterprise license subscription renewals.

The Splunk Enterprise software is a central logging repository that receives system logs from network security devices, network switches, Windows / Linux servers, directory services and applications. It correlates the log data to provide real-time analysis of security alerts generated by applications, servers, and network hardware.

Bids were opened on June 30, 2021. Notice to Bidders was advertised. Ten (10) bids were solicited and five (5) bids were received with the lowest and best complying bidder being the firm of Technologent. This award complies with all applicable laws and policies.

The 2021 budgeted amount for Technical Support is \$13,308,847.00; the amount spent to date is \$2,703,771.13; leaving a balance available of \$10,605,075.87 to be spent in 2021; of which \$210,000.00 will be spent on this purchase order in 2021; leaving a balance of \$10,395,075.87 after award; the remaining balance of \$420,000.00 to be spent from subsequent budget years as approved; and

NOW THEREFORE BE IT RESOLVED BY the Board of Light, Gas and Water Commissioners:

THAT, subject to the consent and approval of the Council of the City of Memphis, award of a three (3) year purchase order to Technologent is approved for furnishing:

Annual - Term license with Standard Success Plan/450 GB/day renewal/Includes standard support 24x7; August 15, 2021 – August 14, 2022;

Annual - Term license with Standard Success Plan/450 GB/day renewal/Includes standard support 24x7; August 15, 2022 - August 14, 2023;

Annual - Term license with Standard Success Plan/450 GB/day renewal/Includes standard support 24x7; August 15, 2023 - August 14, 2024;

Total award amount is \$630,000.00; f.o.b. Memphis, Tennessee, transportation prepaid; our dock; said price being firm; terms net 30 days.

I hereby certify that the foregoing is a true copy of a resolution accepted by the Board of Light, Gas and Water Commissioners at a regular-special meeting held on 4th day of August, 2021, at which a quorum was present.


Secretary-Treasurer

RESOLUTION

WHEREAS, the Board of Light, Gas and Water Commissioners in their meeting of August 4, 2021 approved the purchase of Splunk Enterprise license subscription renewals for three (3) years and is now recommending to the Council of the City of Memphis that it approves said purchase as approved in the 2021 fiscal year budget and subsequent budget years as approved; and

WHEREAS, the Splunk Enterprise software is a central logging repository that receives system logs from network security devices, network switches, Window / Linux servers, directory services and applications. It correlates the data to provide real-time analysis of security alerts generated by applications, servers, and network hardware; and

WHEREAS, bids were opened on June 30, 2021. Notice to Bidders was advertised. Ten (10) bids were solicited and five (5) bids were received with the lowest and best complying bidder being the firm of Technologent. This award complies with all applicable laws and policies; and

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Memphis that there be and is hereby approved the purchase of Splunk Enterprise license subscription renewals for three (3) years from Technogent in the amount of \$210,000.00 chargeable to the MLGW 2021 fiscal year budget and the balance of \$420,000.00 chargeable to subsequent budget years as approved.

Memphis City Council Summary Sheet for MLGW Items

1. Description of the Item

Resolution awarding Contract No. 12307, Assessing MLGW Assessment Center Candidates to Alignmark, LLC in the funded amount of \$138,600.00.

2. Additional Information

The project scope is for Alignmark, LLC, as a single source provider, to provide remote assessing of MLGW's Assessment Center candidates consisting of Supervisors and Foremen per month. The Consultant will receive digital videos and written materials from MLGW's candidates to observe, complete assessments, input ratings to generate reports and email reports to MLGW within three (3) business days.

EXCERPT
from
MINUTES OF MEETING
of
BOARD OF LIGHT, GAS AND WATER COMMISSIONERS
CITY OF MEMPHIS
held
August 4, 2021

The Manager of Procurement and Contracts recommends to the Board of Light, Gas and Water Commissioners that it awards Contract No. 12307, Assessing MLGW Assessment Center Candidates to Alignmark, LLC in the funded amount of \$138,600.00.

The project scope is for Alignmark, LLC, as a single source provider, to provide remote assessing of MLGW's Assessment Center candidates consisting of Supervisors and Foremen per month. The Consultant will receive digital videos and written materials from MLGW's candidates to observe, complete assessments, input ratings to generate reports and email reports to MLGW within three (3) business days. Alignmark will assess up to 72 individuals per year, up to 360 individuals during the term of the contract for a five (5) year period covering January 1, 2022 through December 31, 2026. MLGW is requesting approval of this single source award, which can only be provided by Alignmark, LLC in the funded amount of \$138,600.00. This single source award complies with all applicable laws and policies.

NOW THEREFORE BE IT RESOLVED BY the Board of Light, Gas and Water Commissioners:

THAT, Subject to the consent and approval of the Council of the City of Memphis, the award of Contract No. 12307, Assessing MLGW Assessment Center Candidates to Alignmark, LLC in the funded amount of \$138,600.00, as outlined in the foregoing preamble, is approved and further,

THAT, the President, or his designated representative is authorized to execute the Award.

I hereby certify that the foregoing is a true copy of a resolution accepted by the Board of Light, Gas and Water Commissioners at a ~~regular~~-~~special~~ meeting held on 4th day of August, 20 21, at which a quorum was present.


Secretary-Treasurer

RESOLUTION

WHEREAS, the Board of Light, Gas and Water Commissioners in their meeting of August 4, 2021, awarded Contract No. 12307, Assessing MLGW Assessment Center Candidates to Alignmark, LLC in the funded amount of \$138,600.00, and is now recommending to the Council of the City of Memphis that it approves said award as approved; and

WHEREAS, the project scope is for Alignmark, LLC, as a single source provider, to provide remote assessing of MLGW's Assessment Center candidates consisting of Supervisors and Foremen per month. The Consultant will receive digital videos and written materials from MLGW's candidates to observe, complete assessments, input ratings to generate reports and email reports to MLGW within three (3) business days. Alignmark will assess up to 72 individuals per year, up to 360 individuals during the term of the contract for a five (5) year period covering January 1, 2022 through December 31, 2026. MLGW is requesting approval of this single source award, which can only be provided by Alignmark, LLC in the funded amount of \$138,600.00. This single source award complies with all applicable laws and policies; and

NOW THEREFORE BE IT RESOLVED by the Council of the City of Memphis, that there be and is hereby approved an award of Contract No. 12307, Assessing MLGW Assessment Center Candidates to Alignmark, LLC in the funded amount of \$138,600.00 as approved.

Memphis City Council Summary Sheet for MLGW Items

1. Description of the Item

Resolution awarding Contract No. 12288, Gas Matrix Utility Landscaping to Enlightenment, Inc. dba APS Facility Maintenance in the funded amount of \$398,448.00.

2. Additional Information

The project scope is to supply supplemental landscaping services to MLGW's Gas Construction and Maintenance crews as required to restore areas disturbed by underground gas utility construction. This includes pumping water and back-filling excavations, performing finish grading, sodding or seeding to match existing landscape, removing sod and brush from gas meter locations, and removal and installation of ornamental bushes and small trees.

EXCERPT
from
MINUTES OF MEETING
of
BOARD OF LIGHT, GAS AND WATER COMMISSIONERS
CITY OF MEMPHIS
held
August 4, 2021

The Manager of Procurement and Contracts recommends to the Board of Light, Gas and Water Commissioners that it awards Contract No. 12288, Gas Matrix Utility Landscaping to Enlightenment, Inc. dba APS Facility Maintenance in the funded amount of \$398,448.00.

The project scope is to supply supplemental landscaping services to MLGW's Gas Construction and Maintenance crews as required to restore areas disturbed by underground gas utility construction. This includes pumping water and back-filling excavations, performing finish grading, sodding or seeding to match existing landscape, removing sod and brush from gas meter locations, and removal and installation of ornamental bushes and small trees.

The Notice to Bidders was advertised using MLGW's On-Line Bid Notification System and the Memphis Daily News on April 9, 2021. MLGW solicited twelve bids; and received two (2) bids on May 4, 2021. The lowest and best bid received was from Enlightenment, Inc. dba APS Facility Maintenance in the amount of \$398,448.00. The term of this contract is for one (1) year from the date of the Notice to Proceed with an option of four (4) annual renewals. This award complies with all applicable laws and policies.

NOW THEREFORE BE IT RESOLVED BY the Board of Light, Gas and Water Commissioners:

THAT, Subject to the consent and approval of the Council of the City of Memphis, the award of Contract No. 12288, Gas Matrix Utility Landscaping to Enlightenment, Inc. dba APS Facility Maintenance in the funded amount of \$398,448.00, as outlined in the foregoing preamble, is approved and further,

THAT, the President, or his designated representative is authorized to execute the Award.

I hereby certify that the foregoing is a true copy of a resolution accepted by the Board of Light, Gas and Water Commissioners at a regular ~~special~~ meeting held on 4th day of August, 2021, at which a quorum was present.


Secretary-Treasurer

RESOLUTION

WHEREAS, the Board of Light, Gas and Water Commissioners in their meeting of August 4, 2021, awarded Contract No. 12288, Gas Matrix Utility Landscaping to Enlightenment, Inc. dba APS Facility Maintenance in the funded amount of \$398,448.00, and is now recommending to the Council of the City of Memphis that it approves said award as approved; and

WHEREAS, the project scope is to supply supplemental landscaping services to MLGW's Gas Construction and Maintenance crews as required to restore areas disturbed by underground gas utility construction. This includes pumping water and back-filling excavations, performing finish grading, sodding or seeding to match existing landscape, removing sod and brush from gas meter locations, and removal and installation of ornamental bushes and small trees.

WHEREAS, the Notice to Bidders was advertised using MLGW's On-Line Bid Notification System and the Memphis Daily News on April 9, 2021. MLGW solicited twelve bids; and received two (2) bids on May 4, 2021. The lowest and best bid received was from Enlightenment, Inc. dba APS Facility Maintenance in the amount of \$398,448.00. The term of this contract is for one (1) year from the date of the Notice to Proceed with an option of four (4) annual renewals. This award complies with all applicable laws and policies; and

NOW THEREFORE BE IT RESOLVED by the Council of the City of Memphis, that there be and is hereby approved an award of Contract No. 12288, Gas Matrix Utility Landscaping to Enlightenment, Inc. dba APS Facility Maintenance in the funded amount of \$398,448.00 as approved.

Memphis City Council Summary Sheet for MLGW Items

1. Description of the Item

Resolution awarding a Purchase Order to LightSpeed Technologies, Inc., for multiprotocol label switching (MPLS) network expansion equipment in the amount of \$365,230.00

2. Additional Information

The multiprotocol label switching network expansion equipment is needed to transport voice and data communication from MLGW's various facilities and substations utilizing the fiber infrastructure. The equipment will expand the existing MPLS infrastructure and provide backup access to the Tropos Networks and Distribution Automation.

EXCERPT
from
MINUTES OF MEETING
of
BOARD OF LIGHT, GAS AND WATER COMMISSIONERS
CITY OF MEMPHIS
held
August 4, 2021

The Manager of Procurement and Contracts recommends to the Board of Light, Gas and Water Commissioners that it awards a purchase order to LightSpeed Technologies, Inc. in the amount of \$365,230.00 for multiprotocol label switching (MPLS) network expansion equipment.

The multiprotocol label switching network expansion equipment is needed to transport voice and data communication from MLGW's various facilities and substations utilizing the fiber infrastructure. The equipment will expand the existing MPLS infrastructure and provide backup access to the Tropos Networks and Distribution Automation.

Bids were opened on June 9, 2021. Notice to Bidders was advertised. Four (4) bids were solicited and four (4) bids were received with the lowest and best complying bidder being the firm of LightSpeed Technologies, Inc. This award complies with all applicable laws and policies.

The 2021 budgeted amount for Telecommunications Networks is \$2,837,400.00; the amount spent-to-date is \$16,672.18; leaving a balance of \$2,820,727.82 available to be spent in 2021; of which \$365,230.00 will be requested for carry over to the 2022 budget due to the delivery time of this equipment; leaving a balance of \$2,455,497.82 after award; and

NOW THEREFORE BE IT RESOLVED BY the Board of Light, Gas and Water Commissioners:

THAT, subject to the consent and approval of the Council of the City of Memphis, award of purchase order to LightSpeed Technologies, Inc. is approved for furnishing:

75 – SAR-HC with redundant (20-75V) DC power feeds. DIN rail or panel mountable. Node has 6 10/100/1000 Mbps Ethernet ports (2 SFP, 2 RJ45, 2 POE RJ45), and 2 RS232 ports, Part #3HE07353AA,

90 – 7705 SAR Release 9.0 OS License, Part #3HE02784NA,

75 – SAR-HC Din Mounting H/W KIT -Rear Mount. Kit contains DIN rail bracket and hardware to mount the SAR-HC to a DIN rail from the rear of the chassis, Part #3HE07357AA,

15 – 3HE06791AA, 7705 SAR-8 SHELF V2 - SAR-8 Shelf V2 that accepts redundant DC-power feeds and up to 2 CSMs (V1 or V2) and up to 6 interface cards. Fan Module must be version associated with this V2 shelf. 6 Blanking plates included,

35 – 3HE02774AB, Control Switch Module (CSM) Version 2 for redundancy, Part #3HE02774AB,

15 – 3HE06792EA, Fan Module For SAR-8 V2 shelf (EXT. TEMP 48 VDC), Part #3HE06792EA,

35 – 3HE06151AC, 8-port GigE SFP Enhanced Performance Ethernet Card v3 w. Large Tables, supporting Ethernet/VLAN services. Includes 8 Sync E capable GigE ports. This card is supported in both -48 VDC and +24 VDC systems, Part #3HE06151AC,

895 – NSP License Point, Part #3HE16254AA

895 – NSP Classic Management FP, Part #3HE16001AA,

895 – NSP Network Infrastructure Management FP, Part #3HE16003AA,

Total award is \$365,230.00; f.o.b. Memphis, Tennessee, our dock, transportation prepaid; said prices being firm; delivery in 21 weeks; terms net 30 days.

I hereby certify that the foregoing is a true copy of a resolution accepted by the Board of Light, Gas and Water Commissioners at a ~~regular~~-special meeting held on 4 day of August, 2021, at which a quorum was present.

 Secretary-Treasurer

RESOLUTION

WHEREAS, the Board of Light, Gas and Water Commissioners in their meeting of August 4, 2021 approved a purchase order for multiprotocol label switching (MPLS) network expansion equipment and is now recommending to the Council of the City of Memphis that it approves said purchase as approved in the MLGW 2022 fiscal year budget contingent upon approval; and

WHEREAS, the multiprotocol label switching network expansion equipment is needed to transport voice and data communication from MLGW'S various facilities and substations utilizing the fiber infrastructure. The equipment will expand the existing MPLS infrastructure and provide backup access to the Tropos Networks and Distribution Automation; and

WHEREAS, bids were opened on June 9, 2021. Notice to Bidders was advertised. Four (4) bids were solicited and four (4) bids were received with the lowest and best complying bidder being the firm of LightSpeed Technologies, Inc. This award complies with all applicable laws and policies; and

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Memphis that there be and is hereby approved a purchase order for multiprotocol label switching (MPLS) network expansion equipment from LightSpeed Technologies, Inc. in the sum of \$365,230.00, Due to the delivery time funds for this equipment will be requested for carry over to the 2022 budget.

Memphis City Council Summary Sheet for MLGW Items

1. Description of the Item

Resolution awarding a purchase order to Summit Truck Group, for Class 8 Cab / Crew Cab & Chassis, in the amount of \$694,284.00.

2. Additional Information

The class 8 cab / crew cab & chassis will be used by employees to maintain the electric, gas and water systems and for various customer service functions throughout Memphis and Shelby County, TN.

EXCERPT
from
MINUTES OF MEETING
of
BOARD OF LIGHT, GAS AND WATER COMMISSIONERS
CITY OF MEMPHIS
held
August 4, 2021

The Manager of Procurement and Contracts recommends to the Board of Light, Gas and Water Commissioners that it awards a purchase order to Summit Truck Group in the amount of \$694,284.00 for the purchase of class 8 cab / crew cab & chassis.

The class 8 cab / crew cab & chassis will be used by employees to maintain the electric, gas and water systems and for various customer service functions throughout Memphis and Shelby County, TN.

Bids were opened on June 23, 2021. Notice to Bidders was advertised. Five (5) bids were solicited and three (3) bids were received with the lowest and best complying bidder being the firm of Summit Truck Group. This award complies with all applicable laws and policies.

The 2021 budgeted amount for Transportation and Fleet Services is \$2,916,000.00; the amount spent to date is \$440,724.50; leaving a balance available of \$2,475,275.50 to be spent in 2021; of which \$694,284.00 will be requested for carry over due to the delivery time of this equipment; leaving a balance of \$1,780,991.50 after award; and

NOW THEREFORE BE IT RESOLVED BY the Board of Light, Gas and Water Commissioners:

THAT, subject to the consent and approval of the Council of the City of Memphis, award of purchase order to Summit Truck Group is approved for furnishing:

1 - Class 8 crew cab and chassis with a 120-inch clear cab-to-axle dimension with an Altec AA55E fully hydraulic aerial tower with fiberglass two-man platform with material handler package mounted over the rear axle with a utility body with tail shelf. All in accordance with MLGW Specification No. TRAT-21-5031,

1 - Class 8 cab and chassis with a 120-inch clear cab-to-axle dimension with an Altec AA55E fully hydraulic aerial tower with fiberglass two-man platform with 180-degree rotator mounted over the rear axle with Altec utility body with tail-shelf. All in accordance with MLGW Specification No. TRAT-21-5035,

1 - Class 8 cab and chassis with a 102-inch clear cab-to-axle dimension with an Altec AA55E fully hydraulic aerial tower with fiberglass two-man platform with 180-degree rotator mounted over the rear axle with an all steel utility body. All in accordance with MLGW drawing No. GM-299-A and Specification No. TRAT-21-5037,

Totaling \$694,284.00; f.o.b. Memphis, Tennessee, our dock, transportation prepaid; prices being firm, terms net 30 days; delivery 640-670 days after receipt of order.

I hereby certify that the foregoing is a true copy of a resolution accepted by the Board of Light, Gas and Water Commissioners at a ~~regular~~-~~special~~ meeting held on 4th day of August, 2021, at which a quorum was present.


Secretary-Treasurer

RESOLUTION

WHEREAS, the Board of Light, Gas and Water Commissioners in their meeting of August 4, 2021 approved the purchase of class 8 cab / crew cab & chassis and is now recommending to the Council of the City of Memphis that it approves said purchase as approved in subsequent budget years contingent upon approval; and

WHEREAS, class 8 cab / crew cab & chassis will be used by employees to maintain the electric, gas and water systems and for various customer service functions throughout Memphis and Shelby County, TN; and

WHEREAS, bids were opened on June 23, 2021. Notice to Bidders was advertised. Five (5) bids were solicited and three (3) bids were received with the lowest and best complying bidder being the firm of Summit Truck Group. This award complies with all applicable laws and policies; and

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Memphis that there be and is hereby approved the purchase of class 8 cab / crew cab & chassis from Summit Truck Group in the sum of \$694,284.00. Due to the delivery time funds for this equipment will be requested for carry over to subsequent budget year as approved.

Memphis City Council Summary Sheet for MLGW Items

1. Description of the Item

Resolution awarding a purchase order to Summit Truck Group, for 6-ton cab and chassis tractors, in the amount of \$314,055.00.

2. Additional Information

The 6-ton cab and chassis tractors will be used by Division employees to maintain the electric, gas and water systems and for various customer service functions throughout Shelby County. These tractors will replace equipment that will be retired from service based on age, actual operational usage, projected usage, repair cost and frequency, parts availability, and effectiveness to meet the Division's needs.

EXCERPT
from
MINUTES OF MEETING
of
BOARD OF LIGHT, GAS AND WATER COMMISSIONERS
CITY OF MEMPHIS
held
August 4, 2021

The Manager of Procurement and Contracts recommends to the Board of Light, Gas and Water Commissioners that it awards a purchase order to Summit Truck Group in the amount of \$314,055.00 for 6-ton cab and chassis tractors.

The 6-ton cab and chassis tractors will be used by Division employees to maintain the electric, gas and water systems and for various customer service functions throughout Shelby County. These tractors will replace equipment that will be retired from service based on age, actual operational usage, projected usage, repair cost and frequency, parts availability, and effectiveness to meet the Division's needs.

Bids were opened on June 23, 2021. Notice to Bidders was advertised. Four (4) bids were solicited and two (2) bids were received with lowest and best complying bidder being the firm of Summit Truck Group. This award complies with all applicable laws and policies.

The 2021 budgeted amount for Transportation and Fleet Services is \$5,727,000.00; the amount spent to date is \$731,477.20; leaving a balance available of \$4,995,522.80 to be spent in 2021; of which \$314,055.00 will be requested for carry over to the 2022 budget due to the delivery time of this equipment; leaving a balance of \$4,681,467.80 after award; and

NOW THEREFORE BE IT RESOLVED BY the Board of Light, Gas and Water Commissioners:

THAT, subject to the consent and approval of the Council of the City of Memphis, award of contract to Summit Truck Group is approved for furnishing:

2 - Latest model cab and chassis tractors with fifth-wheel having at least a 64,000 GVWR and 109" cab-to-center of tandem dimension, all in accordance with Division Specification Number TCC-21-1420,

1 - Latest model cab and chassis tractor with fifth-wheel having at least a 52,000 GVWR and 108" cab-to-center of tandem dimension, all in accordance with Division Specification Number TCC-21-1422,

Total award amount is \$314,055.00; f.o.b. Memphis, Tennessee, transportation prepaid; our dock; said prices being firm; delivery 260 days after receipt of order; terms net 30 days.

I hereby certify that the foregoing is a true copy of a resolution accepted by the Board of Light, Gas and Water Commissioners at a ~~regular-special~~ meeting held on 4th day of August, 2021, at which a quorum was present.


Secretary-Treasurer

RESOLUTION

WHEREAS, the Board of Light, Gas and Water Commissioners in their meeting of August 4, 2021 approved the purchase of 6-ton cab and chassis tractors and is now recommending to the Council of the City of Memphis that it approves said purchase as approved in the 2022 fiscal year budget contingent upon approval; and

WHEREAS, the 6-ton cab and chassis tractor will be used by Division employees to maintain the electric, gas and water systems and for various customer service functions throughout Shelby County. These tractors will replace equipment that will be retired from service based on age, actual operational usage, projected usage, repair cost and frequency, parts availability, and effectiveness to meet the Division's needs; and

WHEREAS, bids were opened on June 23, 2021. Notice to Bidders was advertised. Four (4) bids were solicited and two (2) bids were received with lowest and best complying bidder being the firm of Summit Truck Group. This award complies with all applicable laws and policies; and

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Memphis that there be and is hereby approved the purchase of 6-ton cab and chassis tractors from Summit Truck Group in the sum of \$314,055.00. Due to the delivery time funds for this equipment will be requested for carry over to the 2022 budget.

Memphis City Council Summary Sheet for MLGW Items

1. Description of the Item

Resolution awarding a purchase order to Elster American Meter Company for gas smart meters in the amount of \$1,097,520.00.

2. Additional Information

The gas smart meters are designed to measure a specific amount of natural gas, which is one (1) standard cubic foot delivered at 60 degrees Fahrenheit. That information is both visible at the meter and communicated via the smart meter network by the module attached to the smart meter.

EXCERPT
from
MINUTES OF MEETING
of
BOARD OF LIGHT, GAS AND WATER COMMISSIONERS
CITY OF MEMPHIS
held
August 4, 2021

The Manager of Procurement and Contracts recommends to the Board of Light, Gas and Water Commissioners that it awards a purchase order to Elster American Meter Company for gas smart meters in the amount of \$1,097,520.00.

The gas smart meters are designed to measure a specific amount of natural gas, which is one (1) standard cubic foot delivered at 60 degrees Fahrenheit. That information is both visible at the meter and communicated via the smart meter network by the module, attached to the smart meter.

A bid was received on May 19, 2021 for gas smart meters in accordance with MLGW's Sole/Single Source Policy. The gas smart meters have been defined as sole source by MLGW's Gas Meter Shop because Elster American Meter Company is the only authorized distributor for the gas smart meters. This award complies with all applicable laws and policies.

Contingent upon approval of the 2022 fiscal year budget, the budgeted amount for Gas – Previously Capitalized Items is \$1,200,000.00; of which \$1,097,520.00 will be spent on this purchase order in 2022; leaving a balance of \$102,480.00 after award; and

NOW THEREFORE BE IT RESOLVED BY the Board of Light, Gas and Water Commissioners:

THAT, subject to the consent and approval of the Council of the City of Memphis, award of a purchase order to Elster American Meter Company is approved for furnishing:

8,000 – Gas smart meters, Honeywell Elster AC-250 with EG214000000 Module pre-installed. Temperature compensated, odometer index, two (2) cubic foot drive, 20 LT, 5 PSIG MAOP, UV protected index,

Totaling \$1,097,520.00; f.o.b. Memphis, Tennessee, transportation prepaid; our dock; said prices being firm; delivery 20-22 weeks; terms net 30 days.

I hereby certify that the foregoing is a true copy of a resolution accepted by the Board of Light, Gas and Water Commissioners at a regular-special meeting held on 4th day of AUGUST, 2021, at which a quorum was present.


Secretary-Treasurer

RESOLUTION

WHEREAS, the Board of Light, Gas and Water Commissioners in their meeting of August 4, 2021, approved the purchase for gas smart meters and is now recommending to the Council of the City of Memphis that it approves said purchase as approved in the 2022 fiscal year budget contingent upon approval; and

WHEREAS, the gas smart meters are designed to measure a specific amount of natural gas, which is one (1) standard cubic foot delivered at 60 degrees Fahrenheit. That information is both visible at the meter and communicated via the smart meter network by the module, attached to the smart meter; and

WHEREAS, a bid was received on May 19, 2021 for gas smart meters in accordance with MLGW's Sole/Single Source Policy. The gas smart meters have been defined as sole source by MLGW's Gas Meter Shop because Elster American Meter Company is the only authorized distributor for the gas smart meters. This award complies with all applicable laws and policies; and

Now **THEREFORE BE IT RESOLVED** by the Council of the City of Memphis that there be and is hereby approved a purchase order for gas smart meters from Elster American Meter Company for the sum of \$1,097,520.00 chargeable to the MLGW 2022 fiscal year budget contingent upon approval.

City of Memphis



TENNESSEE

JIM STRICKLAND
MAYOR

July 12, 2021

The Honorable Chase Carlisle, Chairman
Personnel, Government Affairs, and Annexation Committee
City Hall - Room 514
Memphis, TN 38103

Dear Chairman Carlisle:

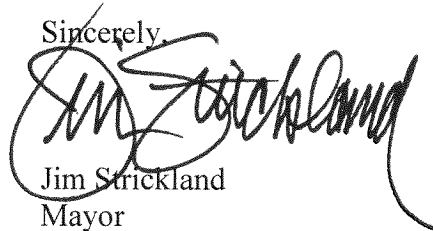
Subject to Council approval, I hereby recommend that:

Darius Jones

be appointed to the Solid Wasted Municipal Planning Board with a term expiring May 31, 2025.

I have attached biographical information.

Sincerely,



Jim Strickland
Mayor

JSS/sss

Cc: Council Members

SOLID WASTE MUNICIPAL PLANNING BOARD

5 Member Board

6 Year Term

Oath of Office Required

Purpose:

This joint Memphis and Shelby County Municipal Solid Waste Regional Board is responsible for the region's Municipal Solid Waste Plan, annual updates to the Plan, five-year updates to the Plan and for reviewing applications for disposal.

Members:

Roosevelt T. Allen	M/B	05-31-17
Philip Davis	M/W	05-31-21
Vacancy*	M/B	05-31-23
Kerry R. Roy	F/W	05-31-21
Vacancy**	F/B	05-31-19

***Albert Lamar resigned**

****Joyce (Joy) Williams retired**

Updated: 6/2021



City of Memphis

BIOGRAPHICAL INFORMATION
APPOINTMENT TO BOARD/COMMISSION
Municipal Solid Waste Planning Board
BOARD/COMMISSION

Name: Darius Jones Race Black M F

E-Mail Address: darius.jones@memphistn.gov D.O.B. 07/29/1971

Profession/Employer: City of Memphis

Business Address: 125 North Main Street Room 628
Memphis, TN 38103 Zip 38103 Phone: 901-636-6877

Education: Mississippi State University; BA Political Science

Name of Spouse: Gloria Jones Number of Children: 3

Home Address: 1677 Belledeer Dr West Phone: 9013027879

City: Cordova State: TN Zip: 38016

I certify that I am a resident of the City of Memphis (Unincorporated areas and surrounding counties are not considered). Yes or No If yes, how long? _____

Professional Organization/Associations:

Other Organizations/Association:

Other Interests:
Fifteen years of experience in the waste industry.

Signature _____ Date _____

Darius L. Jones

1677 Belledeer Drive W. ♦ Memphis, TN 38106
901-302-7879 ♦ dariusl.jones@yahoo.com

Results-driven professional with 20+ years of progressive leadership experience in the transportation industry. Demonstrated success managing safety, operations, P&L, distribution, strategic positioning, acquisitions, and strategic planning in both start-up organizations and companies experiencing rapid growth. Proven ability to consistently increase production and profitability and improve safety. Driven by new challenges and the desire to excel in all endeavors.

CORE COMPETENCIES

Strategic Planning ♦ Fleet Management ♦ Customer Relationships ♦ Operations Management
Team Management ♦ P&L Management ♦ Safety Compliance ♦ Project Management ♦ Leadership
Route Planning ♦ Acquisitions/Mergers ♦ Union Negotiations ♦ Regulation Compliance
Vendor Relations ♦ Opportunity Identification ♦ Contract Negotiations ♦ Staff Training ♦ Problem Solving

EXPERIENCES AND ACHIEVEMENTS

City of Memphis, TN/Solid Waste Division Sr. Solid Waste Operations Administrator

2021-current

Administer Operational Support to the Solid Waste Division. Evaluate current procedures and practice, develop and implement alternate methods to improve the operations. Coordinate department activities with inter-related activities of other City departments and other government agencies to insure optimum efficiency.

- ♦ Review bid specification and contracts necessary to purchase vehicles, tools, equipment, and supplies.
- ♦ Develop and review staffing requirement to maintain efficient and effective operations.
- ♦ Attend public meetings, community and civic meetings on behalf of the Division of Solid Waste.
- ♦ Interact and communicate with the public, vendors, management, and other staff members on a variety of issues and concerns.

Waste Pro, Inc., Memphis, TN Regional Operations Manager

2019- 2021

Provide operational support to nine division that make up the Southern Regions with an annual revenue more than \$65 MM. Ensure that all Regional operational and budget expectations are met. Also, work with the Region on hauling company acquisitions, start-up locations, and acquiring new municipal solid waste contracts.

- ♦ Provide support to the Division Managers to endure that all DOT and company safety expectations are met.
- ♦ Work hand in hand with management to develop and implement new ideas and plans that will enhance the operation of the company.
- ♦ Review the operational reports and divisions P&L to ensure that divisions meet their goals.
- ♦ Train and develop managers that are within the Region.
- ♦ Work with the Region Safety Manager on ensuring that all safety guidelines are met.
- ♦ Assist in the recruitment of Regional and Divisional staff to ensure that all staffing needs are met.
- ♦ Provide feedback on how the divisions function within the region to Region Vice President to ensure that monthly and quarterly objective are achieved.

Inland Waste, Inc., Memphis, TN General Manager

2017- 2018

Manage a solid waste hauling company with annual revenue more than \$4MM. Ensure that all DOT and safety requirements are met. Meet monthly with City Administrators and Directors to discuss concerns with the current contract. Manage the P&L for the hauling company. Submit monthly forecast to the Region office. Perform administrative duties including hiring, submitting contract bids, and vendor contracts.

- ♦ Manage a solid waste company that consists of 25 routes.
- ♦ Improve safety expectations and hiring practices.
- ♦ Developed HR policies and SOP (Standard Operating Procedure) for a new solid waste company.
- ♦ Experience working with sales representatives to improve customer and bottom line profits.
- ♦ Extensive experience working with vendors and negotiating vendor contracts.

Midwest Transportation, Inc., Memphis, TN
Regional Transportation Manager**2017 - 2017**

Managed the daily operation of a large LTL company with an annual revenue of \$16MM. Made sure that all DOT requirements were met. Conducted interviews and hired drivers and office personnel. Managed all safety requirements for the region.

- ◆ Managed the entire Southeast Region postal contract to ensure timely pickup and delivery.
- ◆ Conducted orientation for all new hires and employees.
- ◆ Ensured that all postal clearance badges met the government standard of the US Post Office.
- ◆ Planned and executed a weekly schedule for all the postal routes in the Southeast Region.
- ◆ Met with Postal Director weekly to ensure that all obligations were in accordance with the contract.
- ◆ Reduced and eliminated DOT hours of service by implementing a new schedule and route changes.
- ◆ Rerouted the relayed points to eliminate layover expenses.

STERICYCLE, INC., Memphis, TN
Transportation Manager**2014 - 2017**

Oversaw day-to-day operations of a large medical waste hauling company that collects and transports medical waste for daily disposal with an annual revenue of \$30MM. Skillfully coordinated staffing to ensure that routes are completed in a timely manner. Consistently ensured that all vehicles met DOT requirements, maintained preventative maintenance records, and annual inspections. Conducted initial interviews and road tests for team members. Completed administrative duties including reviewing and processing route sheets, time sheets, and other required documentation.

Key Contributions:

- ◆ Improved safety standards by reviewing and conducting root cause analysis pertaining to injuries, accidents, and property damage claims.
- ◆ Increased efficiency and productivity by planning routes to provide the most efficient service to customers while managing labor hours.
- ◆ Controlled costs by conducting cost analysis for purchasing or leasing vehicles to improve the fleet.

Cargill, Memphis, TN
Quality Assurance Technician**2013 - 2013**

- ◆ Operated processing equipment to ensure that the product is within specification.
- ◆ Conducted daily sanitation and maintenance on equipment in the food processing environment.
- ◆ Conducted lab samples of processing products to make sure that the results met or exceeded specification.
- ◆ Communicated effectively to other departments.

REPUBLIC SERVICES, INC., Memphis, TN
Division Manager • 2011 - 2012**2002 - 2012**

Integral in delivering sound and stable leadership for the division consisting of 42 routes, six direct reports, 45 drivers, helpers, and annual revenues more than \$8MM. Performed administrative duties including creating and updating all maintenance files and necessary documentation. Fostered a sense of mutual respect among all contacts, proactively engaging in positive working relations with managers, in-house and contracted mechanics, dispatchers, and schedulers. Managed 11 municipal contracts with a focus on residential services, and skillfully negotiated contracts with third-party vendors.

Key Contributions:

- ◆ Reduced the division's claims frequency rate by 50% resulting in a reduction in the cost per hour worked by \$1.33 through the establishment of a safety program at a new division.
- ◆ Eliminated DOT Hours of Service violations by enforcing compliance and reducing driver overtime.
- ◆ Key player in improving current safety trends by implementing safety metrics.

Assistant General Manager • 2008 – 2011

Provided solid leadership to a business unit consisting of one hauling company, two landfills, one rubbish pit, 102 collection routes, 160 employees, and annual revenues more than \$85MM. Conducted regular site visits to ensure all documentation was within local, state, and federal regulations. Trained, mentored, and coached team members, providing performance feedback to promote professional growth and development. Collaborated with the Division Controller to create monthly forecasts and yearly budget plans. Proactively resolved union-related issues, cultivated excellent working relationship with the local Union President, and conducted Collective Bargaining Agreement negotiations with the company and union officials.

Key Contributions:

- ◆ Drove revenue by creating effective sales campaigns and leading key account management efforts, resulting in winning six new large municipal contracts.

Operations Manager • 2005 – 2008

Coordinated all staffing and managed the daily operations of large hauling company generating more than \$43MM in annual revenue and placing an average of 105 waste collection routes daily. Managed a team of 15 direct reports and more than 160 other employees. Established and enforced productivity improvement goals, resulting in greater productivity.

Key Contributions:

- ◆ Achieved a score of 82.46% on the division's 10-key safety audit, reduced the division claims frequency rate by 53%, and reduced the cost per hour worked by \$1.40.
- ◆ Removed the division from the safety priority list, on which it was ranked as second worst in the entire company, by implementing innovative safety practices and conducting regular safety meetings.

Operations Supervisor • 2005

Supervised and coordinated the daily activities of more than 160 operations employees, resolved unusual or nonscheduled service requests and equipment breakdowns, and conducted employee observations to ensure safety and productivity processes were being followed consistently.

Key Contributions:

- ◆ Developed and implemented new processes resulting in improved productivity and efficiency.

Route Supervisor • 2002 – 2005

Directed the activities of drivers and staff in providing safe, effective, and courteous waste collection service to customers. Ensured compliance with DOT rules and company policies in regards too operations and safety issues, and assisted in the investigation of accidents, injuries, and property damage claims.

Key Contributions:

- ◆ Hired and retained key talent by conducting initial interviews and road tests for potential employees.

EDUCATION & TRAINING

Bachelor of Arts in Political Science, Mississippi State University

Professional Development/Certifications: Graduate of the Dale Carnegie Leadership Course; HAZWOPER Certification; Smith System Certified Defensive Driver Trainer; OSHA 30 Certification; Forklift Certification; Six Sigma Green Belt Certification – Villanova University

City of Memphis



TENNESSEE

JIM STRICKLAND
MAYOR

July 12, 2021

The Honorable Chase Carlisle, Chairman
Personnel, Government Affairs, and Annexation Committee
City Hall - Room 514
Memphis, TN 38103

Dear Chairman Carlisle:

Subject to Council approval, I hereby recommend that:

Phillip Davis

be reappointed to the Solid Wasted Municipal Planning Board with a term expiring May 31, 2027.

I have attached biographical information.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Strickland", written over a circular stamp or seal.

Jim Strickland
Mayor

JSS/sss

Cc: Council Members

SOLID WASTE MUNICIPAL PLANNING BOARD
5 Member Board
6 Year Term
Oath of Office Required

Purpose:

This joint Memphis and Shelby County Municipal Solid Waste Regional Board is responsible for the region's Municipal Solid Waste Plan, annual updates to the Plan, five-year updates to the Plan and for reviewing applications for disposal.

Members:

Roosevelt T. Allen	M/B	05-31-17
Philip Davis	M/W	05-31-21
Vacancy*	M/B	05-31-23
Kerry R. Roy	F/W	05-31-21
Vacancy**	F/B	05-31-19

*Albert Lamar resigned

**Joyce (Joy) Williams retired

Updated: 6/2021



City of Memphis

BIOGRAPHICAL INFORMATION
APPOINTMENT TO BOARD/COMMISSION
Municipal Solid Waste Planning Board
BOARD/COMMISSION

Name: Philip Davis Race White M F

E-Mail Address: philip.davis@memphistn.gov D.O.B. 08/04/1974

Profession/Employer: Solid Waste Deputy Director / City of Memphis

Business Address: 125 N Main St Room 628
Memphis, TN Zip 38103 Phone: 901-636-6872

Education: MS, Geology - University of Memphis; BS, Geology - Millsaps College

Name of Spouse: Melissa Davis Number of Children: 1

Home Address: 2081 Old Oak Dr Phone: 901-417-4027

City: Memphis State: TN Zip: 38119

I certify that I am a resident of the City of Memphis (Unincorporated areas and surrounding counties are not considered). Yes or No If yes, how long? 10 years

Professional Organization/Associations:

Solid Waste Association of North America (SWANA) - West TN Director
Shelby County Municipal Solid Waste Region - Vice Chairman
Tennessee Composting Council - Board Member

Other Organizations/Association:

St. Dominic School for Boys - Alumni Board
Tennessee Government Management Institute - Alumni

Other Interests:

State of Tennessee - Registered Professional Geologist
SWANA - Integrated Solid Waste Management Systems Manager

Signature  Date 07/15/2021

2002 – 2008: Tennessee Department of Environment and Conservation
Division of Solid Waste Management Memphis, TN

Environmental Field Office Manager

- Manager of environmental field office staff (eight positions) including certified hazardous materials managers, registered professional engineers, and registered professional geologists. Responsible for regional implementation of the Solid Waste Management Program and the Hazardous Waste Management Program. Duties include review of permit applications, geologic and hydrogeologic designs, inspection reports, hydrogeologic data, and oversight of remediation of contaminated sites.

2000 – 2002: Tennessee Department of Environment and Conservation
Division of Water Pollution Control Memphis, TN

Environmental Specialist 4, 5

- Supervisor of three positions. Responsible for regulation of the Construction General Permit Program, including general permitting, inspection, and enforcement recommendations; and the Aquatic Resource Alteration Permit Program, including permitting, inspection and biological/water quality assessments.

1998 – 2000: Tennessee Department of Environment and Conservation
Division of Superfund Memphis, TN

Environmental Specialist 1, 3 / Geologist 3

- Responsible for project management of State Hazardous Waste Management Act Part 2 (Superfund) and Federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA) sites. Sites included National Priorities List, State Promulgated List, Voluntary Oversight and Assistance Program, and Department of Defense-State Memorandum of Agreement sites. Duties included report review, including geologic and hydrogeologic data; and oversight of remediation contaminated sites.

CERTIFICATIONS

- Certified by Safety Unlimited, Inc. for 8-Hour Refresher Course for Hazardous Waste Operations and Emergency Operation standards. (February 2012)
- Certified by Lion Technology, Inc. for Environmental Regulations (June 2003)
- Certified by Lion Technology, Inc. for Hazardous/Toxic Waste Management (January 2003)
- Certified by University of Tennessee Center for Industrial Services for Construction Storm Water Permit Regulatory Requirements (April 2002)
- Certified by State of Tennessee for Fundamentals of Erosion Prevention and Sediment Control (June 2001)
- Certified by US EPA for Hazardous Waste Site Investigations – Planning, Implementation, and Assessment (October 2000)
- Certified by US EPA for Chemistry for Environmental Professionals – Applied (August 2000)
- Certified by US EPA for Chemistry for Environmental Professionals – Fundamentals (August 2000)
- Certified by Southern Environmental Enforcement Network for Basic Environmental Crime Investigations (August 2000)
- Certified by US EPA for Hazard Ranking System (June 1999)
- Certified by US EPA for Hazardous Waste Site Sampling (March 1999)
- Certified by University of Tennessee Environmental, Health, and Safety

Extension Services for 40-Hour Course for Hazardous Waste Operations and Emergency Operation standards (January 1999)

- Certified by University of Tennessee Center for Waste Management Worker Training for 16-Hour DOT Hazardous Waste Regulations Training (November 1998)

COMMUNITY ACTIVITIES

Appointed by the Mayor of the City of Lakeland, TN to serve on the Municipal Planning Commission in April 2000. Served as Chairman and Vice-Chairman of the Commission.

PROFESSIONAL ACCREDITATIONS/LICENSES

Licensed by the Tennessee Department of Commerce and Insurance Geology Section as a Professional Geologist (Expires February 2014)

Graduate of the University of Tennessee/Tennessee Department of Human Resources Tennessee Government Management Institute (November 2008)

REFERENCES

Andy Ashford

Deputy Director

Memphis Public Works/ Solid Waste Management
Memphis, TN
(901) 576-6868

Joseph P. Fracchia, C.P.A

Partner

Vaco
Memphis, TN
(901) 333-2250

Debra G. Shults

Environmental Program Director

Tennessee Division of Radiological Health
Nashville, TN
(615) 532-0364

ADOPTING ORDINANCE

ORDINANCE NO. 5769

An Ordinance Adopting and Enacting a New Code of Ordinances of the City of Memphis, Tennessee; Providing for the Repeal of Certain Ordinances Not Included Therein; Providing for the Manner of Amending such Code; and Providing When such Code and this Ordinance Shall Become Effective

WHEREAS, the Council of the City of Memphis, as the City's legislative body, has the full power and authority under the Charter of the City to codify, revise and collect in the form of a code of ordinances of a general nature, and in doing so has the full power, to amend, alter, repeal or modify any ordinance of a general nature other than contract ordinances to conform such ordinances to the legislative intent of the Council before inclusion in said code;

WHEREAS, the last official code of ordinances was adopted by the City Council on September 1, 1985 pursuant to Ordinance No. 3490 (the "1985 Code");

WHEREAS, the City has contracted with different publishing companies to republish and supplement the 1985 Code, but such republications and supplements have not been reviewed and adopted by the Council as an official code from time to time as suggested by the City's Charter;

WHEREAS, the absence of an official code of ordinances and the use of unofficial republications of the former code with amendments has created confusing and lack of certainty as to the form, content and existence of new and amending ordinances adopted since September 1, 1985;

WHEREAS, due to clerical errors and omissions there have been many instances in which new and amending ordinances adopted since September 1, 1985 have been omitted or misstated in the unofficial republications

of the City's Ordinances;

WHEREAS, the use of numbering systems in the unofficial republications of the former code that are different from that used in the 1985 Code has made placement of new and amending ordinances more difficult and more susceptible to the opinion of the publisher of the republications rather than the intent of the Council.

WHEREAS, the Council has delegated to the City Attorney and the Council's Attorney the responsibility of making a thorough review of new and amending ordinances adopted by the Council since September 1, 1985 for the purpose of producing for adoption by the City Council a new Official Code of Ordinances that accurately reflects the state of law of the City as of the date(s) of adoption by the City Council.

WHEREAS, due to the volume of ordinances to be considered and codified and the need to provide clear guidance to the City and its citizens, the City Attorney and the Council's Attorney have presented this adopting ordinance consisting of the codification of 4 of the 49 Chapters of the 1985 Code and will periodically provide for adoption by the Council supplementary codification ordinances to supplement the codification herein approved.

Be It Ordained by the Council of the City of Memphis That

Section 1. A Code of Ordinances, consisting of Chapters 1 through 49, each inclusive, and the errata thereto, is hereby adopted and enacted as the "2021 Code of Ordinances, City of Memphis, Tennessee" (the "2021 Code").

Section 2. The Chapters of the 2021 Code will be approved in a series of Codification Adoption Ordinances. As and when chapters of the 2021 Code are approved by

ordinance, such approved chapters shall supersede and replace all then existing general and permanent ordinances of the City to the extent included in such codified chapters or to the extent such ordinances are inconsistent with the provisions of the chapters so codified.

Section 3. The Council does hereby further ordain that the following chapters of the 2021 Code as presented to and considered by the Council are hereby adopted and codified, namely:

Chapter 1-General Provisions

Chapter 2-Administration

Chapter 3-Personnel

Chapter 4-Pension and Retirement System

Section 4. All provisions of the Chapters of the 2021 Code adopted and codified by this ordinance shall be in full force and effect from and after this ordinance becomes effective, and all conflicting codes, provisions, chapters, sections, paragraphs and sentences of ordinances of a general and permanent nature in existence or enacted on final passage on or before the effective date of this ordinance, and not included in the 2021 Code or recognized and continued in force by reference therein are hereby repealed from and after the effective date of this Ordinance.

Section 5. Any and all additions and amendments to the

2021 Code, when passed by ordinance in a form to specifically indicate the intention of the Council to make such additions and amendments a part of the 2021 Code, shall be deemed to be incorporated in the 2021 Code, so that reference to the 2021 Code shall be understood and intended to include such additions and amendments.

Section 6. Three (3) copies of the 2021 Code shall be kept on file in the office of the comptroller preserved in loose-leaf form, or in such other form as the comptroller may consider most expedient. The comptroller is also authorized to contract for the republication of the 2021 Code and supplements as approved by the Council in electronic format through a nationally recognized legal code publication company.

It shall be the express duty of the comptroller or someone authorized by him to insert in such copies and in their designated places all amendments or ordinances which the council has specifically approved, from time to time, to be to made a part of the 2021 Code when the same have been printed or reprinted in page form, and to extract from such copies all provisions which may be from time to time repealed by the Council. Such copies shall be available for all persons desiring to examine the same.

Section 7. The provisions the 2021 Code as approved by the Council or any copy thereof which purports to be published and maintained, in written or electronic

form, by authority of the City of Memphis shall be conclusively held to be evidence of the law of the City of Memphis from and after the times of their passage, with respect to any subject or provisions contained therein, and no person shall be permitted to impeach any such code provision on the ground that it was not duly and regularly passed in accordance with the laws existing at the time of its passage. Any prior uncodified republications of ordinances of the City with respect to any subject or provisions contained in the 2021 Code shall not be read and accepted in evidence from and after the adoption of any chapter of the 2021 Code.

Section 8. The provisions the 2021 Code as approved by the Council, or any copy thereof which purports to be published by authority of the City of Memphis, may be read and accepted in evidence in any court in this State without further proof of its passage.

Section 9. All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

Section 10. Severability. The provisions of this Ordinance are hereby declared to be severable. If any of the sections, amendments, provisions, sentences, clauses, phrases, or parts hereof are held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

Section 11. Effective Date. The provisions of this Ordinance shall take effect from and after the date it shall have been passed by the Council, signed by the Chairman of the Council, certified and delivered to the Office of Mayor in writing by the comptroller and become effective as otherwise provided by law.

SPONSOR:
Council Chairman

PATRICE ROBINSON
CHAIRPERSON



AN ORDINANCE TO AMEND, CHAPTER 33, ARTICLE I, ARTICLE II, DIVISIONS 1 THROUGH 4, ARTICLE III, DIVISIONS 1 THROUGH 4, TO DELETE ARTICLE II, DIVISIONS 5 AND 6, AND TO CREATE A NEW ARTICLE IV, DIVISIONS 1 THROUGH 6, OF THE CITY OF MEMPHIS CODE OF ORDINANCES, TO UPDATE PERMIT AND DISCHARGE ASSOCIATED REQUIREMENTS FOR INDUSTRIAL AND OTHER USERS OF THE CITY'S SEWER SYSTEM IN ACCORDANCE WITH FEDERAL AND STATE REGULATIONS AND TO PROVIDE FOR PROTECTION OF THE CITY'S PUBLICLY OWNED TREATMENT WORKS INCLUDING THE SANITARY SEWER COLLECTION SYSTEM

WHEREAS, the City of Memphis recognizes that the waters of Tennessee are the property of the State and are held in public trust for the use of the people of the State of Tennessee; and

WHEREAS, the City of Memphis recognizes that the citizens of Memphis, as residents of the State of Tennessee, have a right to unpolluted waters; and

WHEREAS, the City of Memphis recognizes that it has an obligation to take all prudent action to ensure that the navigable waters located within the municipal limits of the City of Memphis remain unpolluted to the fullest extent possible; and

WHEREAS, the City of Memphis has an approved pretreatment program which provides for the implementation and enforcement of pretreatment program requirements in accordance with applicable state and Federal law; and

WHEREAS, the City of Memphis issues permits to industrial users discharging wastewaters to the City's sewer system and/or wastewater treatment plant and otherwise issues permits in accordance with local law as it deems appropriate; and

WHEREAS, the City of Memphis has a program for regulating food establishment waste dischargers and to assure that oil and grease is not inappropriately entering the City's sewer collection system; and

WHEREAS, in accordance with the Tennessee Water Quality Control Act, as well as the Federal Water Pollution Control Act, the City of Memphis deems it necessary to revise the existing pretreatment requirements for users of the wastewater collection system according to new Federal regulations currently set forth in Chapter 33 of the City of Memphis Code of Ordinances and to otherwise reorganize its ordinances; and

WHEREAS, a copy of the pretreatment requirements is also contained in Chapter 13 of the City of Memphis Code of Ordinances and is available on-line in Municode, corresponding changes are made to Chapter 13.

SECTION 1. NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Chapter 33, Article I, is hereby amended to state as follows with corresponding changes to be made to Chapter 13-4 and with any cross-references herein to Chapter 33 provisions also deemed to apply to the corresponding Chapter 13 provision:

SEWERS AND SEWAGE DISPOSAL*
MEMPHIS CODE

Art. I. In General and Definitions, ##33-1--33-16 [Chapter 13-4]

ARTICLE I. IN GENERAL AND DEFINITIONS

Secs. 33-1--33-15. **Reserved.**

***Cross references-** Memphis Light, Gas and Water division, #2-256 *et seq.*; water and/or water closets and equipment requirements for barbershops, #6-3; required toilet facilities in day care centers, #12-7; garbage, trash, and refuse, Ch.15; health and sanitation, Ch.16; toilet facilities required in coin-operated laundrettes, #16-158; sewage disposal in food establishments, #16-208; required toilet facilities at public swimming pools, #16-434; planning, Ch.26; required toilets and urinals in undertaking establishments, #28-6; sewage disposal requirements for trailer courts, #30-28; rivers and harbors, Ch.32; streets and sidewalks, Ch.34; toilets, urinals, etc., required in tattoo shops, #35-28; building code, Ch.44; plumbing, Ch.49.

State law references- Power to acquire, construct, and maintain sewage system and to charge for service, T.C.A. #7-35-401 *et seq.*; authority to require connections to sewer system, T.C.A. # 7-35-201(l); Power to impose administrative penalties, T.C.A. # 69-3-123 *et seq.*

Sec. 33-16. [Sec. 13-4-1] **Definitions.**

Terms for which definitions are not specifically herein provided shall be interpreted consistent with the intent and substance of this Ordinance and as otherwise provided by state regulation at 0400-40-14-.03 or EPA regulation at 40 C.F.R. § 403.3. Unless the context specifically indicates otherwise, the meaning of terms used in this Ordinance shall be as follows:

Act or the Act means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, and found in 33 U.S.C. § 1251 *et seq.*

Action Level means a goal set forth in a permit or other document. In order for a requirement in a permit or other document to be deemed an Action Level it must specifically be designated as an "Action Level" in the permit or document, as applicable. An Action Level may be established as a numerical or other limitation. While an exceedance of an Action Level is not a violation, it can trigger or otherwise lead to additional requirements being imposed upon the Discharger, including, but not limited to, User study of the cause of the Action Level exceedance and/or the imposition of enforceable Discharge limitations.

Additional Treatment Charge means the portion of the service charge, which is levied on those Users whose wastes are greater in strength than the concentration values established as representative of normal sewage or Wastewater.

Alkalinity means the mass of a 100% sulfuric acid required to reduce the pH of a given volume of Wastewater to a pH of 7.0. The value is expressed as pounds of sulfuric acid per day.

Authorized Representative of the User means:

- (1) A responsible corporate officer if the User is a Corporation. A responsible corporate officer means
 - (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for

the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for individual and general Discharge Permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) A general partner or proprietor if the User is a partnership or sole proprietorship, respectively.

(3) A duly authorized representative of the individual designated in paragraph (1) or (2) if: (i) The authorization is made in writing by the individual described in paragraph (1) or (2); (ii) The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial Discharge originates, such as the position of plant manager, operator of the well, well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and (iii) the written authorization is submitted to the Control Authority.

(4) If an authorization under paragraph (3) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of paragraph (3) must be submitted to the Control Authority prior to, or together with, any reports to be signed by an Authorized Representative of the User.

Best Management Practices ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Sections 33-243 and 33-244 of this Ordinance [See also Tennessee Rule 0400-40-14-.05(1)(a) and (2)]. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

Blowdown means the Discharge of water with high concentrations of accumulated solids from boilers to prevent plugging of the boiler tubes or stream lines. In cooling tower, blowdown is discharged to reduce the concentration of dissolved salts in the recirculating cooling water.

BOD (denoting biochemical oxygen demand) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees centigrade, expressed in milligrams per liter (or pounds upon factoring in flow).

Building Sewer means the extension from the building to the public sewer or other place of disposal, also called "house connection."

Calendar Day means the 24-hour period from midnight-to-midnight or any other 24-hour period approved by the City for a particular facility that reasonably approximates the midnight-to-midnight time period.

Categorical Industrial User ("CIU") means an Industrial User subject to a Categorical Pretreatment Standard or Categorical Standard (except for dental dischargers subject to 40 C.F.R. Part 441).

Categorical Standards or Categorical Pretreatment Standard means the national categorical pretreatment standards as found in 40 C.F.R. Chapter I, Subchapter N, Parts 405 *et seq.*

C.F.R. means the Code of Federal Regulations.

City means the City of Memphis, Tennessee.

COD (denoting chemical oxygen demand) means the measure of oxygen-consuming capacity of inorganic and organic matter present in Wastewater. It is expressed as the amount of oxygen consumed from a chemical oxidant in a specific test. It is expressed in milligrams per liter (or pounds upon factoring in flow).

Composite Sample means a sample composed of individual subsamples taken at regular intervals over a specified period of time. Unless otherwise specified by this Ordinance or the Control Authority, subsamples may be proportioned by time interval or size according to flow (*i.e.*, flow-proportioned composite sample), or be of equal size and taken at equal time intervals (*i.e.*, time-proportioned composite sample).

Control Authority or Approving Authority means the City of Memphis, Division of Public Works. The term "Approving Authority" as used herein is differentiated from the term "Approval Authority" as defined in 40 C.F.R. § 403.3(c).

Control Mechanism means a permit, order, or similar means of establishing enforceable requirements. This includes SIU Discharge Permits and Other User Permits. Failure to comply with the requirements set forth in these documents may result in enforcement actions, which may include, but is not limited to, administrative fines and/or withdrawal of the privilege to use the City of Memphis Wastewater System.

County means Shelby County, Tennessee unless otherwise specified.

Daily Discharge means the "Discharge of a Pollutant" measured using approved methods at the appropriate sampling point during a Calendar Day, or any 24-hour period that reasonably represents the Calendar Day, established by the Control Authority in the Control Mechanism. For Pollutants with limitations expressed in units of mass, the "Daily Discharge" is calculated as the total mass of the Pollutant Discharged over the day. For Pollutants with limitations expressed in other units of measurement, the "Daily Discharge" is calculated as the average measurement of the Pollutant over the day.

Daily Maximum means the arithmetic average of all effluent samples for a Pollutant (except pH) collected during a Calendar Day.

Daily Maximum Limit means the maximum allowable Discharge limit of a Pollutant during a Calendar Day. Where Daily Maximum Limits are expressed in units of mass, the Daily Maximum Limit will be determined by the Daily Discharge, *i.e.*, the total mass Discharged over the course of a Calendar Day. Where Daily Maximum Limits are expressed in terms of a concentration, the Daily Discharge is the arithmetic average measurement of the Pollutant concentration derived from all measurements using approved methods at the appropriate sampling point taken that day. This can be based upon the averaging of several Grab Samples during a Calendar Day or Composite Samples (*e.g.*, 8-hour or 24-hour composite samples).

Day, for the purposes of counting when an event must occur (*e.g.*, report within 10 days), means, unless otherwise specified, a calendar day, which is a 24-hour period from midnight to midnight. "Days" refers to consecutive calendar days. For the purposes of an effluent limit (*e.g.*, Daily Maximum Limit), "Day" or "Calendar Day" refers to midnight-to-midnight or other 24-hour period that reasonably approximates the midnight-to-midnight time period.

Direct Discharge to State Waters or Direct Discharge means the addition of Pollutants to Waters of the State from a source.

Director means the Director of Public Works except where another position is specifically identified (e.g., EPA Regional Water Protection Division Director).

Discharge or Indirect Discharge means the introduction of Pollutants into the City's POTW including the introduction of Pollutants into the sewer system of the POTW as well as the delivery of waste waters and other Pollutants by truck or any other conveyance. "Discharge" or "Indirect Discharge" does not include a "Direct Discharge to State Water."

Discharge Permit means a SIU Discharge Permit or Other User Permit.

Discharger means a Person who Discharges.

Division means the Division of Public Works of the City of Memphis except where another entity is specifically identified (e.g., EPA Regional Water Protection Division).

Domestic Source means the waste and Wastewater from human or typical household activities including a household kitchen, water closets, lavatories and laundries, or any waste from a similar source and possessing essentially the same characteristics. Commercial facilities such as restaurants, hospitals, institutions (e.g., colleges), cafeterias, bakeries, ground-water remediation sites, and other non-household sources are not considered to be a "domestic source" (except Wastewater from their bathroom facilities, segregated from other flows, is considered a "Domestic Source").

Easement means an acquired legal right for the specific use of land owned by others.

Environmental Protection Agency or EPA means the U.S. Environmental Protection Agency or, where appropriate, the Regional Water Protection Division Director, the Regional Administrator, or other duly authorized official of said agency.

Existing Source means any source of Discharge that is not a "New Source."

Facility Site means the land or water area where any Indirect Discharge activity that is subject to regulation under this Ordinance is physically located or conducted, including adjacent land used in connection with the facility or activity (e.g., manholes on the User's owned or occupied property).

Garbage means solid wastes from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage, and sale of produce.

General Discharge Permit means a Discharge Permit that can be issued to more than one Discharger.

Grab Sample means a sample that is taken from a wastestream without regard to the flow in the wastestream and over a period of time not to exceed fifteen (15) minutes.

Holding-tank Waste means any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks, vaults, pits, sumps, and vacuum-pump tank trucks.

Hydrogen ion concentration: See "pH".

Industrial User means a source of Indirect Discharge.

Industrial Wastes means the Wastewater from industrial processes, trade, or business, as distinct from domestic sanitary sewage.

Instantaneous Limit means the maximum concentration of a Pollutant allowed to be Discharged at any time, determined from the analysis of any discrete sample (*e.g.*, Grab Sample) of the Discharge. pH may *also* be regulated by an instantaneous maximum and/or minimum limit. Where a Composite Sample shows a value higher than an Instantaneous Limit, such sampling result is deemed to provide conclusive evidence of a violation of an Instantaneous Limit applicable during that time period.

Interference means a Discharge which, alone or in conjunction with a Discharge or Discharges from other sources, inhibits or disrupts the sewer system, WWTP, treatment processes, or operations or its sludge processes, use or disposal, exceeds the design capacity of the treatment works or the collection system, and/or which causes or contributes to a violation of any requirement of the City's NPDES permit or poses a threat to worker health and safety (*e.g.*, chemical fumes). The term includes disruption with the use of biogas generated by a POTW as a fuel or prevention of sewage sludge use or disposal by the POTW in accordance with criteria, guidelines, or regulations developed pursuant to the Solid Waste Disposal Act ("SWDA"), the Clean Air Act, the Toxic Substances Control Act, or more stringent state criteria (including those contained in any state sludge management plan prepared pursuant to Title IV of SWDA) applicable to the method of disposal or use employed by the POTW.

Legal Authority means the rules, regulations and ordinances of the City of Memphis regulating the Discharge and treatment of Industrial Waste.

Local Hearing Authority means the Memphis Wastewater Hearing Authority. See Tennessee Code Annotated § 69-3-124.

Local Limit means specific Discharge limits developed by the Control Authority to implement the general and specific Discharge prohibitions listed in Tennessee Rule 0400-40-14-.05(1)(a) and (2).

Medical Waste means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

mg/l means a concentration unit of milligrams per liter of solution.

Monthly Average means the sum of all "Daily Discharges" measured during a calendar month divided by the number of "Daily Discharges" measured during that month.

Monthly Average Limit means the highest allowable average of "Daily Discharges" over a calendar month, calculated as the sum of all "Daily Discharges" measured during a calendar month divided by the number of "Daily Discharges" measured during that month.

Municipality means a city, town, borough, county, parish, district, association, or other public body created by or pursuant to state law and having jurisdiction over disposal of sewage, Industrial Wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the Clean Water Act (33 U.S.C. § 1288).

National Pretreatment Standards or Pretreatment Standard or Standard means any regulation containing Pollutant Discharge limits promulgated by the Environmental Protection Agency in accordance with the Act,

which applies to Users. The term includes general and specific prohibitive Discharge limits pursuant to Sections 33-243(a) and 33-243(b)(1)-(7), and local limits pursuant to Section 33-244(c), (d) and (f).

National Pollution Discharge Elimination System ("NPDES") means the program for issuing, conditioning, and denying permits for the Direct Discharge of Pollutants from point sources into navigable waters, the contiguous zone, and the oceans pursuant to Section 402 of the Clean Water Act as amended, 33 U.S.C. § 1342.

Natural Outlet means any outlet, into a watercourse, pond, ditch, lake or other body of surface, or ground water.

New Source means:

(a) Any building, structure, facility, or installation from which there is or may be a Discharge of Pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under Section 307(c) of the Clean Water Act, which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, provided that:

(1) The building structure, facility, or installation is constructed at a site at which no other source is located; or

(2) The building, structure, facility, or installation totally replaces the process or production equipment that causes the Discharge of Pollutants at an Existing Source; or

(3) The production or Wastewater generating processes of the building, structure, facility, or installation are substantially independent of an Existing Source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plan and the extent to which the new facility is engaged in the same general type of activity as the Existing Source should be considered.

(b) Construction on a site at which an Existing Source is located results in a modification rather than a New Source if the construction does not create a new building, structure, facility, or installation meeting the criteria of parts (a)(ii) or (a)(iii) of this definition but otherwise alters, replaces, or adds to existing process or production equipment.

(c) Construction of a New Source as defined under this paragraph has commenced if the owner or operator has:

(1) Begun, or caused to begin, as part of a continuous onsite construction program:

(A) Any placement, assembly, or installation of facilities or equipment; or

(B) Significant site preparation work including cleaning, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of New Source facilities or equipment; or

(2) Entered into a binding contractual obligation for the purchase of facilities or equipment, which is intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for

feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

Non-Significant Categorical Industrial User means an Industrial User, subject to Categorical Pretreatment Standards, that never Discharges more than 100 gallons per day (gpd) of total categorical Wastewater (excluding sanitary, non-contact cooling, and boiler Blowdown Wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met:

(a) The Industrial User, prior to Control Authority's finding, has consistently complied with all applicable Categorical Pretreatment Standards and Pretreatment Requirements;

(b) The Industrial User annually submits the certification statement required in Section 33-230(j)(2) of this Chapter [see Tennessee Rule 0400-40-14-.12(17)], together with any additional information necessary to support the certification statement; and

(c) The Industrial User never Discharges any untreated concentrated Wastewater.

Other User Permit means an individual control mechanism or General Discharge Permit issued to a User that is not a Significant Industrial User. Failure to comply with the requirements set forth in Other User Permits may result in enforcement actions, which may include, but is not limited to, administrative fines and/or withdrawal of the privilege to use the City of Memphis Wastewater System. The requirements imposed in an Other User Permit and the manner in which such permits are issued and enforced, and such facilities are monitored or inspected, are subject to the City's sole discretion. Other User Permits include, but are not limited to, Food Establishment Wastewater Discharge ("FEWD") Permits imposing, among other things, requirements pertaining to fats, oils, and grease, waste hauler permits, permits issued to ground water remediation pump and treat facilities (except to the extent the Discharger is identified as an SIU), special permits for the disposal of portable toilet Wastewater, letters of approval for hauled Wastewater, and letters of approval setting forth flow limitations (e.g., limiting use of the sewer system to certain hours) on Users or new or expanded development or facilities.

Pass-through means a Discharge which exits the Wastewater Treatment Plant ("WWTP") into Waters of the State in quantities or concentrations which, alone or in conjunction with a Discharge or Discharges from other sources, is a cause of a violation of any requirement of the WWTPs' NPDES permits, including an increase in the magnitude or duration of a violation.

Person means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, state and Federal agencies, municipalities or political subdivisions, or officers thereof, departments, agencies, or instrumentalities, or public or private corporations or officers thereof, organized or existing under the laws of this or any state or country.

pH means the negative log of the hydrogen ion concentration (in moles per liter) of a given water, $\text{pH} = -\log_{10}[\text{H}^+]$. Water will dissociate into hydrogen and hydroxyl ions ($\text{H}_2\text{O} \leftrightarrow \text{H}^+ + \text{OH}^-$) and the concentration of hydroxyl ion can be expressed as pOH. The $\text{pH} + \text{pOH}$ always equals 14 in water. pH limits may be established in standard units, based on this relationship and the hydroxide load.

pH Maximum Limit means a limit imposed on the alkalinity of a Discharge. A pH Maximum Limit is distinct from a pH Minimum Limit.

pH Minimum Limit means a Discharge limit imposed on the acidity of a Discharge. A pH Minimum Limit is distinct from a pH Maximum Limit.

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural, and Industrial Wastes, and certain characteristics of Wastewater (*e.g.*, pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).

Pollution means the man-made or man induced alteration of the chemical, physical, biological, and radiological integrity of water.

Pretreatment means the reduction of the amount of Pollutants, the elimination of Pollutants, or the alteration of the nature of Pollutant properties in Wastewater prior to, or in lieu of, introducing such Pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical, or biological processes, by process changes, or by other means, except by diluting the concentration of the Pollutants, unless allowed by an applicable Pretreatment Standard.

Pretreatment Program means the rules, regulations, and/or ordinances of the City regulating the Discharge and treatment of industrial and commercial Wastewater, the Control Mechanisms issued under Article IV of Chapter 33 of the Memphis Code and such other provisions as provided for in this Ordinance, 40 C.F.R. 403.1 *et seq.*, and/or Tennessee Rule 0400-40-14-.01 *et seq.*

Pretreatment Requirement means any substantive or procedural requirement related to Pretreatment other than a National Pretreatment Standard imposed on a User.

Pretreatment Standards or Standards means prohibited Discharge standards, Categorical Pretreatment Standards, and Local Limits.

Priority Pollutants means any Pollutant identified in 40 C.F.R. Part 423, Appendix A.

Process Wastewater means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product.

Properly Shredded Garbage means the wastes from the preparation, cooking, and dispensing of food that has been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch in any dimension.

Publicly Owned Treatment Works ("POTW") means a treatment works as defined by Section 212 of the Federal Water Pollution Control Act, (33 U.S.C. § 1292) which is owned in this instance by the municipality (as defined by Section 502(4) of the Federal Water Pollution Control Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey Wastewater to a WWTP. The term also means the municipality as defined in Section 502(4) of the Federal Water Pollution Control Act, which has jurisdiction over the Indirect Discharges to and the Discharges from such a treatment works.

Sanitary Sewer means a sewer which carries sewage and/or Wastewater. It does not include a Storm Sewer, which is designed primarily to address storm water, surface, and ground waters.

Service Charge means the assessment levied on Users of the public sewer system.

Sewage means a combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with any groundwater, surface water, and storm water that may be present.

Sewage System or Wastewater System means all facilities for collecting, pumping, treating, and disposing of sewage that flows to a City's WWTP.

Significant Industrial User ("SIU") means any Industrial User of the City of Memphis Wastewater System, or Wastewater Systems of other municipalities connected to the City of Memphis Wastewater System, that is subject to Categorical Pretreatment Standards under 40 C.F.R. § 403.6 and 40 C.F.R. Chapter I, Subchapter N (except for dental dischargers subject to 40 C.F.R. Part 441) and/or has an average Discharge flow of 25,000 gallons or more per day of process Wastewater to the POTW (excluding sanitary, non-contact cooling, and boiler Blowdown Wastewater); and/or has a Discharge of a process wastestream which is greater than or equal to five percent (5%) of the average dry weather hydraulic flow and/or organic design capacity of the receiving WWTP; and/or is found by the City of Memphis to have a reasonable potential for adversely affecting the POTW's operation, or for violating any Pretreatment Standard or Pretreatment Requirement either singly or in combination with other contributing industries on the City of Memphis' Wastewater System, including, but not limited to, the quality of sludge produced, the Wastewater System's effluent quality, groundwater in the area, or air emission generated by the Wastewater System. Upon a finding that a Non-Categorical Industrial User meeting the criteria above has no reasonable potential for adversely affecting the POTW's operation, or for violating any Pretreatment Standard or Pretreatment Requirement, the City may, at any time, on its own initiative or in response to a petition received from an Industrial User, and in accordance with procedures in Tennessee Rule 0400-40-14-.08(6)(f), determine that such Industrial User is not a Significant Industrial User.

Unless otherwise designated by Memphis subject to its discretion, dental dischargers subject to 40 C.F.R. Part 441 are not "Significant Industrial Users" as defined herein and are not "Categorical Industrial Users" or "industrial users subject to categorical pretreatment standards" as those terms and variations are used herein and in 40 CFR part 403.

SIU Discharge Permit is a Control Mechanism issued to a Significant Industrial User that establish specific parameter limits and other requirements for control and monitoring of the Wastewater Discharges. Failure to comply with the requirements set forth in an SIU Discharge Permit may result in enforcement actions, which may include, but is not limited to, administrative fines and/or withdrawal of the privilege to use the City of Memphis Wastewater System. Individual SIU Discharge Permits may be issued to individual industrial/commercial users. Subject to the Control Authority's discretion, general SIU Discharge Permits may be issued to a group of facilities.

Slug Discharge or Slug means any Discharge of a non-routine, episodic nature (including, but not limited to, an accidental spill) or a batch Discharge (including customary and non-customary batch Discharges) which has a reasonable potential to cause Interference or Pass-Through, or in any other way violate Article IV of Chapter 33 of the Memphis Code and/or Local Limits or permit conditions.

Special Sewer Service Area means a sewer service area which shall be subject to unique and separate Sewer Infrastructure Surcharge Fees in addition to normal sewer fees described within this chapter, based upon the particular costs associated with providing sewer service in that area.

Standard Methods means the analytical procedures set forth in the latest edition of "Standard Methods for the Examination of Water and Wastewater" published by the American Public Health Association; and/or "EPA Methods for Chemical Analysis of Water and Wastes" as per 40 C.F.R. Part 136 and amendments thereto;

and/or City of Memphis, Public Works Division's laboratory procedures for certain tests that detail specific requirements that are not addressed elsewhere or are presented as optional.

Storm Drain or Storm Sewer means a sewer which primarily carries storm and surface waters and drainage, but is designed to exclude sewage and Industrial Wastes, other than unpolluted cooling water.

Storm Water means any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

Suspended Solids or Total Suspended Solids means total suspended matter that either floats on the surface of, or is in suspension in, water, Wastewater, or other liquids, and that is removable by laboratory filtering as prescribed by Standard Methods.

TOC (denoting Total Organic Carbon) means the measure of the concentration of covalently bonded carbon, which is combustible to carbon dioxide. It is not to be confused with elemental carbon, dissolved carbon dioxide, inorganic carbonates, or bicarbonates.

User means any person (including a waste hauler) that Discharges Wastewater or otherwise causes or permits Wastewater to enter into the City's POTW, including, but not limited to, the sanitary sewer.

Wastewater means liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated.

Wastewater Treatment Plant ("WWTP") means the City's facilities for treating Wastewater and includes that portion of the POTW which is designed to provide treatment of municipal sewage and Industrial Waste.

Watercourse means a channel or conduit in which surface water flow of water occurs, either continuously or intermittently.

Waters of the State means any and all water, public or private, on or beneath the surface of the ground, which are contained within, flow through, or border upon Tennessee, or any portion thereof, except those bodies of water confined to and retained within the limits of private property in single ownership which do not combine or effect a junction with natural surface or underground waters.

SECTION 2. NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Chapter 33, Article II, Divisions 1 through 4 are hereby amended to state as follows, with corresponding changes to be made to Chapters 13-8, 13-12 and 13-16 with any cross-references herein to Chapter 33 provisions also be deemed to apply to the corresponding Chapter 13 provision:

- Art. II. Use of Public and Private Sewage Disposal Methods, ##33-16--33-125
 - Div. 1. Generally, ##33-17--33-26
 - Div. 2. Use of Public Sewers, ##33-26--33-40 [Chapter 13-8]
 - Div. 3. Private Sewage Disposal, ##33-41--33-60 [Chapter 13-12]
 - Div. 4. Building Sewers, Connections, Sewer Extensions and Development Fees, ##33-61--33-80 [Chapter 13-16]

ARTICLE II. USE OF PUBLIC AND PRIVATE

SEWAGE DISPOSAL METHODS

DIVISION 1. GENERALLY

Secs. 33-17--33-25. **Reserved.**

DIVISION 2. USE OF PUBLIC SEWERS [Chapter 13-8]

Sec. 33-26. [Sec. 13-8-1] **Discharge to Natural Outlets Where Public Sewer Available Prohibited.**

It shall be unlawful to Directly Discharge to any natural outlet within the City, or in any area under the jurisdiction of the City, any untreated sewage or other polluted waters where suitable public collection and/or treatment has been provided in accordance with the provisions of Articles II and III of this chapter, except where a federal National Pollutant Discharge Elimination System (NPDES) permit has been duly issued and is currently valid for such discharge or the discharger is specifically exempt from obtaining an NPDES permit under duly promulgated state regulations. The City, upon becoming aware of such unlawful discharges, may refer the matter to TDEC or take such other action as the City deems appropriate. Nothing herein shall be deemed to change the obligation of a septic system to connect to the City's POTW to the extent otherwise provided under this Ordinance.

Sec. 33-27. [Sec. 13-8-2] **Maintaining Private Methods of Disposal.**

Except as hereinafter provided in this chapter, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of sewage.

Sec. 33-28. [Sec. 13-8-3] **Connection to Public Sanitary Sewer, When Required.**

The owner, occupant or lessee of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, situated within the city where public sewer is available and abutting on any street, alley, right-of-way, or easement in which there is now located or may in the future be located a public sanitary sewer of the city, is hereby required at his expense to install suitable sanitary facilities therein and to connect such facilities directly with the proper public sewer, in accordance with the provisions of Articles II and III of this chapter within one year after date of official notice by the regulatory agency to do so, as long as no health hazard exists or is imminent. In cases of health hazards as determined by the city and county health department, the owner, occupant or lessee must connect within ninety (90) days of the official notice of the City and County health department that there exists a health hazard or that a health hazard is imminent.

Sec. 33-29. [Sec. 13-8-4] **Disconnection of Sanitary Sewer Service.**

Any person wishing to demolish a building or remove the sanitary sewer service from any point into their property shall obtain a "sanitary sewer line cap permit." After this line has been capped, joints shall be left exposed and inspected by the POTW. All construction procedures and specifications relative to capping shall be approved by the Approving Authority.

Sec. 33-30. [Sec. 13-8-5] **Damaging Sewerage Works.**

(a) No Person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance or equipment which is part of the sewerage works. Any Person violating

this provision may be subject to immediate arrest and shall be guilty of a misdemeanor, punishable as provided in Section 1-8 of this Code of Ordinances and shall be responsible for correcting such damages.

- (b) If public sewer and/or the WWTP becomes obstructed or damaged, whether intentionally or otherwise, the Person or Persons responsible for such Discharge or other cause of damage may be billed and shall pay for the expenses incurred by the City in cleaning out, repairing or rebuilding the sewer and/or WWTP. This includes, but is not limited to, (i) the discharge of fats, oil and grease into the sewer system and (ii) digging or other surface or subsurface work puncturing a sewer pipe.
- (c) No unauthorized Person shall enter into or alter any manhole or similar appurtenance of any public sewer, place or cause to be placed anything therein or interfere therewith. No Person shall insert or place in any public sewer, manhole or other appurtenance thereof any debris or other materials which such sewer manhole or appurtenance thereof was not intended to receive. The City may remove or require the removal of any unauthorized materials or substances from the public sewer, repair or replace damaged infrastructure, and shall seek reimbursement of all costs, expenses and resulting damages incurred by City. Any removal or repair work undertaken by City may be performed directly by City workforces or City may engage the services of a contractor to perform such work.

Secs. 33-31--33-40. **Reserved.**

DIVISION 3. PRIVATE SEWAGE DISPOSAL [Chapter 13-12]

Sec. 33-41. [Sec. 13-12-1] **Required When Public Sanitary Sewer Not Available.**

Where a public sanitary sewer is not available under the provisions of Section 33-28 of this chapter, the sewer shall be connected to a private sewage disposal system complying with the provision of this Article.

Sec. 33-42. [Sec. 13-12-2] **Permit-Required; Application and Fees.**

Before commencement of construction of a private sewage disposal system, the owner shall first obtain a written permit signed by the Division of Public Works. The application for such permit shall be made on a form furnished to the applicant, which the applicant shall supplement by any plans, specifications, and other information, which may be deemed necessary by the regulatory agency. A permit and inspection fee as designated by the regulatory agency shall be paid at the time application is filed. The permit and inspection fee of twenty-five dollars (\$25.00), to help defray the cost of plan review and construction inspection, shall be paid to the City and shall be placed in an account designated as "sewer collection and treatment fund."

Sec. 33-43. [Sec. 13-12-3] **Permit Required-effective Date; Notification of Completion of Work; Inspection.**

A private sewage disposal system shall not operate until the installation is completed to the satisfaction of the applicable governmental entity for which approval is required (e.g., TDEC, Health Department) The City shall be allowed to inspect the work at any stage of construction, and, in any event, the entity seeking to operate a private sewage disposal system shall notify the City when the work is ready for final inspection and before any underground portions are covered.

Sec. 33-44. [Sec. 13-12-4] **Design and Other Specifications; Discharge to Natural Outlet Prohibited.**

The type, capacities, location and layout of a private sewage disposal system shall comply with all recommendations of the state regulatory agency and the City. No septic tank or cesspool shall Directly Discharge to any natural outlet.

Sec. 33-45. [Sec. 13-12-5] Connection to Public Sewer upon Availability, Filling of Abandoned Facilities Required, Hardship Exemptions.

At such time as a public sewer becomes available to a property served by a private sewage disposal system, a direct connection shall be made to the public sewer in compliance with Articles II and III of this chapter, and any septic tanks, cesspools, and similar private sewage disposal facilities shall be abandoned and filled with suitable material, as required by the state regulatory agency and/or the City. In the event a person cannot make immediate connection, application may be made for a hardship exemption. Proof of hardship is incumbent upon the applicant. The Division of Public Works may grant a hardship exemption, not to exceed twelve (12) months, as long as no health hazard exists or is imminent.

Sec. 33-46. [Sec. 13-12-6] Maintenance and Manner of Operation.

The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the City. The removal of septage (septic contents) from private sewage disposal facilities shall be performed by individuals licensed to perform such work.

Sec. 33-47. [Sec. 13-12-7] Private Industrial Disposal as Exception to Articles II and III Provisions.

Nothing in Articles II and III of this chapter shall exclude the right of any industry or other facility to properly Directly Discharge its Wastewater, after proper treatment in accordance with an NPDES permit, as applicable, into any stream designated by the State of Tennessee.

Sec. 33-48--33-60. Reserved.

**DIVISION 4. BUILDING SEWERS, CONNECTIONS, SEWER EXTENSIONS
AND DEVELOPMENT FEES [Chapter 13-16]**

Sec. 33-61. [Sec. 13-16-1] Permit Requirements.

No unauthorized person shall uncover, make any connections with or opening into, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Division of Public Works. One copy of the permit shall at all times be available for inspection at the site of the work.

Sec. 33-62. [Sec. 13-16-2] Sewer Development Fees.

(a) There is established a sewer development fee, as set forth herein, to be paid by new sanitary sewer customers connecting to the System as of July 1, 2021. Such fee shall reflect (1) the actual cost to provide service to such new customers connecting to the System seeking an approved sewer connection for subdivisions, land developments, new buildings, and redevelopments of land or buildings served by the City sanitary sewer system or where the facility served requires modification of or enlargement of the existing sewers, whether within or outside the corporate limits of the City and whether service is by existing or by new facilities to be constructed; (2) a portion of the capital costs incurred by the City for the construction of

wastewater treatment plant facilities and related assets, including prior upgrades and expansions; and (3) a portion of the capital costs incurred by the City for the construction of the sewage collection and conveyance system including sewer mains, manholes, lift stations, associated appurtenances including prior upgrades and expansions. The sewer development fee shall be payable by the applicant, developer of the subdivision, or developer of industrial, commercial or residential site as set forth herein, upon the execution of the subdivision contract or the sewer extension contract, or at the time of application for the sewer connection or plumbing permit, as appropriately determined by the Approving Authority.

- (b) Sewer development fees shall be calculated based upon the size of the water meter used for the connection using a trended original cost method defined as the historical cost of the City’s assets in present day dollar amounts. Written confirmation of the applicable water meter size from Memphis Light, Gas & Water (MLGW) must be provided by the applicant or developer prior to payment of the sewer development fee as such payment is required in accordance with Section 33-62(a). The sewer development fee shall be assessed, as set forth in this section and the fee schedule adopted by the Approving Authority:

Meter Size (in inches)	Sewer Development Fee
5/8	\$2,255
3/4	\$3,383
1	\$5,638
1 ½	\$11,277
2	\$18,043
3	\$33,830
4	\$56,384
6	\$112,767
8	\$180,427
10	\$259,364
12	\$484,899

- (c) The sewer development fee calculation may be reviewed and adjusted by the Approving Authority every five years or as determined necessary due to significant changes to the customer makeup of the System, and in the instance of an extensive capital improvement plan.
- (d) The sewer development fee authorized herein shall become effective on July 1, 2021. Notwithstanding the foregoing, such fee assessment shall be implemented as follows:

From July 1, 2021 to June 30, 2022	50% of applicable fee
Subsequent years	100% of applicable fee

- (e) In support of the objectives of the Memphis 3.0 Comprehensive Plan which encourage increased support for community-based developers and development of affordable housing, the sewer development fee may be reduced up to 50% (fifty percent) by the Director of Public Works or his designee upon written request. In order to qualify for this discounted fee, developer must submit proof of 501c3 status and evidence that the development meets affordable housing standards for the following residential property types: 2-family (duplex), 3-family (triplex), 4-family (quadplex) structures, and single-family homes. For purposes herein, affordable housing shall be defined as at least 50% of the units serving households at 80% of the Area Median Income as defined by the applicable standards adopted by the US Department of Housing & Urban Development.

- (f) No sewer development fee shall be assessed to a person authorized to install a private sewage disposal system pursuant to this division, but a sewer development fee may be charged to the developer or property owner when sanitary sewers are available under Section 33-28 or when it is determined that sanitary sewers shall be extended to such development. The Approval Authority may thereafter require the installation of the sewer and the payment of the sewer development fee. The developer or property owner by applying for and receiving a private sewage disposal permit shall agree to such fee when the sewer is available. Notwithstanding the foregoing, a sewer development fee may be waived or reduced up to fifty percent (50%) by the Director of Public Works or his designee upon written request by a low-income residential property owner of the following property types: 2-family (duplex), 3-family (triplex), 4-family (quadplex) structures and single-family homes; provided that, proof of such low-income is made available to the City upon request. For purposes herein, low-income shall mean families who have incomes at or below 80% of the Area Median Income as defined by the applicable standards adopted by the US Department of Housing & Urban Development.
- (g) The prior payment of a sewer development fee for any land or building currently served by the System shall not restrict the City's ability to assess a sewer development fee in accordance with Section 33-62(a) for any proposed redevelopment of such land or building.
- (h) A sewer development fee shall be assessed to any development, redevelopment, new building or building addition resulting in the installation of an additional water meter or enlarged water meter. No sewer development fee shall be assessed for water meters dedicated to fire protection or irrigation.
- (i) Within the City reserve area, the owner(s) of property who petition for connection to the City's sanitary sewer system to serve their property shall at that time consent to, petition and request the annexation of such property by the City, with the annexation to take place at such time as the City may deem appropriate pursuant to state law. Until such time as annexation occurs, the owner(s) shall agree not to seek either incorporation as a separate entity nor annexation to any other incorporated area.

The consent to annexation shall be incorporated as a part of the city land development and/or sewer extension contract(s). At the time the sewer extension and/or land development contract is entered into the property owner shall submit his or her petition for annexation to the City.

The above-described consent to annexation by the City shall be made a restrictive covenant imposed by the property owner(s) upon the property which shall run with the land and shall be binding upon all heirs, successors and assigns. Such covenant shall be recorded in the office of the Shelby County register and it shall be the duty of the original property owner and all subsequent property owners to disclose the existence of the covenant to any parties to whom the property or a portion thereof is conveyed. Reference to such recorded covenant shall be evidenced on any final plat or plan development prior to the recordation of the plat or plan in the office of Shelby County register. It shall be the responsibility of the division of planning and development to ensure that the signed petition for annexation is submitted by the property owner and that the covenant appears on the plat or plan prior to signing and recordation of the final plat or plan.

Sec. 33-63. [Sec. 13-16-3] Sewer Connection Fees.

There is established a sewer connection charge, as set forth herein, to defray the construction costs of providing a sewer tap to a property which charges shall be payable by the owner, applicant, developer of the subdivision, or developer of industrial, commercial or residential site as set forth herein, and which charge shall be payable prior to the physical sewer connection being made. Sewer connection charges shall apply only where the physical connection is made by the Division of Public Works.

- (a) Standard 4 or 6-inch connections to residential and small commercial facilities will be made at the owner's expense. The owner shall be responsible for all costs and expenses incurred.
- (b) For any connections other than standard connections as determined by the Division of Public Works, or for a second connection to any property, the cost shall be based on time, materials and labor for the Approving Authority to install the connection.

Sec. 33-64. [Sec. 13-16-4] Sewer Extensions.

- (a) The City may permit the orderly extension of its sanitary sewer system to provide gravity sewer service of adequate capacity to unsewered properties and to properties not served by sewers of adequate capacity following the comprehensive plan and policies of the City for gravity sewer system expansion.
- (b) No Person shall undertake to extend City sanitary sewer service to his property without entering into a sewer extension contract with the City.
- (c) In order for a property to be eligible for City participation in the cost of a gravity sewer extension, all of the following criteria must be met:
 - (1) The capacity, location and design of the proposed gravity sewer extension shall conform to the City's comprehensive plans and policies for extension of the sanitary sewer system.
 - (2) The portion of the property or contiguous properties under one ownership being the subject of the request for a sewer extension shall neither be served by gravity sanitary sewer at the time of the request, nor have previously been part of a parcel or tract of property which was served by gravity sanitary sewers; i.e., for the purposes of determining eligibility for City funding participation, once a property or contiguous properties under one ownership is served by gravity sewers, it cannot be disassociated from that sewer service by the sale of all or part of the property.
 - (3) The property shall not be situated within the corporate limits or within the recognized annexation reserve area of another municipality unless the sewer extension will be used to serve other properties that would otherwise be eligible for City funding participation. The City shall participate in funding only those portions of the sewer extension, which will serve such other properties.
- (d) Whenever the City enters into a contract with an owner/developer relative to extending a sanitary sewer to his property, a reasonable estimated time shall be indicated in the contract for the completion of this service by the City.

Sec. 33-65. [Sec. 13-16-5] Sewer Extension Fees.

- (a) The developer/owner/applicant shall pay to the City, upon execution of the sewer extension contract, a sewer extension fee as set forth herein. The developer/owner/applicant may secure payment of the sewer extension fee by executing a performance bond, certificate of deposit assigned to the City, or an irrevocable, automatically renewable letter of credit in favor of the City. Such securities shall be in the full amount of the sewer extension fee and be in a form acceptable to the City. Payment of the sewer development fee shall be made by the developer/owner/applicant to the City upon advertisement for bids for construction of the sewer extension.

- (b) The minimum sewer extension fee to be paid by the developer/owner/applicant shall not be less than fifty percent (50%) of the cost of engineering including surveying, easement acquisition, inspection and construction of any sewer extension and other applicable fees for a development located within the municipal boundaries of Memphis and one hundred percent (100%) of such cost for developments located in unincorporated Shelby County which were authorized for a sewer extension or connection prior to August 18, 2017, and parcels to which sewer must be extended or connected pursuant to existing obligations between the City and the applicable developer or land owner. A preliminary estimate, based on the estimated cost of construction, engineering, easement acquisition, inspection, and other applicable fees shall be used for determining the fee to be charged to the developer for the purpose of negotiating a sewer extension contract. The final cost accounting shall be determined by the City upon completion of the sanitary sewer extension, and final accounting shall be made to the developer of any additional fee required or refund due to the developer.
- (c) Sewer extension fees paid to the City prior to July 1, 2021, shall run with the land described in the sewer extension contract and may be used for the purpose of defraying sewer development fees. Any sewer extension fees paid on or after July 1, 2021, shall not be used for the purpose of defraying sewer development fees as determined in Section 33-62.

Sec. 33-66. [Sec. 13-16-6] Urban Service Boundary; Definition and Amendment.

The Urban Service Boundary is defined by the Memphis 2000 Policy Plan and Map adopted by the Memphis City Council in September 1981 or its most recent adopted amendment. The Memphis and Shelby County Office of Planning and Development (O.P.D.) and the Division of Public Works shall review the Urban Service Boundary periodically, and recommendations for amendments, if any, shall be forwarded to the Memphis City Council for consideration.

Sec. 33-67. [Sec. 13-16-7] Internal Sewers and Upstream Properties.

- (a) The owner/developer or his successors in title or assigns shall, at the time of developing the property covered in the sewer extension contract, construct all internal sanitary sewers necessary to serve the property at their sole expense.
- (b) The owner/developer, upon entering into a sewer extension contract, shall grant permanent sanitary sewer easements and temporary construction easements to the City at no cost for future extension of the sanitary sewers through the property covered by the sewer extension contract to serve upstream properties. The sewer easement alignment shall be recommended by the owner/developer and be subject to the approval of the City. Acceptance of the sanitary sewer easements does not impose upon the City any obligation or responsibility to participate in the cost of or construct sanitary sewers within the easements.

Sec. 33-68. [Sec. 13-16-8] Expenditure of City Funds; Limitation.

The City may only expend City funds on construction for which the City has contracted through the standard bidding process.

Sec. 33-69. [Sec. 13-16-9] Fees Deposited in Sewer Fund.

All sewer development fees, connection fees and sewer extension fees collected herein shall be placed in the sewer collection and treatment fund established by Division 2 of Article III of this chapter and used for the purpose stated therein.

Sec. 33-70. [Sec. 13-16-10] Connection to Be at Expense of Owner; Indemnification of City; Construction.

All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the City and its employees from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer. All construction on the owner's property shall conform to the applicable plumbing code.

Sec. 33-71. [Sec. 13-16-11] Separate and Independent Connection Required for Each Building; Exception.

A separate and independent building sewer shall be provided for every building and for every dwelling unit in single family detached, single family attached and duplex developments, except that, where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, courtyard or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer, but the City does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection aforementioned.

Sec. 33-72. [Sec. 13-16-12] Connection of Old Building Sewers.

Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Division of Public Works, to meet all requirements of Articles II and III of this chapter.

Sec. 33-73. [Sec. 13-16-13] Construction Standards - Size; Slope; Materials; Methods of Excavation.

The size, slopes, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the building and plumbing codes and other applicable rules and regulations of the City.

Sec. 33-74. [Sec. 13-16-14] Construction Standards - Elevation; Lifts, Where Required.

Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building gradient is too shallow to permit gravity flow to the public sewer, sanitary sewage carried by such building gradient shall be lifted by an approved pumping system and discharged to the building sewer. The installation and operational expenses of this system shall be borne solely by the property owner.

Sec. 33-75. [Sec. 13-16-15] Construction Standards - Connection to Sanitary Sewer of Sources of Surface Runoff, Approval Required.

No Person shall make connection of roof downspouts, foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer which in turn is connected directly or indirectly to a public sanitary sewer, unless connection is approved by the Division of Public Works.

Sec. 33-76. [Sec. 13-16-16] **Construction Standards - Conformity of Connection to Codes, Connection to Be Made Gastight and Watertight; Inspection During Construction.**

The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing codes and other applicable rules and regulations of the City. All such connections shall be made watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the Division of Public Works before installation. The Division of Public Works shall have the right to inspect the work at any stage of construction, and in any event, the covers of all building sewer manholes, inspection chambers, cleanouts, and the like shall be watertight and shall be capable of withstanding, without damage or displacement, any traffic load to which they may be subjected.

Sec. 33-77. [Sec. 13-16-17] **Notification to Division of Public Works Prior to Covering of Work Underground; Final Inspection.**

The applicant for the building sewer permit shall notify the Division of Public Works before covering portions of the work to be underground, and when the building sewer is ready for final inspection and connection to the public sewer. The connection and testing shall be made under supervision of the Division of Public Works.

Sec. 33-78. [Sec. 13-16-18] **Guarding of Excavations Posing Hazard to Public; Restoration of Public Property; Posting of Bond.**

All excavations for building any sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City. The posting of a bond of appropriate value may be required to safeguard the interest of the City with regard to damage to public property.

Sec. 33-79. [Sec. 13-16-19] **Sewer Infrastructure Surcharge Fees.**

(a) There is established a sewer infrastructure surcharge fee, as set forth herein, to defray the construction costs, bond costs, and/or design costs associated with providing sewer services to a special service to a Special Sewer Service Area. Such a fee may take any of the following forms:

- 1) Sewer development infrastructure surcharge fee;
- 2) Sewer construction connection infrastructure surcharge fee;
- 3) Sewer extension infrastructure surcharge fee; and/or
- 4) Sewer user infrastructure surcharge fee.

(b) Sewer infrastructure surcharge fees may not be credited against extension fees.

Sec. 33-80—33-100. **Reserved.**

SECTION 3. NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Chapter 33, Article II, Divisions 5 and 6 are hereby repealed with the repeal of corresponding provision in Chapters 13-20 and 13-24.

SECTION 4. NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Chapter 33, Article III, Divisions 1 thru 4 are hereby amended to state as follows with corresponding changes to

be made to Chapters 13-28, 13-32 and with any cross-references herein to Chapter 33 provisions also be deemed to apply to the corresponding Chapter 13 provision:

Art. III. Administration of Wastewater Treatment Facilities, ##33-126--33-185

Div. 1. Generally, ##33-126--33-130

Div. 2. Sewer Fees and Charges, ##33-131--33-140 [Chapter 13-28]

Div. 3. Powers and Authority of Inspectors, ##33-141--33-155 [Chapter 13-32]

Div. 4. Billing Procedures, ##33-156--33-170 [Chapter 13-28-7]

ARTICLE III. ADMINISTRATION OF WASTEWATER TREATMENT FACILITIES

DIVISION 1. GENERALLY

Sec. 33-101--33-130. **Reserved.**

DIVISION 2. SEWER FEES AND CHARGES [Chapter 13-28]

Sec. 33-131. [Chapter 13-28-1] **Established; Bases for Determination.**

(a) Requirements generally. In accordance with Public Law 92-500 and Title 40, Chapter 1, Subchapter B, Part 35, Subpart E, Section 35.925-11, which requires the city to implement a Wastewater treatment User's charge, each User will pay its proportionate share of the cost for operation and maintenance of the total treatment works. Direct and incidental costs to the city, including, but not limited to, administrative, technical and legal expenses, shall be considered a part of the cost of operations and maintenance of the total treatment works. There shall be two (2) types of charges: The first type of charge is volumetric charge; the second is a charge for treating Wastewater, which has an excessive strength.

(b) Sewer Service Charge. The sewer service charge shall be made up of two (2) types of charges.

(1) Volumetric charge. All customers will be charged a volumetric charge based on the equivalent strength of domestic sewage BOD5 of two hundred fifty (250) milligrams per liter, SS of three hundred (300) milligrams per liter, and COD of eight hundred (800) milligrams per liter. Since seven and forty-eight one hundredths (7.48) gallons equal one cubic foot, one thousand (1,000) gallons equals 133.689 cubic feet (cf) or one thousand (1,000) gallons equals 1.33689 hundred cubic feet (cf). The volumetric charge per one thousand (1,000) gallons shall be based on annual debt service, capital costs, treatment and operations and maintenance costs, and all other charges assigned to the sewer fund.

All customers shall be charged a volumetric charge in accordance with the following fee schedule until changed by amendment to this section. The volumetric charge shall be assessed against the name in which a meter has been installed.

Beginning January 1, 2020, the volumetric charge will be \$3.32 per one thousand (1,000) gallons of flow. A residential maximum volume fee of seventy-five dollars (\$75.00) and a minimum of eight dollars and seventy-five cents (\$8.65) per month per individual dwelling unit is herewith established.

Notwithstanding the foregoing, in the case of multifamily dwellings, a portion of the volumetric charge may be recovered through a monthly flat rate per customer charge. The charge, as determined by the Director of Public Works, shall not exceed the amounts set forth in the fee schedule below. Amounts collected through any monthly flat rate charge shall be credited in accordance with section 33-156.

Beginning January 1, 2020 \$12.95 per month

All citizens who qualify for the Solid Waste Fee Discount Program as delineated in Chapter 15, Section 12, City of Memphis, Code of Ordinances shall be charged a reduced fee for wastewater use in accordance with the following fee schedule, until changed by amendment to this section:

Beginning January 1, 2020 \$2.43 per 1,000 gallons

- (2) Additional Treatment Charge. In addition to the volumetric charge, all Users who Discharge Wastewater with a strength greater than domestic sewage which shall include, but not be limited to, BOD of 250 milligrams per liter, SS of 300 milligrams per liter, and COD of 800 milligrams per liter will be assessed an Additional Treatment Charge (ATC) based on the following formula:

$$ATC = \frac{U(B)T(B)}{B} + \frac{U(S)T(S)}{S} + \frac{U(C)T(C)}{C}$$

Where:

U(B) = BOD loading in excess of 250 milligrams per liter

T(B) = Treatment costs assigned to BOD (includes debt service, operation, maintenance, and replacement costs)

B = Total BOD loading or BOD capacity of treatment plants, whichever is less

U(S) = Suspended solids loading in excess of 300 milligrams per liter

T(S) = Treatment costs assigned to suspended solids (includes debt service, operation, maintenance, and replacement costs)

S = Total suspended solids loading or suspended solids capacity of treatment plants, whichever is less

U(C) = COD loading in excess of 800 milligrams per liter

T(C) = Treatment costs assigned to COD (includes debt service, operation, maintenance, and replacement costs)

C = Total COD loading or COD capacity of treatment plants, whichever is less

Sampling frequency for determination of the ATC will be specified in the Discharge Permit.

COD or TOC analytical results may be used in lieu of the BOD test if the BOD test is not applicable due to a toxic effect of the wastewater or a substantial correlation can be developed between BOD and the substitute test, and if allowed by the Approving Authority. If a BOD test is not applicable due to a toxic effect, then the Approving Authority has the authority to require the discharger to determine the cause of the toxic effect and then to eliminate the constituent causing the toxic effect.

- (3) The Division of Public Works may impose and modify such additional surcharges as it deems appropriate to address, among other things, disproportional costs associated with the Discharge of Wastewater by one or more Users. For example, a fee schedule may be established to address disproportional costs the City incurs due to color, COD (due to its impacts on the City's disinfection process), sulfur (due to its impact on biogas generation), dissolved organics (due to its impact on disinfection costs) or fats oils and grease (due to its impact on the collection system). Nothing herein shall be deemed to require the City to accept such wastes for treatment.
- (c) Cooperative agreements. The sewer service charges in this section are applicable to every person inside and outside the corporate limits of the city whose sewage or Wastewater empties into the City's sewage system for eventual disposal through the sewage system and sewage or Wastewater Treatment Plants. The City may enter into appropriate agreements with the county and all other municipalities in the county or elsewhere using the city's sewage system for the disposal of their sewage or Wastewater, which agreements shall provide for the implementation of the charges herein and the billing and collection thereof. Such county and municipalities shall be required to enter into such agreement in order to continue their position of Discharging their sewage and Wastewater through the sewerage system established by the City. All funds collected shall be deposited with the City in the sewer treatment fund in accordance with applicable agreements.
- (d) Private wells. Those users having private wells will install either water meters on the wells or approved flow metering devices on Wastewater discharged to the City sewers. These water meters are subject to approval, inspections, and any maintenance, calibration, record keeping, and reporting requirements deemed necessary by the Control Authority to continually and reliably produce accurate flow volumes. Wastewater Discharge flow metering devices requirements are found in Section 33-247. Users will be classified as residential or commercial-industrial according to classifications established by the light, gas and water division or other water-serving utility.
- (e) Seasonal Adjustment of Sewer Fees. Section 33-131(b) establishes a monthly maximum charge for residential sewer service regardless of the amount of water flow measured in a billing period. During the months of June, July, August, and September, the maximum charge shall be reduced, and the following fee shall apply for residential customers until changed by amendment to this section:
- June through September 2020 and during such months for subsequent years: \$50.00
- Those residential customers living in special sewer service surcharge areas will not be relieved of the flat rate charges even if their volumetric charges are reduced by the monthly maximum charge. The appropriate flat rate charge will be added to the volumetric charge to reach the adjusted monthly value. No such relief shall be granted to those customers residing in other cities or service areas whose fees are assessed based upon current contracts and agreements.
- (f) Any User desiring to exercise his option of installing an approved metering device shall notify the Control Authority of his exercise of the option, and the Control Authority from the date of installation of the metering device shall adjust its charges back to the date of the notice of the User to install the metering

device or ninety (90) days, whichever is sooner and such adjustment shall be based upon the average charge for the ninety (90) days following the installation of the metering device. Those Users having private wells shall have ninety (90) days in which to install a water meter or a metering device for measuring Wastewater Discharged into the City sewer system. The City shall estimate charges for the period of time prior to the installation of the device and shall adjust the charges based on ninety (90) days experience after the installation of the device. If a private well owner installs a water meter and thereafter elects to install a metering device for measuring Wastewater Discharge into the City sewerage system, then he likewise shall have his charges adjusted from the time of the installation of the device back to the date of notice to the Control Authority or ninety (90) days, whichever is sooner, and such adjustment shall be based on the charges for ninety (90) days following the installation. Wherever used in this section, the word "sewer" shall mean "sanitary sewer".

- (g) Groundwater Remediation and Monitoring Wells. Owners or operators of groundwater remediation and/or monitoring wells, such as for TDEC Leaking Underground Storage Tank (LUST) sites or Dry Cleaner Environmental Remediation Program (DCERP) sites, shall be subject to applicable rates based on flow and pollutants.

Sec. 33-132. [Chapter 13-28-2] Distribution of Funds, Accounting Therefore.

The Division of Public Works shall institute an accounting system reflecting an equal distribution of total funds produced under the division based upon the respective needs of each segment of the Wastewater treatment operations and maintenance functions, including but not limited to, treatment plant operations; sewer maintenance; sewer design; sewer construction; pollution control monitoring; Wastewater treatment capital improvements bond indebtedness loan repayments; direct and incidental costs to the city, including, but not limited to, administrative, technical and legal expenses; and other expenditures necessary for an effective Wastewater treatment program. Revenue generated under this division shall be used exclusively for the Wastewater treatment program.

Sec. 33-133. [Chapter 13-28-3] Sewer Fee Review.

Rates generated under Articles II and III of this chapter shall be reviewed periodically and approved or adjusted by the Division of Public Works subject to the approval of the Memphis City Counsel.

Sec. 33-134. [Chapter 13-28-4] Appeals.

Appeals related to sewer use fees, connection fees, development fees, and/or sewer extension fees in situations in which the owner, user, company, etc., feels that extenuating circumstances exist that warrant a modification of the applicable fee should be made to the Director of Public Works or his/her designee. The Director of Public Works or his/her designee shall have authority to modify or waive fees as is considered appropriate. The decision of the Director of Public Works or his/her designee shall be final.

Sec. 33-135. [Chapter 13-28-5] Grays Creek Special Sewer Service District 1.

Due to the cost of designing, constructing, construction and financing a sewer system for the Grays Creek Drainage Basin the following sewer infrastructure surcharge fees are hereby established for any Person directly or indirectly served by the Grays Creek Outfall Sewer outfall sewer:

- (a) Residential lot infrastructure surcharge development fee (which fee shall be in addition to normal development fees) shall be One Thousand Dollars (\$1,000.00) per lot.
- (b) Multifamily dwelling infrastructure surcharge development fee (which fee shall be in addition to normal development fees) shall be the greater of Three Thousand Five Hundred Dollars per acre or Four Hundred and Fifteen (\$415) per unit.
- (c) Commercial and industrial multi-unit building infrastructure surcharge development fee (which fee shall be in addition to normal development fees) shall be the greater of Fifty Dollars (\$50.00) per front foot, or Three Thousand Five Hundred Dollars (\$3,500.00) per acre.
- (d) Residential and commercial infrastructure user surcharge fee (which shall be in addition to normal user fees) shall be Six Dollars (\$6.00) per month.
- (e) Industrial User infrastructure surcharge fee (which shall be in addition to normal user fees) shall be sixty cents (\$0.60) per one thousand (1,000) gallons.

Sec. 33-136. [Chapter 13-28-6] **Loosahatchie River Special Sewer Service Area.**

There is now established the Loosahatchie River special sewer service area. Due to the cost of designing, constructing and financing a sewer system for the Loosahatchie River Drainage Basin east of the Illinois Central railroad and north of the existing city limits for the city (as of March 31, 1999), the following sewer infrastructure surcharge fees are established for any Person directly or indirectly served by the Loosahatchie River interceptor within the bounds delineated above.

- (a) Residential lot infrastructure surcharge development fee (which fee shall be in addition to normal development fees) shall be one thousand dollars (\$1,000.00) per lot.
- (b) Multifamily dwelling infrastructure surcharge development fee (which shall be in addition to normal development fee shall be the greater of three thousand five hundred dollars (\$3,500.00) per acre or four hundred fifteen dollars (\$415.00) per unit.
- (c) Commercial and industrial multiunit building infrastructure surcharge development fee (which fee shall be in addition to normal development fees) shall be the greater of fifty dollars (\$50.00) per front foot or three thousand five hundred dollars (\$3,500.00) per acre.

Sec. 33-137. [Chapter 13-28-7] **Reserved.**

Sec. 33-138. [Chapter 13-28-8] **Mary's Creek Special Sewer Service Area.**

There is now established the Mary's Creek Special Sewer Service District. Due to the cost of designing, construction and financing a sewer system for the Mary's Creek drainage basin the following sewer infrastructure surcharge fees are established for any Person directly or indirectly served by the Mary's Creek. Mary's Creek is a tributary of Gray's Creek in an area north of the Wolf River, east of the City of Memphis, and in the City of Memphis annexation reserve area as of July 2004. Mary's Creek runs generally east to west. Sewer service provided to Mary's Creek will only service land in the city and/or city annexation area:

- (a) Residential lot infrastructure surcharge development fee (which fee shall be in addition to normal development fees) shall be two thousand two hundred dollars (\$2,200.00) per lot.

- (b) Multifamily dwelling infrastructure surcharge development fee (which shall be in addition to normal development fees) shall be the greater of seven thousand seven hundred dollars (\$7,700.00) per acre or nine hundred fifteen dollars (\$915.00) per unit.
- (c) Commercial and industrial multiunit building infrastructure surcharge development fee (which fee shall be in addition to normal development fees) shall be the greater of one hundred ten dollars (\$110.00) per front foot or seven thousand seven hundred dollars (\$7,700.00) per acre.
- (d) Residential and commercial infrastructure user surcharge fee (which shall be in addition to normal user fees) shall be twelve dollars (\$12.00) per month.
- (e) Industrial User infrastructure surcharge fee (which shall be in addition to normal user fees) shall be one dollar and twenty cents (\$1.20) per one thousand (1,000) gallons.

Sec. 33-139. [Chapter 13-28-9] **Grays Creek Special Sewer Service District 2.**

There is now established the Grays Creek Special Sewer Service District 2. Due to the cost of designing, construction and financing a sewer system for the Grays Creek Special Sewer Service District 2, the following sewer infrastructure surcharge fees are established for any person directly or indirectly served by this portion of the Grays Creek sewer basin. Grays Creek District 2 begins at the upstream terminus of the interceptor constructed under the original Grays Creek Special Sewer Service Area (hereafter called District 1). The general boundaries of district 2 are the Memphis annexation area in the Grays Creek drainage basin that is upstream of a point approximately one mile east of Pisgah Road. This encompasses the area outside of Grays Creek District 1 that is bounded on the north by U.S. Highway 64, on the west by (1) the eastern ridge line of an unnamed tributary to Grays Creek that is approximately two thousand (2,000) feet west of Roland Road; said tributary is north of and drains southward into Grays Creek and (2) the eastern ridge line of an unnamed tributary to Grays Creek approximately one thousand eight hundred (1,800) feet east of Pisgah Road; said tributary is south of and drains northward into Grays Creek. The southern boundary of this district is the Grays Creek Basin ridge line which generally follows Macon Road east of Pisgah. The eastern boundary is the Shelby County line which is also the eastern limit of the City of Memphis annexation reserve area. Sewer service will only be provided to those areas in Grays Creek District 2 that are within the current limits of the City of Memphis and/or the City of Memphis annexation reserve area.

- (a) Residential lot infrastructure surcharge development fee (which fee shall be in addition to normal development fees) shall be two thousand five hundred dollars (\$2,500.00) per lot.
- (b) Multifamily dwelling infrastructure surcharge development fee (which shall be in addition to normal development fees) shall be the greater of eight thousand seven hundred fifty dollars (\$8,750.00) per acre or one thousand forty dollars (\$1,040.00) per unit.
- (c) Commercial and industrial multiunit building infrastructure surcharge development fee (which fee shall be addition to normal development fees) shall be the greater of one hundred twenty-five dollars (\$125.00) per front foot or eight thousand seven hundred fifty dollars (\$8,750.00) per acre.
- (d) Residential and commercial infrastructure user surcharge fee (which shall be in addition to normal user fees) shall be twelve dollars (\$12.00) per month.
- (e) Industrial User infrastructure surcharge fee (which shall be in addition to normal user fees) shall be one dollar and twenty cents (\$1.20) per one thousand (1,000) gallons.

Sec. 33-140. **Reserved.**

DIVISION 3. POWERS AND AUTHORITY OF INSPECTORS [Chapter 13-32]

Sec. 33-141. [13-32-1] **Authority to Enter, Sampling and Oversight.**

Inspectors may include representatives of the City of Memphis, Division of Public Works, Control Authority, and/or its designee (including contractors), bearing proper credentials and identification. Inspectors shall be permitted to enter appropriate property areas at all reasonable times for the purpose of inspection, observation, measurement, sampling, and testing as the inspector deems necessary in accordance with of this chapter. Sampling, inspection and other oversight may be undertaken at any location at the Facility Site including, but not limited to, effluent discharge points, internal wastestream points and manholes located on the User's owned or occupied property. This includes the authority to inspect production, waste and other areas to ascertain whether the purposes of this chapter are being met and all requirements are being complied with. Persons or occupants of premises where regulated activities occur shall allow the inspector ready access at all reasonable times, at a minimum the days and hours of operations for the purposes of inspection, sampling, testing, photographing, videotaping, copying documents and records, conducting interviews in the performance of their duties. Access to the property for the purposes set forth herein shall not be conditioned upon the City of Memphis and/or the inspectors signing an access agreement, including, but not limited to, a document pertaining to the potential waiver or release from liability or provisions pertaining to secrecy, confidentiality or disclosure of information. The inspector shall have the right to set up on the User's property such sensors or other devices as are necessary to conduct sampling, metering operations or other oversight, which includes, but is not limited to, composite samplers, discrete samplers, flow measuring devices, continuous monitoring devices and/or sensors, controllers, remote telemetry devices, modems, and cleaning devices such as air blasts or water blasts. Where a User has security measures in force, which would require proper identification and clearance before entry into the premises, the User shall make necessary arrangements with security personnel so that, upon presentation of suitable identification, inspectors shall be permitted to enter without delay for the purposes of performing their specific responsibilities.

Sec. 33-142. [13-32-2] **Injury to or by City Employees Engaged in Inspection Activities.**

While performing the necessary work on private properties referred to in Section 33-141 above, representatives of the Division of Public Works, Control Authority and/or its designee shall observe all safety rules applicable to the premises established by the company except as otherwise deemed necessary by the City (e.g., to address an emergency situation).

Sec. 33-143. [13-32-3] **Authority to Enter upon Easements for the Purposes of Inspection of Sewerage Works.**

Representatives of the Division of Public Works (including its designee), and Tennessee Department of Environment and Conservation bearing proper credentials and identification, shall be permitted to enter all private properties through which the city holds a duly negotiated easement for the purposes of inspection, observation, measurement, sampling, repair and maintenance of any portion of the sewerage works lying within such easement. All entry and subsequent work, if any, on such easement shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

Sec. 33-144--33-155. **Reserved.**

DIVISION 4. BILLING PROCEDURES [Chapter 13-28-7]

Sec. 33-156. Billing and Collection.

- (a) The sewer service charge shall be included each month on the bills rendered by the light, gas and water division, or other serving utility, in accordance with its standard billing practices. Such charges shall be rendered on the first bill of the serving utility sent out on and after June 1, 1979, and for each month thereafter. Billings separate from those made by the light, gas and water division, as determined by the Director of Public Works, may be made to commercial and Users. Failure to pay the sewer service charge within thirty (30) days from due date of the utility statement shall be grounds for terminating water service by the serving utility.
- (b) When service commences or ceases, applicable charges may be prorated.
- (c) If service shall be supplied to a location, the occupant or tenant of which was vacated, and the city is satisfied that there has been a termination of sewer service, then the city, on timely application of the owner or agent thereof, may suspend liability for such charges, and such charges shall be reinstated for the next utility bill rendered to the occupant or tenant of such premises.
- (d) Charges based on metered measurement of volume discharged to the sewer system and/or additional treatment charges based on Wastewater strength, shall be paid monthly to the City in a manner prescribed by the Division of Public Works.
- (e) The sewer service charges are applicable to every person, inside and outside the corporate limits of the city, whose sewage and Wastewater empties into the city's collection and treatment systems.
- (f) Credit for prior billing errors is limited to errors occurring less than or equal to twelve (12) months prior to the date that the claim for credit is made by residential or commercial customers.
- (g) In accordance with the apartment credit program the Approving Authority has the right to charge each tenant twelve dollars and ninety-five cents (\$12.95) per month effective January 1, 2020, if so requested in writing by the apartment owner, until this section is otherwise amended. The total amount collected will then be credited against the amount billed from the master water meter reading each month.
- (h) Commercial and Industrial Users that are billed separately from the light, gas, and water division or other serving utility billing system will be charged a late fee of (1) percent or \$500, whichever is less, for any portion of each month in which billing information as required is not submitted to the sewer billing office by the fifteenth (15th) of each month for the previous month.

Sec. 33-157-- 199. Reserved.

SECTION 5. NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Chapter 33, Article IV is hereby created to state as follows with corresponding changes to be made to Chapter 13-24 and with any cross-references herein to Chapter 33 provisions also be deemed to apply to the corresponding Chapter 13 provision:

Art. IV. Pretreatment, 33-200--33-309

Div. 1. Generally and Definitions, ## 33-200--33-219 [13-24-1--13-24-19]

- Div. 2. System Discharge Permits and Incorporation of Federal and State Requirements, ## 33-220--33-239 [13-24-20--13-24-39]
- Div. 3. Discharge to Public Sanitary Sewers, ##33-240--33-259 [13-24-40--13-24-59]
- Div. 4. Review and Enforcement, ## 33-260--33-289 [13-24-60--13-24-89]
- Div. 5. Review and Oversight of Outlying Jurisdictional Programs with Dischargers to Memphis STP(s), ## 33-290--33-299 [13-24-90--13-24-99]
- Div. 6. Miscellaneous Provisions, ## 33-300--33-309 [13-24-100--13-24-109]

ARTICLE IV. PRETREATMENT

DIVISION 1. GENERALLY AND DEFINITIONS

Sec. 33-200. [13-24-1] Definitions.

Unless the context specifically indicates otherwise, the meanings of terms used in this Article IV shall be the definitions as set forth in Section 33-16 of Article 1, which are hereby incorporated by reference into this Article IV. Terms for which definitions are not specifically provided shall be interpreted consistent with the intent and substance of this Ordinance and as otherwise provided by state regulation at 0400-40-14-.03 or EPA regulation at 40 C.F.R. § 403.3.

Sec. 33-201--33-219. [13-24-2 --19] Reserved.

DIVISION 2. SYSTEM DISCHARGE AND INCORPORATION OF FEDERAL AND STATE REQUIREMENTS

Sec. 33-220. [13-24-20] User compliance with these requirements is required whether or not such requirements are specifically incorporated into an SIU Discharge Permit or Other User Permit. This includes fees and charges as set forth in Article II and Article III, as well as other fees the Division of Public Works may impose (*e.g.*, permit fees, sampling fees, and inspection fees) on Users.

Sec. 33-221. [13-24-21] Incorporation of Federal and State Pretreatment Requirements by Reference.

The regulatory requirements pertaining to Users as set forth in (a) 40 C.F.R. Part 403, (b) 40 C.F.R., Chapter I (Environmental Protection Agency), Subchapter N (Effluent Guidelines and Standards), Parts 405 *et. seq.*, and (c) Tennessee Pretreatment Requirements as set forth in Chapter 0400-40-14, are hereby incorporated by reference, including all future changes to such regulations. User compliance with these requirements is required, and subject to enforcement for noncompliance, whether or not such requirements are specifically incorporated into an SIU Discharge Permit or Other User Permit.

Sec. 33-222. [13-24-22] SIU Permits and Other Permits.

(a) Requirements to Obtain a Permit

Except as provided in Sec. 33-222(c), below, the Discharge of Wastewater by (i) a Significant Industrial User or (ii) such other commercial or industrial facility that the City, based upon the exercise of its discretion, identifies as requiring a Discharge Permit, is illegal unless such entity has an SIU Discharge Permit or Other User Permit, as applicable, issued by the City or an Outlying Jurisdiction which is authorized under the City's pretreatment program and this Ordinance to issue a Discharge Permit.

(b) Discretionary Permitting of Non-Significant Industrial Users

In addition to food establishments and waste haulers, non-Significant Industrial Users that the City, subject to its discretion, may require to obtain an Other User Permit are commercial or industrial facilities that: result in additional treatment costs to the City; have the potential for Discharge of acidic Wastewater; have the potential for Discharge of Wastewater with offensive characteristics (e.g., odors); have a wastestream or treatment process that the City believes is preferable to be regulated under a permit; any new or expanded development where the additional flows raise potential concerns regarding capacity associated with the collection system, pump station, and/or WWTP; Discharge Wastewater containing a Pollutant that could potentially result in additional requirements (e.g., monitoring or effluent limitation) being imposed in the City's NPDES permit; or as the City otherwise deems appropriate. Conditions included in Other User Permits and the City regulation of non-Significant Industrial Users are subject to the City's sole discretion.

(c) Time Frame for Obtaining Permit

An existing User designated by the Control Authority as requiring an SIU Discharge Permit or Other User Permit, shall submit a permit application and/or such other information as the City may require for a permit within the timeframe specified by the City. Any proposed new discharger which has not Discharged prior to the date it is notified that it must be permitted, shall not Discharge to the system until a permit is issued and it is in compliance with the terms of such permit. The City may issue individual or general discharge permits. It is illegal to Discharge Wastewater to the City's POTW (including the collection system) in violation of a Discharge Permit, Other User Permit and/or this Ordinance. The City may adjust the timeframes for applying for a permit on a case-by-case basis as it deems appropriate.

(d) Construction Summary Submission

A letter report setting forth an engineering summary of proposed changes shall be submitted to the Control Authority prior to commencement of construction, if applicable, by any existing or other industrial or commercial facility intending to discharge to the City's POTW. The Control Authority does not by its approval of the letter report, submitted by an industrial or commercial facility, warrant or aver in any manner that the implementation of such measures will result in compliance with the applicable Pretreatment Requirements. Notwithstanding any approval of such letter report by the City, the industrial or commercial facility remains solely responsible for compliance with the applicable Pretreatment Requirements and all other Federal, state, and local requirements.

(e) City Options for Non-Significant Industrial Users

Notwithstanding anything to the contrary in this Ordinance, nothing herein shall preclude the City of Memphis from issuing a letter or other authorization allowing Discharge into the POTW for Wastewater involved in groundwater clean-ups or other such Discharges as the City deems appropriate. SIUs, however, shall be regulated by an SIU Discharge Permit (see Section 33-222(f)).

(f) SIU Discharge Permits

- (1) Except as otherwise specifically provided in this Ordinance, an SIU shall apply for and obtain an SIU Discharge Permit (individual or general).
- (2) The application for an individual SIU Discharge Permit shall contain, but not be limited to, the following information: Standard industrial classification; facility name, physical address, and mailing address; if applicable, corporate name and address; facility contact name and contact information; Authorized

Representative of the User; date facility began operations or expects to start-up; number of employees; water supply and use information; raw material and chemical use rates; production rates; byproduct and waste generation rates; if applicable, service volume rates; if applicable, descriptions of onsite and office waste storage and disposal; volumes of Wastewater to be Discharged, whether process Wastewater, equipment or vehicle wash water, condensate, non-contact cooling water, boiler Blowdown, storm water, domestic sanitary Wastewater, or other Wastewater; Wastewater constituents and characteristics; time and duration of Discharge, and whether Discharges are batch or continuous; average Wastewater flow rates, including daily, monthly, and seasonal variations, or estimates of such where such information is not yet available; site plans and floor plans showing all drains and sewers, description of activities, facilities and plant processes; if applicable, descriptions of Pretreatment systems; Discharge and monitoring locations; and any additional information, data, diagrams, and drawings as required by the Control Authority to make permitting decisions. Applications for specialized individual permits, such as for groundwater remediation sites, may not require all the information listed above. This will be determined by the Control Authority.

- (3) Except for Existing Dischargers, Industrial Users seeking an SIU Discharge Permit shall obtain a permit application form from the Control Authority and file with the Control Authority a completed permit application form with all required descriptions, certifications, determinations, reports, information, data, plans, diagrams, and drawings, in the form prescribed by the Control Authority, not less than 180 days prior to the first Discharge of industrial Wastewater to the POTW, unless modified or waived by the Control Authority. Existing Dischargers shall file for a permit in accordance with Section 33-222(c), above.
- (4) At the discretion of the Control Authority, the Control Authority may use general SIU Discharge Permits to control SIU Discharges to the POTW if, in the opinion of the Control Authority, the following conditions are met. All facilities to be covered by a general permit must:
 - (A) Involve the same or substantially similar types of operations;
 - (B) Discharge the same types of wastes;
 - (C) Require the same effluent limitations;
 - (D) Require the same or similar monitoring; and
 - (E) In the opinion of the Control Authority, are more appropriately controlled under a general permit than under individual permits.
- (5) To be covered by the general SIU Discharge Permit, the SIU must file a written request for coverage that identifies its contact information, production processes, the types of wastes generated, the location for monitoring all wastes covered by the general SIU Discharge Permit, any requests in accordance with Section 33-242(h) for a monitoring waiver for a Pollutant neither present nor expected to be present in the Discharge, and any other information the Control Authority deems appropriate. A monitoring waiver for a Pollutant neither present nor expected to be present in the Discharge is not effective in the general SIU Discharge Permit until after the Control Authority has provided written notice to the SIU that such a waiver request has been granted in accordance with Section 33-242(h).

(g) Other User Permits

- (1) A User required to obtain an Other User Permit shall submit an application, or such information as the City may require, for developing permit conditions and evaluating issues associated with the Other User Permit, within the timeframe identified by the City.
- (2) Subject to its discretion, the Control Authority may use general Other User Permits to control non-SIUs or other Users to the POTW subject to such requirements as the City deems appropriate.

(h) Requirement for a Permittee with a General Permit to Obtain an Individual Permit

Notwithstanding any provision to the contrary, the City may require any permittee subject to a General SIU Discharge Permit or a General Other User Permit to be covered by an individual permit instead. In such instance, the permittee shall submit an individual permit application, or such information as the City may require, as applicable, within the timeframe specified by the City.

Sec. 33-223. [13-24-23] **Permit Provisions.**

(a) General Authority/Change of Discharge

The Control Authority has the right to deny issuance of a permit (and, as such, the use of the City's sewer system and treatment facilities) or to impose such conditions in a Discharge Permit as the City deems appropriate, including conditions upon the types of wastes that can be discharged (*e.g.*, precluding wastes which are solid or viscous in nature), new or increased contributions of Pollutants, or changes in the nature of Pollutants to the POTW by Industrial Users or other Users. Except as otherwise provided by the Control Authority, any Significant Industrial User changes that have the potential to substantially increase flow or Pollutants Discharged or otherwise substantially affect the POTW, the treatability of the Wastewater entering the POTW, or the ability of the POTW to meet NPDES, sludge and other applicable requirements, are subject to Control Authority approval prior to SIU implementation. The Authority may require the SIU to undertake a compatibility study to demonstrate to the satisfaction of the Control Authority that the Wastewater to be Discharged is compatible with the existing POTW, will not affect any requirements imposed upon the City (including sludge disposal requirements), and will not otherwise adversely affect the POTW. The Control Authority may preclude the discharge of certain wastes even if those wastes would otherwise meet numeric effluent limits for specific pollutants.

(b) Requirements Applicable to All Users

Users, whether permitted (*e.g.*, with an individual or a general permit), are hereby expressly subject to all provisions pertaining to Users as set forth in (1) 40 C.F.R. Part 403, (2) 40 C.F.R., Chapter I (Environmental Protection Agency), Subchapter N (Effluent Guidelines and Standards), Parts 405 *et. seq.* (categorical pretreatment requirements), (3) Tennessee pretreatment requirements as set forth in Rule 0400-40-14-.05, and (4) Article IV of this chapter, as well as all other applicable ordinances, regulations, charges, and fees administered by the Division of Public Works. User compliance with these requirements is required whether or not such requirements are specifically incorporated into an SIU Discharge Permit or Other User Permit.

(c) Permit Conditions

SIU Discharge Permits and Other User Permits, whether individual or a general permit, may contain such conditions as the City deems appropriate including, but not limited to, the following conditions:

- (1) Minimum and maximum pH limits in standard units and/or hydroxide loading;

- (2) Daily Maximum Limits, Weekly Average limits, Monthly Average Limits, and Instantaneous Maximum Limits
- (3) Daily maximum, weekly and monthly average Discharge flow limits and, when deemed appropriate by the Control Authority, flow regulation and/or equalization, including average and/or maximum flow rates;
- (4) Requirements for installation of inspection and sampling facilities, and when required, for continuous pH monitoring and flow monitoring;
- (5) When Categorical Standards are applicable, Categorical Pretreatment Standards, effluent limits, Best Management Practices, baseline monitoring reports, compliance monitoring, and certification statements, based on applicable general pretreatment standards in Part 403 of the Federal Regulations;
- (6) Other Best Management Practices (*e.g.*, to implement Local Limits and/or the requirements of Sections 33-243 and 33-244 in addition to, or in lieu of, the underlying Local Limits and/or requirements of Sections 33-243 and 33-244);
- (7) A prohibition on the use of dilution to meet permit limits (*e.g.*, to meet color limits) and/or the imposition of mass limitations to prevent dilution to meet applicable Pretreatment Standards or Pretreatment Requirements or where otherwise deemed appropriate;
- (8) Self-monitoring, sampling, reporting (*e.g.*, electronic reporting), notification and record keeping requirements, including an identification of the Pollutants to be monitored, sample location, sampling frequency, sample type, and numbers, types, and standards for tests;
- (9) Requirements for submission of self-monitoring and other reports;
- (10) Maintaining plant records relating to Wastewater Discharge, as specified by the Control Authority, and for affording the Control Authority access thereto;
- (11) Maximum Discharge rates, or other appropriate limits or prohibitions, when a potentially incompatible Pollutant is proposed or present in the User's Wastewater Discharge or otherwise deemed appropriate by the Control Authority;
- (12) Penalties and damages for violation of the permit and provisions of Article IV of this chapter, including any daily penalties, costs to the Control Authority, and damages. Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any schedule to achieve compliance with applicable requirements, however, such schedules do not extend the compliance date beyond applicable Federal and state deadlines;
- (13) Statement of duration;
- (14) Statement of non-transferability or a provision allowing transfer of a permit with, at a minimum, prior notification to the Control Authority and provision of a copy of the existing Control Mechanism to the new owner or operator;
- (15) When deemed appropriate by the Control Authority, compliance schedules to meet applicable requirements (*e.g.*, local ordinance requirements and/or Federal Categorical Pretreatment Standards);

- (16) Requirements for repeat sampling after becoming aware of a violation;
- (17) Requirements to control Slug Discharges, if determined by the Control Authority to be necessary;
- (18) Requirements pertaining to the proper operation and maintenance of the User's treatment, sampling and analytical equipment, and notification to the Authority regarding the failure of such equipment;
- (19) Requirements to address Control Authority concerns about the potential effect of influent sulfur content (*e.g.*, upon the biogas at the WWTP) or the effect of other Wastewater characteristics upon activities at the WWTP;
- (20) Action Levels;
- (21) Other conditions as deemed appropriate by the Control Authority; and
- (22) The process for seeking a waiver from monitoring for a pollutant neither present nor expected to be present in the Discharge in accordance with Section 33-242(h).

Sec. 33-224. [13-24-24] Time Period of Permits; Continuation of Expired Permits.

- (a) SIU Discharge Permits shall be issued for a specified time period, not to exceed five (5) years. Other User Permits may be issued for such time period as the City deems appropriate. To continue discharging Wastewater to the POTW, a User with an existing permit must obtain a permit application form from the Control Authority, if applicable, and file with the Control Authority a completed permit application and/or such other information required by the City with all required descriptions, certifications, determinations, reports, information, data, plans, diagrams, and drawings, in the form prescribed by the Control Authority not less than 180 days prior to the expiration date of the existing Discharge Permit (unless an alternative period is provided by the City). General permits are automatically continued after its expiration date pending a City decision to reissue the general permit, except for any Discharger that does not timely submit such information as required by the City, if applicable.
- (b) Notwithstanding any provision to the contrary, the conditions of an expired SIU Discharge Permit and Others Permits, as applicable, continue in force until the effective date of a new permit or the date of a decision by the City not to reissue the permit, as applicable, if (i) the permittee has submitted a complete and timely permit application or such other information as the Control Authority may require and (ii) the Control Authority, through no fault of the permittee, does not reissue a permit on or before the expiration date of the previous permit (for example, when issuance is impractical due to time or resource constraints).

Sec. 33-225. [13-24-25] Modification, Suspension, or Revocation of Permits and Appeals.

- (a) During the life of the permit, the Control Authority may conduct review of the permit to assess if the individual or general permit should be modified, suspended, or revoked.
- (b) The terms and conditions of a permit, or any part thereof, are subject to modification for good cause, including, but not limited to, the following reasons:
 - (1) To incorporate any new or revised Federal, state, or local requirements;

- (2) To address significant alterations or additions to the User's operation, processes, or Wastewater volume or character;
 - (3) A change in the POTW'S NPDES permit or in the POTW (*e.g.*, changes in the design or capability of WWTP or sludge disposal options);
 - (4) A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized activity;
 - (5) Information indicating that the authorized discharge poses a threat to the City's WWTP (*e.g.*, would adversely impact the wastewater treatment process) or the collection system (*e.g.*, could cause corrosion to the pipes or pumping station), City personnel, the receiving waters, or that contradicts prior information;
 - (6) Violation of any term or condition of the permit and/or any requirement set forth in applicable law, regulation, and/or this Ordinance;
 - (7) Misrepresentations or failure to fully disclose all relevant facts in the permit application or in any required reporting or the tampering of monitoring equipment;
 - (8) Failure to allow timely access to the User's facility or records;
 - (9) Failure to timely pay fines or applicable sewer charges;
 - (10) Revision of or a grant of variance from Categorical Pretreatment Standards pursuant to Tennessee Rule 0400-40-14-.13;
 - (11) To correct typographical errors, omissions, or other errors in the permit;
 - (12) Changes to the local sewer Discharge requirements;
 - (13) To change monitoring, sampling, or reporting requirements; and/or
 - (14) For such other reason as the City deems appropriate.
- (c) When a permit is modified, only the conditions subject to modification are reopened. The User may request that the Control Authority modify the permit. All other terms and conditions of the existing SIU Discharge Permit and/or Other User Permit remain unchanged. In lieu of modifying or changing an existing permit, the Control Authority may require the User to apply for a new permit when there are significant changes to a User's facility, significant changes to the Discharges, or other good cause exists. A User newly designated as a Significant Industrial User shall obtain an SIU permit, in which case its Other User Permit for the same Discharge, if applicable, shall terminate upon issuance of an SIU Discharge Permit.
- (d) A request for modification or other change to a permit does not stay any term or condition set forth in the existing or modified permit pending a determination upon the request. The Control Authority may, upon its own initiative or in response to a request by the permittee, stay contested permit conditions or actions.
- (e) Any User is subject to having its permit modified, suspended, or revoked and sewer service discontinued for cause, including:

- (1) Violation of the SIU Discharge Permit, Other User Permit, or any provision of this Ordinance;
 - (2) Failure of a User to fully disclose all relevant facts, or the permittee's misrepresentation of any relevant facts, including the reporting of the Wastewater constituents and characteristics of its Discharge;
 - (3) Failure of the User to report significant changes in operations, which affect Wastewater constituents and characteristics;
 - (4) Refusal of reasonable access at the User's premises for the purpose of inspection or monitoring the applicable sewage or Wastewater System;
 - (5) Refusal or failure to pay all appropriate fees, charges, or civil penalties;
 - (6) Causing the City to violate any condition of its NPDES permit(s); or
 - (7) A determination by EPA, TDEC, or the Control Authority that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.
- (f) **Duty to Provide Information:** The User shall furnish the Control Authority, within a reasonable time, any information which the Control Authority may request to determine whether cause exists for issuing, modifying, reissuing, suspending, or revoking an SIU Discharge Permit or Other User Permit or to determine compliance. The User shall also furnish to the Control Authority, upon request, copies of records required to be kept. Where the User becomes aware that it failed to submit any relevant facts in an application for a permit, or submitted incorrect information in an application for a Permit, report to the Control Authority, or in any other correspondence pertaining to its regulated activities, it shall promptly submit such facts or information.
- (g) A User shall not refuse to provide the City of Memphis or its representatives (*e.g.*, inspector) information or refuse to allow the City to undertake actions authorized by this Ordinance, based upon the User's belief that the information would be confidential business information. The User may request that the information be treated as confidential in accordance with Section 33-229.
- (h) A Permittee shall have the right to appeal the issuance, reissuance, modification, suspension, or revocation of a permit to the Local Hearing Authority under Division 4 of this Ordinance. Any appeal must be received within thirty (30) days of the City's action.
- (i) Action of the Control Authority for which review has been available (*e.g.*, enactment of an ordinance, or issuance, reissuance, modification, suspension, or revocation of a permit) shall not be subject to administrative or judicial review in any civil or criminal proceeding for enforcement. Among other things, this means that an underlying permit condition or ordinance requirement cannot be challenged in an enforcement proceeding.

Sec. 33-226. [13-24-26] Limitation to Specific Operation of Specific User; Nontransferable.

- (a) SIU Discharge Permits and Other User Permits are issued to a specific User for a specific operation and the SIU Discharge Permit and Other User Permit shall not be reassigned, transferred, or sold to a new owner, other Industrial User, or different premises. The City, subject to its discretion, may modify the existing SIU

Discharge Permit and/or Other User Permit to include the new owner and may make such changes to the SIU Discharge Permit or Other Permit as the City deems appropriate.

- (b) The User shall provide the City 90 days written notice prior to requested transfer of a permit and shall include a permit application (unless waived by the City).

Sec. 33-227. [13-24-27] Monitoring Facilities, Provisions to Be Outlined in Discharge Permit.

Monitoring facilities, in accordance with Section 33-247 of this chapter, may be required in the SIU Permit or Other User Permit.

Sec. 33-228. [13-24-28] Right of Inspection, Sampling and Oversight; Access to Premises by Control Authority.

Inspectors may include representatives of the Division of Public Works, Control Authority, and/or its designee (including contractors), bearing proper credentials and identification. Inspectors shall be permitted to enter appropriate property areas at all reasonable times for the purpose of inspection, observation, measurement, sampling, and testing as the inspector deems necessary, to assure User compliance with Article IV of this chapter. Sampling, inspection, and other oversight may be undertaken at any location at the Facility Site including, but not limited to, effluent discharge points, internal wastestream points, and manholes located on the User's owned or occupied property. This includes the authority to inspect the production, sewage, and Wastewater facilities of any User to ascertain whether the purposes of this chapter are being met and all requirements are being complied with. Persons or occupants of premises where Wastewater is Discharged shall allow the inspector ready access at all reasonable times, at a minimum, the days and hours of operations indicated in the permit application submitted by the User, for the purposes of inspection, sampling, testing, photographing, videotaping, copying documents and records, and conducting interviews in the performance of their duties. Access to the property for the purposes set forth herein shall not be conditioned upon the City of Memphis and/or the inspectors signing an access agreement, including, but not limited to, a document pertaining to the potential waiver or release from liability or provisions pertaining to secrecy, confidentiality, or disclosure of information. The inspector shall have the right to set up on the User's property such sensors or other devices as are necessary to conduct sampling, metering operations, or other oversight, which includes, but is not limited to, composite samplers, discrete samplers, flow measuring devices, continuous monitoring devices and/or sensors, controllers, remote telemetry devices, modems, and cleaning devices such as air blasts or water blasts. Where a User has security measures in force, which would require proper identification and clearance before entry into the premises, the User shall make necessary arrangements with security personnel so that, upon presentation of suitable identification, the inspectors shall be permitted to enter without delay for the purposes of performing their specific responsibilities.

Sec. 33-229. [13-24-29] Availability of Information on User to Public; Use of Claimed Confidential Information.

(a) Confidential Business Information

All information and data on a User obtained from reports, questionnaires, applications, permits, inspection, monitoring programs, or submitted to the Control Authority pursuant to this Ordinance shall be available to the public, subject to the restrictions of the Tennessee Open Records Act codified at 10-7-501 *et seq.*, and applicable statutory exemptions. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions, or, in the case of other submission, by stamping the words

“confidential business information” on each page containing such information. If no claim is made at the time of submission, the Control Authority may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the standards in 40 C.F.R. Part 2 (Public Information).

(b) Effluent Data

Notwithstanding any provision to the contrary, User information and data which are effluent data shall be available to the public without restriction.

(c) State or Control Authority

All other information which is submitted to the State or Control Authority shall be available to the public at least to the extent provided by T.C.A. §§ 10-7-501 *et seq.*

(d) Information Requested by Another Governmental Agency

Where User information is lawfully requested by another governmental agency (*e.g.*, TDEC or EPA), the City may provide such information to the governmental agency and the City will not be required to make a confidentiality determination regarding such information. The User seeking confidentiality protection of the information shall bear the burden of demonstrating to the other governmental agency that such information is entitled to confidential protection. Prior to providing such information to the other governmental agency, the City shall provide notice to the User.

Sec. 33-230. [13-24-30] Reporting and Recordkeeping.

(a) General

The Control Authority has the right to require the submission of such notices and self-monitoring reports from Users as are necessary to assess and assure compliance by, among others, Users with Pretreatment Standards and Pretreatment Requirements, including, but not limited to, the reports required in 40 C.F.R. § 403.12. Industrial Users shall submit the following reports, as applicable, and Industrial Users and other Users shall submit such reports as may be required by the Control Authority and shall contain the certification statement set forth in paragraph 33-230(j)(1), below.

(b) Baseline Monitoring Report (BMR)

- (1) Within either one hundred eighty (180) days after the effective date of a Categorical Pretreatment Standard or the final administrative decision on a category determination under Tennessee Rule 0400-40-14-.06(1)(d), whichever is later, existing Categorical Industrial Users currently Discharging to or scheduled to Discharge to the WWTP shall submit to the Control Authority a report which contains the information listed in paragraphs 2(A) through (E), (3) and (4), below. At least ninety (90) days prior to commencement of their Discharge, New Sources and sources that become Categorical Industrial Users subsequent to the promulgation of an applicable Categorical Standard, shall submit to the Control Authority a report which contains the information listed in paragraph (2) below. A New Source shall report the method of Pretreatment it intends to use to meet applicable Categorical Standards and shall provide estimates of the information required under paragraphs (b)(2)(D) and (E), below, regarding its anticipated flow and quantity of Pollutants to be discharged.

(2) Industrial Users described above shall submit the information set forth below.

- (A) Identifying Information. The Username and address of the facility including: the names of operators and owners.
- (B) Permit Information. A listing of any environmental control permits held by or for the facility.
- (C) Description of Operations. A brief description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production), and standard industrial classifications of the operation(s) carried out by such User. This description should include a schematic process diagram, which indicates points of Discharge to the WWTP from the regulated processes.
- (D) Flow Measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula pursuant to Section 33-242(b) (See Tennessee Rule 0400-40-14-.06(5)). The Control Authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations. In addition, Discharge flow data showing whether flow-proportional, time-proportional composite, and/or grab sampling are required for collecting representative samples for Discharge monitoring purposes based on the consistency of the Discharge flows.
- (E) Measurement of Pollutants.
 - (i) Identification of the Categorical Pretreatment Standards applicable to each regulated process and any new categorically regulated processes for Existing Sources.
 - (ii) The results of sampling and analysis identifying the nature and concentration (and/or mass, where required by the Pretreatment Standard or by the Control Authority), of regulated Pollutants in the Discharge from each regulated process.
 - (iii) Instantaneous, daily maximum, and long-term average concentrations (or masses, where required), shall be reported.
 - (iv) The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in 40 C.F.R. § 136 and amendments, unless otherwise specified in an applicable Categorical Standard. Where the Pretreatment Standard requires compliance with a Best Management Practice (BMP) or pollution prevention alternative, the Industrial User shall submit documentation as required by the Control Authority, or the applicable Standards, to determine compliance with the Pretreatment Standard.
 - (v) The Industrial User shall take a minimum of one representative sample to compile the data necessary to comply with the requirements of this paragraph.
 - (vi) Samples should be taken immediately downstream from Pretreatment facilities if such exist or immediately downstream from the regulated process if no Pretreatment exists. If other Wastewaters are mixed with the regulated Wastewater prior to Pretreatment, the Industrial User should measure the flows and concentrations necessary to allow use of the combined wastestream formula pursuant to Section 33-242(b) and Tennessee Rule 0400-40-14-.06(5) to evaluate compliance with the Pretreatment Standards.

(vii) The Control Authority may allow the submission of a baseline report, which utilizes only historical data, so long as the data provide information sufficient to determine the need for industrial Pretreatment measures.

(viii) The baseline report shall indicate the time, date, and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected Pollutant Discharges to the WWTP.

- (3) Compliance certification. Existing Industrial Users shall submit a statement, reviewed by the Authorized Representative of the Industrial User and certified by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the Pretreatment Standards.
- (4) Compliance schedule. If additional pretreatment and/or O&M will be required to meet the Pretreatment Standards, existing Industrial Users shall submit the shortest schedule by which the User will provide such additional pretreatment and/or O&M must be provided. The completion date in this schedule for meeting a Categorical Pretreatment Standard shall not be later than the compliance date established for the applicable Categorical Pretreatment Standard. A compliance schedule pursuant to this section must meet the requirements set out in paragraph (c) of this section, below.

(c) Compliance Schedule Progress Report

The following conditions shall apply to the compliance schedule required under the BMR section above:

- (1) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the User to meet the applicable Pretreatment Standards (such events include, but are not limited to, hiring a Tennessee State licensed professional engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation).
- (2) No increment referred to above shall exceed nine (9) months.
- (3) The User shall submit a progress report to the Control Authority no later than fourteen (14) days following each date in the schedule and the final date of compliance including, at a minimum, whether or not it has complied with the increment of progress and, if not, the date on which it expects to comply with this increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the User to return to the established schedule.
- (4) In no event shall more than nine (9) months elapse between such progress reports to the Control Authority.
- (5) At the discretion of the Control Authority, progress reports may be submitted by the 15th of each calendar month until full compliance is achieved, as determined by the Control Authority.

(d) Report on Compliance with Categorical Pretreatment Standard Deadline

Within ninety (90) days following the date for final compliance with applicable Categorical Pretreatment Standards, or in the case of a New Source, following commencement of the introduction of Wastewater into

the POTW, any Industrial User subject to Pretreatment Standards and requirements shall submit to the Control Authority a report containing the information described in Sections 33-230(b)(2)(D) &(E) and 33-230(b)(3). For Industrial Users subject to equivalent mass or concentration limits, established by the Control Authority in accordance with the procedures in Section 33-242(e) or (f), this report shall contain a reasonable measure of the Industrial User's long term production rate. For all other Industrial Users subject to Categorical Pretreatment Standards expressed in terms of allowable Pollutant Discharge per unit of production (or other measure of operation), this report shall include the User's actual production during the appropriate sampling period.

(e) Self-Monitoring Reports (SMRs)

- (1) All Significant Industrial Users (including CIUs, except for non-significant CIUs) must submit, at a frequency determined by the Control Authority, but no less than twice per year, reports indicating the nature, concentration of Pollutants in the Discharge, which are limited or otherwise required to be sampled by the Discharge Permit and such other Pretreatment Standards as are applicable, and the measured or estimated average and maximum daily flows, as applicable, for the reporting period. In cases where the Pretreatment Standard requires compliance with a BMP (or pollution prevention alternative), the Industrial User must submit documentation necessary to determine the compliance status of the Industrial User, including documentation required by the Control Authority and/or the Pretreatment Standard. If a semi-annual reporting schedule is established, then such reports are to be submitted on April 15 and October 15 for the preceding six full-month calendar period, unless a different schedule is established by the Control Authority. Monthly self-monitoring reports (and reports at other frequencies established by the Control Authority) are required to be submitted on the 15th of the month following the compliance report (*i.e.*, monthly compliance reports are due by the 15th of each successive calendar month) unless an alternative approach is established in writing by the Control Authority.
- (2) All self-monitoring reports must be signed and certified in accordance with this Ordinance (*see* subsection (j), below).

(f) Potential Reduced Reporting for Small CIUs

If allowed by State law or regulation, the Control Authority may reduce the requirement for self-monitoring reports by a Categorical Industrial User in Section 33-230(e) herein, to a requirement to report no less frequently than once a year, unless required more frequently in the Pretreatment Standard or by the State, where the Industrial User's total categorical Wastewater flow does not exceed any of the following, and the Industrial User otherwise meets the requirements as set forth in 40 C.F.R § 403.12(e)(3)(ii) – (v).

- (1) One one-hundredth (0.01) of a percent of the design dry weather hydraulic capacity of the POTW or five thousand (5,000) gallons per day, whichever is smaller, as measured by a continuous effluent flow monitoring device, unless the Industrial User discharges in batches;
- (2) One one-hundredth (0.01) of a percent of the design dry weather organic treatment capacity of the receiving treatment plant as determined by the Control Authority; and
- (3) One one-hundredth (0.01) of a percent of the maximum allowable headworks loading (MAHL) of the receiving treatment plant for any Pollutant regulated by applicable Categorical Pretreatment Standard for which Local Limits were developed as determined by the Control Authority.

(g) Reporting of Alternate Concentration or Mass Limits

Where an alternate concentration or mass limit has been calculated in accordance with Section 33-242(f), this adjusted limit, along with supporting data, shall be submitted to the Control Authority.

(h) Reports of Changed Conditions

Each Industrial User must notify the Control Authority at least thirty (30) days before any significant changes to the Industrial User's operations or system or any substantial increase to the nature, quality, or volume of its Wastewater Discharged, including the listed or characteristic hazardous wastes for which the Industrial User has submitted initial notification under subsection (k), below, or any changes that could reasonably be expected to cause Interference or Pass-Through.

- (1) The Control Authority may require the User to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a new or updated permit application.
- (2) The Control Authority may issue an individual or general permit under section 33-222, modify, suspend, or revoke an existing Discharge Permit in response to, among other things, changed conditions or anticipated changed conditions.

Control Authority approval is required before a Significant Industrial User can make such changes.

(i) Report of Potential Problems

- (1) In the case of any Discharge, including, but not limited to, accidental Discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, or a Slug Discharge that might cause potential problems to the POTW (including problems to the collection system that may be caused by fats, oils or grease clogging the sewer system or lift stations), the Industrial User shall immediately notify the Control Authority of the incident. This notification shall include the location of the Discharge, type of waste, concentration, and volume, if known, and corrective actions taken by the Industrial User.
- (2) Within five (5) days following such Discharge, the Industrial User shall, unless waived by the Control Authority, submit a detailed written report describing the cause(s) of the Discharge and the measures to be taken by the Industrial User to prevent similar future occurrences. Such notification shall not relieve the Industrial User of any expense, loss, damage, or other liability which might be incurred as a result of damage to the WWTP, natural resources, or any other damage to Person or property; nor shall such notification relieve the Industrial User of any fines, penalties, or other liability which may be imposed pursuant to this Ordinance.
- (3) A notice shall be permanently posted on the Industrial User's bulletin board or other prominent place advising employees who to call in the event of a Discharge described in paragraph (1), above. Employers shall ensure that all employees, who could cause such a Discharge to occur, are advised of the emergency notification procedure.
- (4) Significant Industrial Users are required to notify the Control Authority immediately of any changes at its facility that significantly increases the potential for a Slug Discharge.

(j) Certification Statements

- (1) The following reports shall be signed by the Authorized Representative of the User and shall have the certification statement set forth below in the indented language: permit applications, periodic self-

monitoring reports, compliance schedule compliance reports, baseline monitoring, reports of accidental or Slug Discharges, and such other reports as the City identifies in writing to a User:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

- (2) Annual Certification for Non-Significant Categorical Industrial Users. The City may determine that an Industrial User, subject to Categorical Pretreatment Standards, is a non-significant Categorical Industrial User rather than a Significant Industrial User on a finding that the Industrial User meets the definition of "Non-Significant Categorical Industrial User" in Section 33-16 due to its discharge of less than one hundred (100) gallons of total categorical Wastewater on any given day. A facility identified by the City as a non-significant Categorical Industrial User based upon such criteria must annually submit the following certification statement signed by the Authorized Representative of the Industrial User filling in the appropriate information:

Based on my inquiry of the person or persons directly responsible for managing compliance with the Categorical Pretreatment Standards under 40 C.F.R. _____, I certify that, to the best of my knowledge and belief that during the period from _____, _____ to _____, _____ [months, days, year]:

(a) The facility described as _____ [facility name] met the definition of a Non-Significant Categorical Industrial User as described in Section 33-16 Definitions;

(b) The facility complied with all applicable Pretreatment Standards and requirements during this reporting period; and

(c) the facility never Discharged more than one hundred (100) gallons of total categorical Wastewater on any given day during this reporting period.

This compliance certification is based on the following information.

_____.

- (3) Certification of Pollutants Not Present. Industrial Users that have an approved monitoring waiver based on Section 33-242(h) must certify on each report with the following statement that there has been no increase in the Pollutant in its wastestream due to activities of the Industrial User.

Based on my inquiry of the person or persons directly responsible for managing compliance with the pretreatment standard for 40 C.F.R. _____ [specify applicable National Pretreatment Standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of [list Pollutant(s)] in the Wastewaters due to the activities at the facility since filing of the last self-monitoring report under Sec. 33-230(e).

- (k) Notification of the Discharge of Hazardous Wastes

- (1) Industrial/Commercial Users shall notify the Control Authority, the EPA Regional Waste Management Division, and the Tennessee Department of Environment and Conservation (TDEC) in writing of any Discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 C.F.R. Part 261 or Rule 0400-2-01. Such notification must include the name of the hazardous waste as set forth in 40 C.F.R. Part 261 or Rule 0400-12-01, the EPA hazardous waste number, and the type of Discharge (continuous, batch, or other). If the Industrial User Discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the Industrial User: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the waste stream Discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be Discharged during the following twelve months. All notifications for Dischargers existing at the time should have taken place within one hundred eighty (180) days of the City's first adoption of this rule (*i.e.*, within 180 days of March 26, 1982). Industrial Users who commence Discharging after March 26, 1982, were and are required to provide the notification no later than 180 days after the Discharge of the listed or characteristic hazardous waste. Any notification under this paragraph need be submitted only once for each hazardous waste Discharged. However, notifications of changed Discharges must be submitted under Section 33-230(h). The notification requirement in this section does not apply to Pollutants already reported under the self-monitoring requirements of this Ordinance.
- (2) Dischargers are exempt from the requirements of paragraph (k)(1) in this section during a calendar month in which they Discharge no more than fifteen (15) kilograms (kg) of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 C.F.R. §§ 261.30(d) and 261.33(e). A Discharge of more than fifteen (15) kg of non-acute hazardous wastes in a calendar month or of any quantity of acute hazardous wastes as specified in 40 C.F.R. §§ 261.30(d) and 261.33(e) requires a one-time notification.
- (3) In the case of any new regulations under Section 3001 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6921, identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the Industrial User must notify the POTW, the EPA Regional Waste Management Division Control Authority, and the TDEC of the Discharge of such substance within 90 days of the effective date of such regulations.
- (4) In the case of any notification made under paragraph (k) of this section, the Industrial User shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(l) Recordkeeping

Users subject to the reporting requirements of this Ordinance shall retain and make available for inspection and copying all reports, and records of information obtained pursuant to any monitoring activities required by this Ordinance, any additional records of information obtained pursuant to monitoring activities undertaken by the User independent of such requirements, and documentation associated with Best Management Practices. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any enforcement action or litigation concerning the User's compliance with its Discharge Permit or this Sewer Ordinance, or an enforcement action or litigation concerning the City, or where the User has been specifically notified of a longer retention period by the Control Authority.

(m) Submission of All Monitoring Data

A User may monitor its Discharge more frequently than the minimum set forth in its Discharge Permit, this Sewer Use Ordinance, or as otherwise required. If a User subject to reporting requirements monitors any regulated Pollutant at the appropriate sampling location more frequently than required by the Control Authority, using the procedures prescribed in Section 33-248, the results of this monitoring shall be included in the reports required under Section 33-230 and/or the Discharge Permit, as applicable.

(n) Electronic Reporting

Reports of permittees shall contain all results of sampling and analysis of the discharge, including the flow, nature, concentration, production and/or mass, where required. Upon the City of Memphis receiving approval from TDEC of a Cross Media Electronic Reporting Regulation (CROMERR) system, compliant with the Code of Federal Regulations Title 40, Part 3 (CROMERR), the City of Memphis may require all or some of its Users to submit such reports as the City deems appropriate in an electronic-only format through a CROMERR compliant system. CROMERR is an Environmental Protection Agency approved system allowing states, tribes, and local governments that receive or plan to begin receiving *electronic* documents in lieu of paper documents to satisfy regulations under an authorized program. Each User shall submit such CROMERR reports as the City identifies in a Control Mechanism (*e.g.*, permit or letter) to the User within the time frame set forth, which shall provide the User at least ninety (90) days to become CROMERR compliant. The User may request additional time for good cause, but such request does not automatically extend the deadline for becoming CROMERR compliant. New Significant Industrial User dischargers, including those located in Outlying Jurisdictions, shall submit reports through a CROMERR compliant system unless waived by the City of Memphis, Division of Public Works, in writing.

Sec. 33-231--33-239. [13-24-31 -- 39] **Reserved.**

DIVISION 3. DISCHARGE TO PUBLIC SANITARY SEWERS

Sec. 33-240. [13-24-40] **Reserved**

Sec. 33-241. [Sec. 13-24-41] **Discharges of Storm Water, Groundwater, etc., into Sanitary Sewer Prohibited; Exceptions; Discharges into Sanitary Sewer System Other Than through Specifically Permitted Building Sewer, Permit Required.**

- (a) No Person shall Discharge or cause to be Discharged any storm water, surface water, groundwater, roof runoff, subsurface drainage, or uncontaminated cooling water to any sanitary sewer except by permission of the City of Memphis and under permit from the Control Authority.
- (b) No Person shall Discharge, whether directly or by truck or other transportation, any substance into a manhole or other opening in a public sewer, other than through an approved building sewer, unless he/she has been issued a Discharge Permit by the Control Authority that specifically authorizes a Discharge at such location. No Person shall Discharge any holding tank waste into the City POTW, including the collection system, unless he/she has been issued a permit by the Control Authority specifically authorizing such Discharge. Unless otherwise allowed by the Control Authority under the terms and conditions of the permit, a separate permit must be secured for each separate Discharge. This permit may state the specific location of Discharge, the time of day the Discharge is to occur, the volume of the Discharge, the maximum Discharge rate, Wastewater constituents and characteristics, and such other conditions as the Control Authority deems appropriate. If a permit is granted for Discharge of such waste into a community sewer,

the User shall pay the applicable charges and fees and shall meet such other conditions as are required by the Control Authority.

- (c) No Person who generates Wastewater at one property shall Discharge it at another property without approval from the Control Authority.
- (d) No Person shall flush commercial or other non-domestic Wastewater down the toilet or Discharge it through other bathroom connections (*e.g.*, shower drain).

Sec. 33-242. [Sec. 13-24-42] **Implementation of Categorical Pretreatment Standards.**

(a) Compliance with Categorical Pretreatment Standards Required

Users must comply with the Categorical Pretreatment Standards found at 40 C.F.R. Chapter I, Subchapter N, Parts 405–471, as applicable. Compliance by Existing Sources with Categorical Pretreatment Standards shall be within three (3) years of the date the Standard is effective unless a shorter compliance time is specified in the appropriate subpart of Subchapter N or the *Federal Register* promulgation of the Standard. Existing Sources, which become Industrial Users subsequent to promulgation of an applicable Categorical Pretreatment Standard, shall be considered existing Industrial Users except where such sources meet the definition of a New Source. New Sources shall install, have in operating condition and, “start-up” all pollution control equipment required to meet applicable Pretreatment Standards before beginning to Discharge. Within the shortest feasible time (not to exceed ninety (90) days), New Sources must meet all applicable Pretreatment Standards.

(b) Use of the Combined Wastestream Formula

When Wastewater subject to a Categorical Pretreatment Standard is mixed with Wastewater not regulated by the same Standard, the Control Authority may impose an alternate limit in accordance with the combined wastestream formula as set forth in Tennessee Rule 0400-40-14-.06(5) or take such other action as necessary to assure compliance with Categorical Pretreatment Standards.

(c) Fundamentally Different Factors Variance

A Discharger may request a variance from Categorical Pretreatment Standards in accordance with applicable procedures. *See, e.g.*, Tennessee Rule 0400-40-14-.13.

(d) Net Gross Adjustment

A Categorical Industrial User (CIU) may obtain a net/gross adjustment to a Categorical Pretreatment Standard in accordance with the following paragraphs:

- (1) Categorical Pretreatment Standards may be adjusted to reflect the presence of Pollutants in the Industrial User’s intake water in accordance with this section. Any Industrial User wishing to obtain credit for intake Pollutants must make application to the City. Upon request of the Industrial User, the applicable Pretreatment Standard will be calculated on a “net” basis (*i.e.*, adjusted to reflect credit for Pollutants in the intake water) if the requirements of paragraphs (2) through (5) of this section are met.
- (2) Criteria

- (A) The applicable Categorical Pretreatment Standards contained in 40 C.F.R. subchapter N specifically provide that they shall be applied on a net basis; or
- (B) The Industrial User demonstrates that the control system it proposes or uses to meet applicable Categorical Pretreatment Standards would, if properly installed and operated, meet the Pretreatment Standards in the absence of Pollutants in the intake waters.

- (3) Credit for generic Pollutants such as biochemical oxygen demand (BOD), total suspended solids (TSS), and oil and grease should not be granted unless the Industrial User demonstrates that the constituents of the generic measure in the Industrial User's effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water Pollutants either at the outfall or elsewhere.
- (4) Credit shall be granted only to the extent necessary to meet the applicable Categorical Pretreatment Standard(s), up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with Pretreatment Standard(s) adjusted under this section.
- (5) Credit shall be granted only if the User demonstrates that the intake water is drawn from the same body of water as that into which the POTW Discharges. The City may waive this requirement if it finds that no environmental degradation will result.

(e) Implementation of Production-based Limits

- (1) When the limits in a Categorical Pretreatment Standard are expressed only in terms of mass of Pollutant per unit of production, the Control Authority may convert the limits to equivalent limitations expressed either as mass of Pollutant Discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual Industrial Users.
- (2) Any Industrial User operating under a Control Mechanism incorporating equivalent mass or concentration limits calculated from a production-based standard shall notify the Control Authority within two (2) business days after the User has a reasonable basis to know that the production level will significantly change within the next calendar month. Any Industrial User not notifying the Control Authority of such anticipated change will be required to meet the mass or concentration limits in its Control Mechanism that were based on the original estimate of the long-term average production rate.

(f) Imposition of Equivalent Mass or Concentration Based Limits

- (1) When a Categorical Pretreatment Standard is expressed only in terms of Pollutant concentrations, the Control Authority may also establish equivalent mass limits so that local, state, or Federal authorities may enforce either concentration or mass limits. In the alternative, an Industrial User may request that the Control Authority convert the concentration limits to equivalent mass limits and include only the equivalent mass limits in the permit. The determination to convert concentration limits to mass limits is within the discretion of the Control Authority. The Control Authority may establish equivalent mass limits in lieu of a concentration limit only if the Industrial User meets all the conditions set forth in paragraphs (f)(1)(A) through (E) below.

- (A) Employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its Discharge Permit;

- (B) Currently use control and treatment technologies adequate to achieve compliance with the applicable Categorical Pretreatment Standard and has not previously used or plan to use dilution as a substitute for treatment;
 - (C) Provide sufficient information to establish the facility's actual average daily flow rate for all wastestreams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and the long-term average production rate must be representative of current operating conditions;
 - (D) Not have daily flow rates, production levels, or Pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the Discharge; and
 - (E) Have consistently complied with all applicable Categorical Pretreatment Standards during the period prior to the Industrial User's request for equivalent mass limits.
- (2) An Industrial User subject to equivalent mass limits must:
- (A) Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits;
 - (B) Continue to record the facility's flow rates with a continuous effluent flow monitoring device;
 - (C) Continue to record the facility's production rates and notify the Control Authority whenever production rates are expected to vary by more than twenty (20) percent from its baseline production rates. Upon notification of a revised production rate, the Control Authority may reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility; and
 - (D) Continue to employ the same or comparable water conservation methods and technologies as those implemented pursuant to paragraph (f)(1)(A) of this section, so long as it Discharges under an equivalent mass limit.
- (3) When developing equivalent mass limits, the Control Authority may:
- (A) Calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated process(es) of the Industrial User by the concentration-based daily maximum and monthly average standard for the applicable Categorical Pretreatment Standard and the appropriate unit conversion factor;
 - (B) Upon notification of a revised production rate, reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility;
 - (C) Retain the same equivalent mass limit in subsequent Discharge Permit terms if the Industrial User's actual average daily flow rate was reduced solely as a result of the implementation of water conservation methods and technologies, and the actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment; and

- (D) Deny or condition equivalent mass limits upon the Industrial User also being in compliance with Section 33-246(c)(4) regarding the prohibition of bypass.
- (4) The Control Authority may convert the mass limits of the Categorical Pretreatment Standards of 40 C.F.R. Parts 414, 419, and 455 to concentration limits for purposes of calculating limitations applicable to individual Industrial Users. The conversion is at the discretion of the Control Authority.
- (5) If only equivalent mass limitations are included in the Control Mechanism, once included in the Control Mechanism, the Industrial User must comply with the equivalent limitations in lieu of the promulgated Categorical Standards from which the equivalent limitations were derived.

(g) Calculation of Categorical Limits

Many Categorical Pretreatment Standards specify one limit for calculating maximum Daily Discharge limitations and a second limit for calculating maximum monthly average, or 4-day average limitations. Where such standards are being applied, the same production or flow figure shall be used in calculating both the average and the maximum equivalent limitation under applicable Categorical Pretreatment Standards.

(h) Sampling Waiver

The Control Authority may authorize an Industrial User subject to a Categorical Pretreatment Standard to forego sampling of a Pollutant regulated by a Categorical Pretreatment Standard if the Industrial User has demonstrated through sampling and other technical factors that the Pollutant is neither present nor expected to be present in the Discharge, is present only at background levels from intake water, and there will be no increase in the Pollutant due to activities of the Industrial User. See Tennessee Rule 0400-40-14-.12(5)(b). This authorization is subject to the following conditions:

- (1) The waiver may be authorized where a Pollutant is determined to be present solely due to sanitary Wastewater Discharged from the facility, provided that the sanitary Wastewater is not regulated by an applicable Categorical Standard and otherwise includes no process Wastewater.
- (2) The monitoring waiver is valid only for the duration of the effective period of the individual Control Mechanism, but in no case longer than five (5) years. The User must submit a new request for the waiver before the waiver can be granted for each subsequent Control Mechanism.
- (3) In making a demonstration that a Pollutant is not present, the Industrial User must provide data from at least one sampling of the facility's process Wastewater prior to any treatment present at the facility that is representative of all Wastewater from all processes.
- (4) The request for a monitoring waiver must be signed by an Authorized Representative of the User and include the certification statement in 33-230(j)(3). See 40 C.F.R. § 403.6(a)(2)(ii) and Tennessee Rule 0400-40-14-.06(1)(b)2.
- (5) EPA and TDEC have determined that, where the lowest minimum detection level for a Pollutant as set forth in 40 C.F.R. Part 136 has been used in the analysis, it is appropriate to equate a non-detectable sample result as demonstrating that a Pollutant is not present.
- (6) In order for a monitoring waiver approval by the Control Authority to be effective, it must be included as a condition in the User's Discharge Permit.

- (7) Upon approval of the monitoring waiver and revision of the User's Control Mechanism by the Control Authority, the Industrial User must certify on each report with the statement in Section 33-230(j)(3) that there has been no increase in the Pollutant in its wastestream due to activities of the Industrial User.
- (8) In the event that a waived Pollutant is found to be present or is expected to be present because of changes that occur in the Industrial User's operations, the Industrial User must immediately comply with the monitoring requirements as set forth in Section 33-230(e) or other more frequent monitoring requirements imposed by the Control Authority and notify the Control Authority.
- (9) This provision does not supersede certification processes and requirements established in Categorical Pretreatment Standards, except as otherwise specified in the Categorical Pretreatment Standard.

Sec. 33-243. [Sec. 13-24-43] **General and Specific Prohibitions.**

(a) General Prohibition Against Interference and Pass-Through

No Person shall introduce into the POTW any Pollutant(s) which cause Pass-Through or Interference. This prohibition and the specific prohibitions in paragraphs (b)(1) through (11), below, apply to each Person introducing Pollutants into the POTW, whether or not the Person is subject to other National Pretreatment Standards or any national, state, or local Pretreatment Requirements.

(b) Specific Prohibitions

No Person shall Discharge, or cause to be Discharged, any of the following to the City's POTW (including the City's sewers):

- (1) Petroleum oil (*e.g.*, gasoline, benzene, naptha, fuel oil, diesel fuel, jet fuel, or kerosene), nonbiodegradable cutting oil, products of mineral oil origin, or any other Pollutant (i) which causes Interference or Pass-Through, (ii) creates a fire or explosion hazard in the POTW, including, but not limited to, Wastewater with a closed cup flashpoint of less than 140° Fahrenheit or 60° Celsius using the test methods specified in 40 C.F.R. § 261.21, as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D-93-79 or D-93-80 or a Setaflash Closed-Cup Tester, using the test method specified in ASTM Standard D-3278-78, and/or (iii) Pollutants which cause an exceedance of 10% of the lower explosive limit (LEL) at any point within the POTW.
- (2) Pollutants, including toxic or poisonous solids, liquids, vapors, or gases in sufficient quantity, either singly or by interaction with other wastes, to result in the presence of toxic gases, vapors, or fumes within the WWTP in a quantity that may injure personnel, cause workers to have acute health or safety problems, cause fires, explosions, interfere with any sewage or Wastewater treatment process or any sanitary sewer system, constitute a hazard to humans or animals, threaten the public health or safety, create a public nuisance, or create any hazard in the receiving waters of the sewage or Wastewater Treatment Plant.
- (3) Pollutants in violation of a pH Minimum Limit, *i.e.*, having a pH lower than 5.5 standard units.

- (4) Pollutants with corrosive properties capable of causing damage or hazard to the structures, equipment, conveyances, and personnel of the sewerage works or interfering with the operation of the treatment facility.
- (5) Wastewaters in violation of a pH Maximum Limit, *i.e.*, having a pH higher than 10.0 standard units unless prior approval of a higher limit is approved by the City of Memphis, Division of Public Works, and set forth in a Discharge Permit. In order to Discharge a pH above 10.0 standard units, the City may require the User to submit a study identifying, among other things, the flow and pH concentrations requested, an estimate of the duration the Discharge will exceed 10.0 standard units, the potential impacts of the high pH on the sewer system, lift stations, WWTP or any other part of the POTW, and such other information as the City may request. In no event shall a User discharge a pH equal to or over 11.5 s.u.
- (6) Wastewaters exceeding the hydroxide loadings set forth in a Discharge Permit, as applicable.
- (7) Solid, viscous, or foaming substances in quantities of such size or amount as to reasonably raise a concern to the City of the potential to cause obstruction to the flow in sewers, overflows, Interference with the proper operation of the Wastewater facilities, or cause a violation of the POTW's NPDES permit. This prohibition includes, but is not limited to, the Discharge of surfactants, foaming agents, paper pulp, clays, ashes, bones, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, oil, grease, underground garbage, whole blood, paunch manure, hair and fleshing, wipes, bed pads, cotton tips, tissues, entrails, paper dishes, cups, Styrofoam, milk containers, etc., either whole or ground by garbage grinders. Should blood, tissue, or other prohibited body parts be unavoidably Discharged into the sanitary sewer, then such Discharge must be accompanied by or immediately followed with a liquid disinfectant; such disinfectant may include bleach.
- (8) Any trucked or hauled Pollutants, except at Discharge points designated by the Control Authority.
- (9) Any Pollutant, including oxygen-demanding Pollutants (*e.g.*, BOD, etc.), released at a flow rate and/or Pollutant concentration which will cause Interference.
- (10) Any Wastewater having a temperature which will inhibit biological activity in the WWTP resulting in Interference, but in no case Wastewater with a temperature resulting in the temperature at the introduction into the WWTP which exceeds 40°C (104° F) unless approved by the Control Authority.
- (11) Any Wastewater or waste into street inlets or sewer manholes.

(c) pH Limits

The pH Discharge limit is an instantaneous reading of any Discharge into the sanitary sewer and not an average of any kind. In addition to standard units, the City may establish limits on pH based upon the hydroxide loading.

(d) Limits on Other Corrosive Pollutants

The City may establish limits in a Discharge Permit on other pollutants (*e.g.*, chloride and sulfates), as the City deems necessary to prevent corrosion to the collection system or other parts of the POTW.

(e) Dilution Prohibition

No Industrial User shall ever increase the use of process water, or in any way attempt to dilute a Discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a Discharge limitation unless expressly authorized by an applicable Pretreatment Standard or Pretreatment Requirement or, in the case of other Discharge limitations (e.g., Local Limits), unless expressly authorized by the Control Authority.

(f) Safe Harbor Affirmative Defense

A User shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions established in subparagraph (a) of this paragraph and the specific prohibitions in subparagraphs (b)(1), (2), (6) and (7) where the User can demonstrate that:

- (1) It did not know, or have reason to know, that its Discharge, alone, or in conjunction with a Discharge or Discharges from other sources, would cause Pass-Through or Interference, and a Local Limit designed to prevent Pass-Through and/or Interference, as the case may be, fits one of the following descriptions:
 - (A) The Local Limit for that Pollutant is established in Section 33-244(c) for each Pollutant in the User's Discharge that caused Pass-Through or Interference, and the User was in compliance with each such Local Limit directly prior to and during the Pass-Through or Interference; or
 - (B) The Local Limit has not been established in Section 33-244(c) for the Pollutant(s) that caused the Pass-Through or Interference, the User's Discharge directly prior to and during the Pass-Through or Interference did not change substantially in nature or constituents from the User's prior Discharge activity when the WWTP was regularly in compliance with the WWTP's NPDES permit requirements and, in the case of Interference, applicable requirements for sewage sludge use or disposal.

Sec. 33-244. [Sec. 13-24-44] **Certain Discharge Restricted, Local Limits, Etc.**

(a) Restricted Discharges

Except as otherwise specifically authorized by the Control Authority in writing, no Person shall Discharge or cause to be Discharged the following described Pollutants, substances, materials, Wastewaters, and/or wastes. The limitations or restrictions of materials or characteristics of waste or Wastewaters Discharged to the sanitary sewer, shall not be violated without a variance being granted. The following are restricted Discharges to the POTW:

- (1) Any liquid or vapor having a temperature higher than one hundred fifty (150) degrees Fahrenheit (sixty-five (65) degrees Celsius).
- (2) Any Wastewater or waste containing fats, wax, grease, or oils in excess of one hundred (100) milligrams per liter (mg/l) or containing substances which may solidify or become viscous at temperatures between thirty-two (32) and one hundred fifty (150) degrees Fahrenheit (zero (0) and sixty-five (65) degrees Celsius). This 100 mg/l standard applies to hydrocarbons, whether measured as (i) petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, (ii) animal or vegetable origin, or (iii) total hydrocarbons.
- (3) Any waste that has not been properly shredded. The installation and operation of any waste grinder equipped with a motor of three-fourths (0.75) horsepower or greater shall be subjected to the review and approval of the Control Authority.

- (4) Any Wastewaters or wastes containing strong acid, iron pickling wastes, or any waters or wastes containing concentrated plating solutions whether neutralized or not, except by written permission of the Control Authority.
- (5) Any Wastewater or wastes (e.g., contaminated waters, rinse waters, etc.) containing iron, chromium, copper, lead, mercury, zinc, other heavy metals or toxic substances to such degree that any such Discharge exceeds the Local Limits established by the Control Authority unless a variance is obtained.
- (6) Any Wastewater or wastes containing phenols and/or chlorophenols, to such degree that any such Discharge in the composite sewage at the WWTP exceeds the limits established by the Control Authority.
- (7) Any radioactive wastes or isotopes of long half-life (over one hundred (100) days) without special permit. The radioactive isotopes (I 131 and P 32) used at hospitals are not prohibited if properly diluted at the source.
- (8) Materials, which exert or cause:
 - (A) Concentrations of inert suspended solids (such as, but not limited to, clays, fibers, fuller's earth, lime slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate), which is reasonably anticipated to cause obstruction to the flow in sewers, damage to the sewer system, or Interference.
 - (B) BOD, chemical oxygen demand, or disinfection requirements in such quantities as to constitute Interference.
- (9) Wastewater containing objectionable substances, which are not readily amenable to treatment or reduction by the sewage treatment processes employed.
- (10) Any Wastewater that may cause the Wastewater treatment facility effluent or any product of the treatment process, residues, biogas, sludges, or scums to be unsuitable for reclamation and reuse or to interfere with the reclamation process.
- (11) Any Wastewater that could have a detrimental environmental impact or create an objectionable color, foam, or nuisance in the Waters of the State.
- (12) Any Wastewater that could cause excessive collection or treatment costs or may use a disproportionate share of the POTW.
- (13) Any Wastewater, which causes hazard to human life or creates a public nuisance.
- (14) Any Wastewater containing hydraulic fluid, brake fluid, transmission fluid, steering fluid, motor oils, or lubricants removed from vehicles or other machinery except to the extent that there is a *de minimis* amount after having gone through an oil/water separator or other treatment device.
- (15) Any Wastewater where there is a significant likelihood of producing toxic effects to the biota in the receiving water of the POTW's effluent.

(16) Any hazardous waste as classified or characterized under the Resource, Conservation, and Recovery Act (RCRA), 40 C.F.R. Part 261. This prohibition does not apply if the domestic sewage exemption as set forth in 40 C.F.R. § 261.4(a)(1) would be applicable.

(17) Any Wastewater or waste from an EPA Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) site, unless approved by the U.S. Environmental Protection Agency in writing and the City (subject to the City’s sole discretion).

(b) Discharge That Potentially Interferes with Plant Operations

When it is determined by the Control Authority that a User is Discharging Wastewater so as to potentially interfere with the operation or efficacy of the POTW then the Control Authority may develop effluent limitation(s) (including a prohibition) for such User to correct the concern and/or take such other action as the City deems appropriate.

(c) Local Limits

(1) The Control Authority is authorized to establish Local Limits for Pollutants Discharged to the POTW pursuant to Tennessee Rule 0400-40-14-.05(3). Local Limits may be reviewed and revised as deemed appropriate by the Control Authority. The Local Limits may be implemented as concentration and/or mass limits, as permitted or required under applicable state or Federal rules and regulations. When mass limits are used, continuous flow monitoring of the Discharge flows may be required. Daily Discharge flow volumes and monthly average Discharge flows measured shall be reported and used to calculate Pollutant mass Discharge for each day of Discharge, the calendar Monthly Average Discharge, and the Daily Maximum Discharge for the calendar month.

(2) The following Local Limits apply to all Users Discharging into the City’s POTW (including the sewer system) unless subject to a variance under subsection (d), below, or superseded by Local Limits subsequently adopted by the Division of Public Works and approved by TDEC, with the notice of such Local Limits set forth on the Division of Public Works (e.g., website at www.memphistn.gov). Such subsequent Local Limits may also include limits on additional Pollutants beyond those identified below. Compliance with all Local Limits (including those identified on the above identified website) is required regardless of whether a Person is issued a permit.

TABLE I

LOCAL LIMITS FOR DISCHARGE INTO THE MUNICIPAL SEWERAGE SYSTEM.

Constituent	Daily * Maximum Limit Concentration mg/l	Instantaneous Maximum Limit** Concentration mg/l
Biochemical Oxygen Demand	(1)	(1)
Settleable Solids (ml/l)	(1)	(1)
Total Suspended Solids	(1)	(1)
Nitrogen (total Kjeldahl)	(1)	(1)
Arsenic	1.0	2.0
Cadmium (total)	(2)	(2)

Chromium (hexavalent)	1.0	2.0
Chromium (total)	5.0	10.0
Copper (total)	5.0	10.0
Cyanide (oxidizable) ***	2.0	4.0
Cyanide (total) ***	4.0	8.0
Lead (total)	(2)	(2)
Mercury	(2)	(2)
Nickel (total)	5.0	10.0
Zinc (total)	5.0	10.0
Ammonia NH3-N	125 ppm	250 ppm

* See definition of “Daily Maximum Limit.”

** See definition of “Instantaneous Limit” providing for noncompliance to be determined by use of a grab sample or a composite sample, as applicable.

*** Cyanide samples are required to be collected as grab samples.

(1) Effluent Limits and/or Action Levels may be established for these Pollutants.

(2) Cadmium, mercury, and lead Discharges are severely restricted due to limitations placed on the disposal of sewage sludge containing cadmium, mercury, and/or lead. Actual allowable Discharge concentrations for these constituents will be determined on a case-by-case basis.

(d) Potential Variances

The City, subject to its discretion, may grant a variance for a User’s Local Limits, as it deems appropriate. Notwithstanding such authority, nothing herein shall be deemed to entitle a User to a variance.

- (1) Consideration of variances to the Local Limits may be based on consideration of any of the following criteria:
 - (A) Age, location, land availability, and type of manufacturing processes employed;
 - (B) Total mass of Pollutant Discharged by the industry;
 - (C) Volume of industrial waste in proportion to the total Wastewater flow in the system;
 - (D) Energy requirements of the application of control and treatment technology, but only if the Discharger demonstrates that less energy consumptive alternative control technology is not available;
 - (E) Removal efficiency of the receiving WWTP to effectively treat the Pollutant, and potential to cause Interference or Pass-Through of the WWTP treatment process;
 - (F) Available Pollutant treatment capacity at the receiving WWTP;
 - (G) Potential threat to the health and safety of sewer workers;
 - (H) Protection of biosolids produced at the receiving WWTP;

- (I) Interim measures that can be undertaken to reduce the discharge of the pollutant(s) of concern;
- (J) Costs and schedule associated with installing additional pretreatment to meet the limits; and/or
- (K) Such other factors as the Control Authority deems appropriate.

(2) In no case shall a variance be granted for those parameters defined by Federal Pretreatment regulations as general and specific prohibitions at 40 C.F.R. §§ 403.5(a) and (b) (see Sections 33-243(a) and (b)), or that would violate applicable Categorical Standards.

(e) Discharge of Specific Pollutants Restricted

No User or other Person shall Discharge Wastewater containing any of the Pollutants listed herein into the municipal sewer system or shall otherwise allow any Wastewater to enter the municipal sewer system containing any of the listed Pollutants without obtaining written approval from the Control Authority.

Individual Pollutants

Groups of Pollutants

O,M,P-Xylenes
1,1-Dichloroethylene

1,2 trans,dichloroethylene
3,3-Dichlorobenzidene
Beryllium
Bromodichloromethane
Dimethylnitrosamine
Ethyl benzene
O-Dichlorobenzene
Tin
1,1,1,2-Tetrachloroethane
1,1,2-Trichloroethane
1,1-Dichloroethane
1,1-Dichloropropane
1,2,3-Trichloropropane
1,2-Cis,dichloroethylene
1,2-Dibromo-3-Chloropropane
1,2-Dichloroethane
1,2-Dichloropropane
1,3-Dichloropropane
1,3-Dichloropropene
1,4-Dichlorobenzene(p)
2,2-Dichloropropane
2,4-Dinitroluene
2,4-Dinitrophenol
2-butanone (MEK)
2-Chlorophenol
4-methyl-2-pentanone (MIBK)
Acetone

a) Total Polychlorinated Biphenyls (PCBs),
Arochlor compounds

(b) Herbicides and Pesticides, including, but not limited to:

Aldrin
Chlordane
Demeton
Dieldrin
Endosulfan I
Endosulfan II
Endosulfan sulfate
Endrin
Endrin aldehyde
Guthion
Heptachlor
Heptachlor epoxide
Hexachlorocyclo-hexane
Hexachlorocyclopentadiene
Lindane
Mirex
Methoxychlor
Parathion
4,4-DDD
4,4-DDE
4,4 DDT
Alpha BHC, Beta BHC, Delta BHC, or Gamma BHC
Tetrachlorodiphenylethane (TDE)
Toxaphene

(c) Total Dioxin

Acrylonitrile
Aluminum
Barium
Benzo (a) pyrene
Benzotrifluoride
Bromobenzene
Bromoform
Chlorobenzene
Chlorodibromomethane
Chloroethane
Chloroform
Cumene
Dichloroethyl ether(Bis(2-chloroethyl))
Diisobutylenes
Hexachlorobenzene
Hexachlorobutadiene
Hexane
Isopropylbenzene
M-Dichlorobenzene
Molybdenum
O-Chlorotoluene
Para-Dichlorobenzene
P-Chlorotoluene
Phenanthrene
Pyrene
Titanium
Toluene
Vinyl chloride

The Control Authority reserves the right to modify this list of Pollutants restricted from entering the POTW as may become necessary to protect the POTW from Interference and Pass-Through or as the City otherwise deems appropriate. This may be undertaken by the City providing an updated list of restricted Pollutants on the City website or in any other manner that provides a Discharger notice.

(f) 15% of Maximum Allowable Loading Limitation

Unless otherwise agreed to in writing by the Control Authority, no User shall Discharge a mass loading of any compound or Pollutant, which has a Local Limit, of more than fifteen (15) percent of the Maximum Allowable Industrial Loading (MAIL) of that compound or Pollutant as calculated from current Local Limits. The City may impose a fifteen percent limit on pollutants based upon the rated capacity of the WWTP.

(g) Best Management Practices

The City may develop Best Management Practices (BMPs), by ordinance or in individual and/or general wastewater discharge permit, to implement Local Limits and such other requirements, as it deems appropriate. The City may decide not to apply a local limit to User(s) that are subject to a best management practice designed to address that pollutant.

Sec. 33-245. [Sec. 13-24-45] **Discretionary Actions of Control Authority with Respect to Restricted Discharges.**

(a) Potential Options for Acceptance of Wastewater

If any waters or wastes are Discharged or are proposed to be Discharged to the public sanitary sewers, which waters contain substances or possess characteristics which, in the judgment of the Control Authority, are incompatible with the capacities of the Publicly Owned Treatment Works (including the collection system) and/or may have a deleterious effect upon the sewerage works, processes, sludge use, equipment, or receiving waters, or which otherwise may create a hazard to life or constitute a public nuisance, the Control Authority may undertake such action(s) as it deems appropriate, including but not limited to of the following: (1) Reject the wastes; (2) Require Pretreatment or an acceptable condition for Discharge to the public sanitary sewers; (3) Require control over the quantities and rate of Discharge; and/or (4) Require payment to cover the added cost of handling and treating the wastes as provided in division 2 of Article III of this chapter.

(b) Flow and Other Associated Requirements

The City, in response to potential capacity concerns associated with the collection system, Wastewater Treatment Plant, and/or pumping/lift station, or for other good cause, may impose flow limits including limitation on the hours that flows may enter the sewer system (*e.g.*, limiting the discharge of wastewater and/or domestic wastewater to off-peak hours), may require any User to install on-site storage as a condition to connect or increase flow, and/or may impose such other conditions as the Control Authority deems appropriate. Such conditions may be set by the Control Authority in a control mechanism (*e.g.*, permit, letter of approval, or conditional letter of approval). No Person shall violate the conditions established by the Control Authority set forth in a control mechanism issued by the Control Authority.

(c) Control Authority Review of Pretreatment System

If the Control Authority permits the Pretreatment or equalization of waste flows, the design and installation of any new process Pretreatment or flow equalization system installed in connection therewith shall, upon request from the City, be subject to the review and/or approval of the Control Authority. The City of Memphis does not by its approval of any of the designs, installation, or the construction of the plans and equipment or any of the information or plans submitted by the Permittee, warrant or aver in any manner that the Permittee's implementation of such measures will result in compliance with the applicable Pretreatment requirements. Notwithstanding such review and/or approval, compliance with Federal, state, and local law (including this Ordinance and/or a Discharge Permit) is the sole responsibility of the User. In no event shall the City of Memphis be deemed liable for any User actions based upon the City's review and/or approval of User documents.

(d) Use of Interceptors, Traps and/or Separators

Interceptors, traps, and/or separators shall be provided by industrial and commercial Dischargers (in addition to those cases otherwise specified in this Ordinance) when, in the opinion of the Control Authority, they are necessary for the proper handling of water or waste containing such materials as fats, oils, greases, sand, or flammable reactive or corrosive liquids, substances which may solidify or become viscous in the system, or other harmful ingredients. In maintaining interceptors, traps, and separators, the owner shall be responsible for the proper removal and disposal by appropriate means of the captured material and shall maintain records of the waste manifests, laboratory reports, chain-of-custodies, any field reports, log sheets, field test data (*e.g.*, pH, temperature, ammonia, or chlorine), dates, and means of disposal, which are subject to review by the Control Authority. Any removal and hauling of the collected materials not performed by the owner's personnel must be performed by waste transport and disposal firms and must be documented by the facility.

Any transport to a Memphis WWTP or to a designated Discharge point must be undertaken by a City approved waste transport firm.

(e) Removed Substances

Except as provided by paragraph (d) above, or otherwise approved in a Discharge Permit or in writing by the City of Memphis, Division of Public Works, removed substances, such as solids removed from liquid wastestreams, sludges, filter backwash, or other residuals removed in the course of treatment or control of Wastewater, shall be disposed of in a manner such as to prevent such material from entering the sewer system and Waters of the State.

Sec. 33-246. [Sec. 13-24-46] Proper Operation and Maintenance/Maintenance and Inspection of Pretreatment or Flow Equalization Facilities, Bypass and Upset

(a) Proper Operation and Maintenance

The User shall, at all times, properly operate and maintain all Pretreatment facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Industrial User to achieve and monitor compliance with Pretreatment Standards and Pretreatment Requirements. This includes adequate laboratory controls and appropriate quality assurance procedures, the operation of back-up or auxiliary facilities, or similar systems which are installed by the Industrial User only when the operation is necessary to achieve compliance. Except as provided by 33-246(c), the intentional diversion of waste streams from any portion of the Industrial User's treatment facility is prohibited. In no event shall the diversion of waste streams from any portion of the User's treatment facility cause Interference or Pass-Through.

(b) Pretreatment and/or Flow Equalization

Where pretreatment or flow equalization facilities are required for any water or Wastewater, they shall be maintained continuously and satisfactorily and in effective operation by the owner at his expense and shall be subject to periodic inspection by the Control Authority. The owner or operator shall maintain and make available, as requested, operating records as prescribed by the Control Authority.

(c) Bypass

(1) For the purposes of this section,

(A) Bypass means the intentional diversion of wastestreams from any portion of a User's treatment facility or around required metering or sampling equipment.

(B) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) A User may allow any bypass to occur which does not cause Pretreatment Standards or Pretreatment Requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (3) and (4) of this section.

(3) Bypass Notifications

- (A) If a User knows in advance of the need for a bypass, it shall submit prior notice to the Control Authority, at least ten (10) days before the date of the bypass, if possible.
- (B) A User shall submit oral notice to the Control Authority of an unanticipated bypass that exceeds applicable Pretreatment Standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the User becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Control Authority may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

(4) Bypass

- (A) Bypass is prohibited, and the Control Authority may take an enforcement action against a User for a bypass, unless bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; there were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime; and the User submitted notices as required under paragraph (3) of this section. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass, which occurred during normal periods of equipment downtime or preventive maintenance.
- (B) The Control Authority may approve an anticipated bypass, after considering its adverse effects, if the Control Authority determines that it will meet the three conditions listed in 33-107(c)(4)(A) of this section.
- (C) In no event shall the diversion of flows cause the City to violate its NPDES permit(s). Notwithstanding any provision to the contrary, bypass shall not be a defense to causing Interference or Pass-Through.

(d) Upset

- (1) For the purposes of this section, upset means an exceptional incident in which there is unintentional and temporary noncompliance with Categorical Pretreatment Standards because of factors beyond the reasonable control of the User. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- (2) An upset shall constitute an affirmative defense to an action brought for noncompliance with Categorical Pretreatment Standards if the requirements of paragraph (3), below, are met. An upset is not an affirmative defense for violation of any other requirement (e.g., general and specific prohibitions, Local Limits).
- (3) A User who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs or other relevant evidence that:

- (A) An upset occurred and the User can identify the cause(s) of the upset;
 - (B) The facility was, at the time being operated, in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
 - (C) The User has submitted the following information to the Control Authority within twenty-four (24) hours of becoming aware of the upset (and, if this information is provided orally, a written submission must be provided within five (5) days) that includes: a description of the indirect Discharge and cause of noncompliance; the period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and steps being taken and/or planned to reduce, and prevent recurrence of the noncompliance.
- (4) In any enforcement proceeding, the User seeking to establish the occurrence of an upset shall have the burden of proof.
- (5) Review of whether an event meets the upset criteria is available to a User only in the context of an enforcement action brought for noncompliance with Categorical Pretreatment Standards.

(e) Reduction in Production Required as Necessary to Achieve Compliance

Users shall control production to the extent necessary to maintain compliance with Discharge limitations upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

Sec. 33-247. [Sec. 13-24-47] Monitoring, Control Facilities for Sampling and Observation of Industrial and Commercial Wastes/ Flow Monitoring and Repeat Monitoring.

(a) Installation of Control Facility

When required by the Control Authority, the owner or operator of any industrial, commercial property, any new or expanded development (including developments discharging only domestic flow), or facility serviced by a sewer, shall install a suitable control facility for sampling together with such necessary equipment, which could include: meters, instruments, refrigerated samplers, connections such as contact closures or flowmeter output to drive flow-proportional composite sampler, digital read-outs, data-loggers, recorders, and other appurtenances, in the sewer to facilitate observation, sampling, measurement, and recording of the wastes and Discharge and/or domestic flows.

(b) Monitoring Manhole and Related Provisions

Unless otherwise required by the City and/or federal or State regulations, all regulated and permitted non-domestic waste from the property or facility shall be Discharged through the control facility or facilities, as applicable, after any pretreatment of the waste. Unless otherwise required by the City, those industries with a permitted average daily maximum BOD₅ or TSS of ten thousand (10,000) pounds per day or greater and/or with a permitted average daily maximum Discharge flow of 700,000 gallons per day or greater and/or as deemed necessary by the Control Authority to monitor other permitted Pollutants shall install a monitoring manhole. The facility, when required, shall be accessible and safely located, and shall be constructed in accordance with plans approved by the Control Authority. The facility shall be installed by the owner at his expense and shall be maintained by him so as to be safe and accessible at all times. Plans for such facilities for

the installation of control and related equipment must be reviewed and/or approved by the Control Authority before construction is begun.

(c) Calibration

The User shall ensure that all monitoring, analytical, and sampling equipment used to monitor flow or analyze Pollutants Discharged under a permit are periodically calibrated and maintained at intervals which ensure the accuracy and reliability of measurements, and when required by the Control Authority, the User shall provide written documentation and certification of the calibrations.

(d) Flow Monitoring Maintenance and Calibration Logs

When the measurement or reporting of Discharge flow is required, appropriate effluent flow measurement devices and methods consistent with accepted scientific and engineering practices shall be selected and used to ensure the accuracy and reliability of measurements of the volume of monitored Discharges. The City of Memphis may require that the entire flow measuring system be designed, stamped, signed, constructed, and installed under the direct supervision of a Tennessee State Licensed Professional Engineer. The devices shall be installed, calibrated, and maintained to ensure that the accuracy and reliability of the measurements are consistent with the accepted capabilities of the device and in accordance with the device manufacturer. The flow measuring devices shall be capable of measuring flows with a maximum deviation of less than plus or minus five (5) percent from the true Discharge rates throughout the range of expected Discharge flows (*i.e.*, from the highest peak flow to the minimum flow) using no less than three (3) calibration points, unless otherwise approved by the Control Authority. The flow measuring device shall be calibrated and maintained at the expense of the Permittee as often as recommended by the device manufacturer or at least annually, whichever is more frequent. The City, subject to its discretion, may require a User to have a qualified third-party undertaking calibration. If the flow measuring device can be tested and certified to prove accuracy of $\pm 5\%$, then recalibration is not required. Calibration reports and/or verification reports shall be submitted as required by the City. The Permittee shall maintain written maintenance and calibration logs for the flow measuring device, which will include at least the following information:

- (1) Name of Permittee's facility;
- (2) Name, signature, and affiliation of person(s) performing maintenance and/or calibration;
- (3) Device type, manufacturer, model, and serial number;
- (4) Date and time of maintenance and/or calibration;
- (5) Description of maintenance and/or calibration;
- (6) Whether the maintenance and/or calibration was routine or due to problem with device, with brief explanation;
- (7) Whether or not it was likely that the device was producing accurate flow readings before maintenance and/or calibration, with brief explanation; and
- (8) Whether and/or not it is likely that the device is producing accurate flow readings after maintenance or calibration, with brief explanation.

(e) Flow Monitor Calibration Report

The Permittee shall submit a flow measuring device calibration certification letter to the Control Authority within thirty (30) days, or such alternative time established by the Control Authority, of initial permitted sewer Discharge and all subsequent letters before June 30th every year thereafter. Any User first subject to this

requirement shall submit the certification June 30th of every year it Discharges. If required by the City of Memphis, each of these letters must be certified by either (i) the manufacturer that calibrated the meter or (ii) both a Tennessee State Licensed Professional Engineer and a responsible corporate officer. The flow measuring device calibration reports shall include at least the following information:

- (1) Name of Permittee's facility;
- (2) Location and ID of the device;
- (3) Device type, manufacture, model, serial number, and size;
- (4) Total range capacity of the device;
- (5) Maximum range used at the facility;
- (6) Minimum of three (3) calibration points evenly spaced within the maximum range used at the facility to determine accuracy of the device (e.g., 0%, 25%, 50%, 75% and 100%; 4 mA, 8 mA, 12 mA, 16 mA and 20 mA; or 0 GPM, 200 GPM, 400 GPM, 600 GPM and 800 GPM when the maximum range is 800 GPM);
- (7) Final accuracy of device at each of the calibration points used;
- (8) Date of calibration;
- (9) Name of person performing the calibration; and,
- (10) Name and signature of certifying Tennessee State Licensed Professional Engineer (if required) or other appropriate third-party approved by the Control Authority.

(f) Monitoring Instrumentation Calibration and Maintenance

Instrumentation used for self-monitoring (e.g., pH monitoring) shall be calibrated and maintained at least as often as recommended by the manufacturer and shall be calibrated and maintained more frequently when necessary to maintain instrument reading accuracy and reliability within acceptable error limits based upon the manufacturer's specifications. The Permittee shall maintain a maintenance and calibration log for each instrument, which would include at least the following information:

- (1) Name of Permittee facility;
- (2) Name, signature, and affiliation of person(s) performing maintenance and/or calibration;
- (3) Instrument type, manufacturer, model, and serial number;
- (4) Date and time of maintenance and/or calibration;
- (5) Description of maintenance and/or calibration;
- (6) Whether the maintenance and/or calibration was routine or due to problem with the instrument, with brief explanation;
- (7) Whether or not it was likely that the instrument was producing accurate readings before maintenance and/or calibration, with brief explanation; and
- (8) Whether or not it is likely that the instrument is producing accurate readings after maintenance and/or calibration, with brief explanation.

(g) Repeat Monitoring

If sampling performed by an Industrial User indicates a violation, the Industrial User shall notify the Control Authority within twenty-four (24) hours of becoming aware of the violation. The Industrial User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the City within thirty (30) days after becoming aware of the violation (or sooner if so directed by the Control Authority or its designee). Repeat sampling within thirty (30) days of a violation under this section need not be undertaken if the Control Authority undertakes sampling and indicates in writing to the Industrial User that such repeat sampling is not required.

(h) Toxicity Testing/Toxicity Reduction Evaluation

The User shall undertake effluent toxicity testing as required by the Authority, using the test procedures and methodology specified by the Authority. In the event toxicity is indicated, the User shall undertake a toxic reduction evaluation and take steps to reduce toxicity, as required by the City of Memphis and/or the Control Authority.

Sec. 33-248. [Sec. 13-24-48] **Measurement and Testing Methods.**

(a) Analytical Requirements

All Pollutant analyses, including sampling techniques, to be submitted as part of a Discharge Permit application or report(s) shall be performed in accordance with the techniques prescribed in 40 C.F.R. Part 136 and amendments thereto, unless otherwise specified in an applicable Categorical Pretreatment Standard. If 40 C.F.R. Part 136 does not contain sampling or analytical techniques for the Pollutant in question, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the Pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the Control Authority or other qualified parties approved by EPA.

(b) Representative Sample Collection

Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report and be based on data that is representative of conditions occurring during the reporting period. The Control Authority, subject to its sole discretion, may undertake all or part of the sampling and/or analysis otherwise required by the SIU in lieu of requiring the SIU to undertake the minimum sampling.

- (1) Except as indicated in subsections (b)(2) and (3) below, the Industrial User must collect Wastewater samples using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Control Authority. Where time-proportional composite sampling or grab sampling is authorized by the Control Authority, the samples must be representative of the Discharge. Using protocols (including appropriate preservation) specified in 40 C.F.R. Part 136, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the Control Authority, as appropriate. Notwithstanding anything to the contrary, grab samples may be required to show compliance with instantaneous limits.

- (2) Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.
- (3) For sampling required in support of baseline monitoring report and 90-day compliance reports, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the Control Authority may authorize a lower minimum. For the self-monitoring reports required by 33-230(e), the Industrial User is required to collect the number of grab samples necessary to assess and assure compliance with applicable Pretreatment Standards and Pretreatment Requirements.
- (4) Chain-of-custody forms must be filled out and maintained in the User's files for a period of at least three (3) years. Upon request of the Control Authority, the chain-of custody forms shall be submitted to the City.

(c) Approval Required to Change Sampling Locations

The Control Authority may specify User monitoring points. In such a case, compliance monitoring points shall not be changed without the approval of the Control Authority.

(d) Monitoring and Flow Measurement Facilities

Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a User to keep its monitoring facility in good working order shall not be grounds for the User to claim that non-compliant sample results are not representative of its Discharge.

Sec. 33-249. [Sec. 13-24-49] **Accidental and Slug Discharges.**

(a) Authority to Require Development of a Plan

The Control Authority may require a User to develop a plan to provide protection from accidental and/or Slug Discharge of prohibited materials or other substances regulated by these regulations. Any facilities to prevent accidental and/or Slug Discharge of prohibited material shall be provided and maintained at the User's own cost and expense.

(b) Minimum Requirements for SIU Slug Control Plans

If a Significant Industrial User is required to develop a slug control plan by the Control Authority, the plan shall contain, at a minimum, the following elements:

- (1) Detailed descriptions of Discharge practices, including routine and non-routine batch Discharges;
- (2) Detailed descriptions of stored chemicals, and/or stored waste;
- (3) Procedures for immediately notifying the POTW of Slug Discharge, including any Discharges that would violate a prohibition under Section 33-243, with procedures for follow-up written notification within five (5) days;

- (4) If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operation, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic Pollutants (include solvents), and/or measure and equipment for emergency response.

(c) Additional Potential Requirements for SIU Slug Control Plans

Upon notice from the Control Authority, an SIU shall submit the following additional information in a Slug control plan as indicated in the Control Authority's notice:

- (1) Material safety data sheets, when applicable;
- (2) Best Management Practices to prevent, control, and cleanup releases of chemicals, materials, and/or wastes;
- (3) If necessary, engineering practices (e.g., temporary storage) to assure that Interference or Pass-Through does not occur;
- (4) Employee education;
- (5) Adequate storage or other practices (e.g., trucking the waste off-site for disposal) to assure that potential batch Discharges (whether Wastewater or off-specification product) will not interfere with the operation of the POTW (including the collection system); and
- (6) Such other requirements as the Control Authority deems appropriate.

(d) Potential Requirements for Non-SIU Slug Control Plans

The Control Authority may require a non-SIU to develop a Slug control plan containing such requirements as set forth in Sec. 33-249(b) and (c) as the Control Authority deems appropriate.

(e) Control Authority Approval of Slug Control Plan

Subject to the Control Authority's discretion, a User may be required to submit a plan to the Control Authority for approval. Failure to submit a Slug control plan to the Control Authority, meeting the requirements of Sec. 33-249, may subject the User to an enforcement action.

(f) Notice to Potentially Avoid Downstream Problem at POTW

In order to ensure the integrity of the Wastewater Treatment Plant at a high level and protect the treatment process from unacceptable flows, any User facility at which an accidental spill occurs or any person causing an accidental spill that may enter the sewer system, shall notify the POTW as soon as reasonably possible by telephone and e-mail as to the spill's nature, relating its location, quantity, duration of event, the time of such spill, and corrective action, so that further action may be taken at the Wastewater Treatment Plant to deal with any problems which the incoming flow may create. The applicable e-mail and telephone numbers for notification are as follows:

- Stiles Wastewater Treatment Plant: 901-636-4300
- Maxson Wastewater Treatment Plant: 901-789-0510

- E-Mail: pretreatment@memphistn.gov

(g) Written Notice

See Section 33-230(i) regarding reporting of, among other things, accidental Discharges or Slug Discharges.

(h) Notice to Employees

A notice shall be permanently posted on the Industrial User's bulletin board(s) or other prominent places advising employees who to call in the event of a dangerous Discharge. Employers shall ensure that all employees who become aware of a Slug Discharge occurring are advised of the emergency notification procedure.

(i) Closure Plan

In the event a Significant Industrial User will be terminating its Discharge on a temporary or permanent basis, the Discharger shall notify the Control Authority at least sixty (60) days prior to such termination. The Control Authority, subject to its discretion, may require any User to submit a closure plan to the Control Authority for approval at least thirty (30) days before cessation of Discharge. If required, the closure plan, at a minimum, shall address the cleaning and other activities that will be occurring, the anticipated effect on the quality and quantity of the Discharge, and how the Discharger will assure that such activities will not adversely impact the POTW or otherwise cause Interference or Pass-Through.

Sec. 33-250 [Sec. 13-24-50] **[Reserved]**

Sec. 33-251-. [Sec. 13-24-51] **Discharge of Hauled Wastes.**

(a) Requirements Applicable to Trucked or Hauled Wastes

The requirements of this Ordinance apply to Pollutants from domestic and non-domestic sources, which are transported (*e.g.*, by truck or rail) to the POTW. These requirements apply to such trucked or hauled Pollutants to the same extent as Pollutants Discharged directly into the sewer system. Except for wastewater from residential household septic tank, food establishment grease, drive through car wash traps, and portable toilets, no User shall have wastewater hauled to the Memphis WWTP without receiving preapproval from the City of Memphis.

(b) Requirements for Generators and/or Haulers of Wastewater

The Control Authority may require any generator and/or hauler of Wastewater, including but not limited to, those pertaining to holding tank wastes, industrial waste, sludge, septage, fats, oils and grease, or other sanitary sewage to:

- (1) Monitor, sample, and analyze the Wastewater;
- (2) Provide a representative waste analysis of the waste prior to Discharge;
- (3) Submit reports, including a waste tracking form, and such other information as requested by the Control Authority for every load or at such other frequency as the Control Authority deems appropriate; and/or

- (4) Undertake such additional requirements as deemed appropriate by the Control Authority to implement Pretreatment Requirements and to protect the POTW, human health, and the environment.

(c) Designated Discharge Points and Approvals

No Person may Discharge hauled Wastewater of any type into the sewer system or WWTP except at a Discharge point designated by the City of Memphis and with proper permit, approvals, and manifest. Alternate site locations must be approved or designated by the City of Memphis. Sewer systems treated by the POTW include all sewer systems located in Memphis, Germantown, certain systems located in Bartlett, Collierville, Lakeland, Millington, unincorporated Shelby County, and certain parts of Desoto County, Mississippi, including Southaven, Mississippi, and Horn Lake, Mississippi. Except for the Memphis designated point(s), wastewater may not be hauled into any sewer systems treated by the Memphis POTW.

(d) Hauling License Required and Other Requirements

Any Person engaged in the hauling of Wastewater to the Memphis WWTP must obtain any necessary approvals from the Shelby County Health Department. Licensed haulers shall be responsible for complying with all the terms and conditions contained in the license, in addition to Section R.5 of the Septic Cleaner Regulations of the Memphis and Shelby County Plumbing Code. Additionally, if the waste hauler intends to use the POTW disposal site, the hauler must obtain a disposal permit from the Control Authority and shall be responsible for complying with all the terms and conditions contained in the permit and the City of Memphis Sewer Use Ordinance. All trucks must be marked with the company name, phone number, waste hauler permit number, city, and state. The tank must also be marked with the company name and capacity of the tank in gallons.

(e) Hauled Waste Tracking Form Required for Every Load

Waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents, and a certification that none of the hauled wastes are RCRA hazardous wastes as defined in 40 C.F.R. Part 261 or State Rule 0400-12-01.

(f) Absolute Prohibition on Hauling of Hazardous Waste to Memphis POTW

In no event shall any Person arrange for or deliver to the POTW (including the collection system), by truck or rail, any Pollutant or waste which would be a hazardous waste as defined in 40 C.F.R. Part 261 or State Rule 0400-12-01.

(g) Letter of Approval and Manifest

Except as provided in Section 33-251(h), below, or the City of Memphis otherwise provides in writing, no Wastewater may be picked up and disposed at the POTW (including the collection system) unless the entity producing the waste has a Letter of Approval from the City of Memphis authorizing receipt of the particular wastestream, and each truck load or other load is accompanied with a properly completed manifest. Misrepresentation as to the waste delivered by a hauler may lead to civil and/or criminal enforcement. The generator of the waste must submit a written request to the City of Memphis containing all required

information requesting approval to dispose of the waste and must receive the Letter of Approval prior to the pickup of the waste. The following are the requirements for the written request:

- (1) Must be on company letterhead and must be signed by an Authorized Representative of the User;
- (2) Must include the physical address or location of the facility;
- (3) Must include the address or physical location of the waste sump, pit, or catch basin;
- (4) Must include estimated volume or volumes of Wastewater and/or sludge from each basin, sump, pit, basement, etc.;
- (5) Must include source of waste for each basin, sump, pit, basement, etc. (*e.g.*, sanitary or septic waste, lift station sludge, sediment from industrial Pretreatment system, laundry waste, maintenance shop sludge, mop water, storm water, etc.);
- (6) Must include a Certification Statement of Non-Hazardous Waste, "I certify that the waste to be disposed of would not be classified as hazardous waste as defined under the Resource Conservation and Recovery Act at 40 C.F.R. Part 261 and State Rule 0400-12-01;"
- (7) Must include a Certification Regarding Inapplicability or Compliance with Categorical Pretreatment Standards in accordance with one of the following two options:
 - (A) "I certify that the waste is not subject to Categorical Pretreatment Standards as set forth in 40 C.F.R. Chapter I, Subchapter N, Part 405 *et seq.*" or
 - (B) "I certify that the waste is from the following category [**insert category**], is subject to Categorical Pretreatment Standards as set forth in 40 C.F.R. Chapter I, Subchapter N, Part 405 *et seq.*, and that based upon the attached sampling information, the waste is in compliance with the applicable categorical pretreatment standard.

If option B applies, the letter must include the sampling information.

- (8) Must include the number of expected disposals or frequency of disposals from each basin, sump, or pit (*e.g.*, a one-time event, one-disposal every three months for 12 months, one disposal per month for 12 months, etc., but not for any longer than 12 months); and
- (9) When required by the Control Authority, must include the laboratory report(s) of test results for a representative grab sample collected from each basin, sump, pit, basement, etc., with completed chain-of-custody document(s) attached, and must include any required field test results (*e.g.*, pH) or such additional information as the Control Authority may require.

(h) Wastestreams Not Requiring Separate Written Approval

Notwithstanding Section 33-251(g), above, the following wastestreams are not required to have a separate Written Approval for each particular wastestream unless otherwise required by the Control Authority on a case-by-case basis:

- (1) Wastewater from residential household septic tanks;

- (2) Food establishment grease removal equipment;
- (3) Drive-through car wash traps; and
- (4) Portable toilets.

(i) Documents Required During Disposal and Fee

A copy of the Approval Letter and properly completed manifest must accompany the permitted waste hauler during the disposal at the City of Memphis' designated Discharge point. The disposal fee will be a charge based on a rate established by the Division of Public Works in accordance with the gallon capacity of the truck.

(j) Pollutant Limits and Other Conditions

Maximum hauled waste Pollutant limits and such other conditions as the Control Authority deems appropriate may be set by the Control Authority in a permit and/or Letter of Approval for determining whether a request to transport and dispose of waste to the designated Discharge point is acceptable or not. No Person shall violate the Pollutant limits established by the Control Authority for hauled Wastewater or otherwise be in violation of a waste hauler permits, disposal permit, Letter of Approval, or Other User Permit issued by the Control Authority.

(k) pH Limits for Hauled Wastewater and Volume

- (1) All hauled Wastewater must not violate a pH Minimum Limit of 5.5 standard units, *i.e.*, having a pH lower than 5.5 standard units.
- (2) Notwithstanding Section 33-243(b)(5), all hauled Wastewater must not violate a pH Maximum Limit of 10.0 standard units.
- (3) Decanting or back flushing of the grease trap or its wastes for the purpose of reducing the volume to be hauled is prohibited.

(l) Forfeiture of Hauler Waste Privileges

Failure to renew and/or obtain a waste hauler permit or disposal permit or recurrence of late payment of disposal fees may result in the waste hauler not being allowed to use the City of Memphis' designated Discharge point for disposal.

(m) City Reservation of Rights

The City of Memphis, subject to its discretion, may prohibit the disposal and/or Discharge of Pollutants or wastes hauled or trucked to the POTW or any subcategories thereof.

Sec. 33-252. [Sec. 13-24-52] Specific Charge for Hauled Waste Transported for Disposal at the Discharge Point Designated by the City of Memphis.

The disposal fee charge for hauled Wastewater originating from residential household septic tanks, food establishment grease removal equipment, drive through car washes, portable toilets, and industrial Wastewater and sludge shall be a flat rate based upon the volume of the truck (tank capacity). All customers

will be charged on a hauled waste disposal charge based on rate in cents per gallon of Wastewater multiplied by the capacity in gallons of the truck hauling the Wastewater. The rate may be reviewed and adjusted by the Division of Public Works.

Sec. 33-253. [Sec. 13-24-53] **Food Establishment Wastewater.**

Sec. 33-253-01. [Sec. 13-24-53-01] **Waste Disposal – Construction Plans Approval and Permit Required.**

(a) Compliance with Ordinance

All food service establishments (“FSE”), including but not limited to cafes, restaurants, hotels, retirement centers, nursing homes, hospitals, grocery stores, markets, prisons, mobile food units, or other food preparation establishments, Discharging Wastewater to the City's POTW, including the sewer system, shall comply with this Ordinance except to the extent that any requirement is specifically superseded by the City of Memphis, Division of Public Works, Fats, Oil and Grease (“FOG”) Plan, if applicable. The FOG Management Plan, if applicable, would be available at www.memphistn.gov.

(b) Grease Trap Required/Design Criteria

- (1) An FSE shall not Discharge to the POTW, including the collection system, unless it has installed and is operating and maintaining a sufficiently sized oil and grease, water and solids separator (hereinafter called grease removal equipment) necessary to prevent the accumulation of oil and grease in the sewer collection system. Approval of the City of Memphis, Division of Public Works, shall be required during the construction plans approval process.
- (2) All grease traps used in conjunction with food service establishments shall have the capacity of 15 gallons per seat of dining capacity, except that no single grease trap shall be smaller than 750 gallons or larger than 3,000 gallons. In certain cases, multiple grease traps may be utilized. Alternative treatment technologies shall be considered on a case-by-case basis for food establishments that are to be located in an existing building where large grease removal equipment is not feasible. The use of enzymes and other chemical agents to dissolve, emulsify, or break-up fats, oil, and greases (FOG) in lieu of physically cleaning and removing FOG with grease removal equipment is prohibited.

(c) Food Establishment Wastewater Discharge (“FEWD”) Permits

All FSE’s shall obtain a FEWD permit to Discharge to the POTW, including the collection system, from the Control Authority. This permit shall be posted on the premises and renewed as needed. Except where the Control Authority requires the FSE to obtain an individual permit, an FSE may be covered by a general Other User Permit.

(d) Multi-Dwelling Units, Apartments and Other FSE’s – Control of Fats, Oils & Grease (FOG) Discharges

Any multi-dwelling unit, or apartment building, complex or FSE’s may be subject to enforcement action for discharging FOG that contributes to a sanitary sewer overflow event, or obstruction to the sewer system.

(e) Person Who Causes Obstruction of Sewers

No Person shall Discharge or cause a Discharge that results in an obstruction of the sewer system. For example, a plumber shall take such actions as necessary to avoid the release of FOG material that is lodged in a pipe to be released into the sewer system.

Sec. 33-253-02. [Sec. 13-24-53-02] **Subject to Industrial Wastewater Limitations.**

Wastewater Discharged into public sewers from FSE's are subject to the limitations set forth in Sections 33-243 and 33-244 of this Ordinance and such other provisions of this Ordinance and City Code provisions that apply to Discharges to the POTW (including the sewer system), general and specific prohibitions, reporting, user charges, permit fees, sampling fees, inspection fees, and any other fees established from time to time by the City, and such conditions as the Control Authority includes in a permit.

Sec. 33-253-03. [Sec. 13-24-53-03] **Permit for Food Establishment Wastewater Discharge.**

In addition to requirements otherwise set forth in this Ordinance, a permit for Food Establishment Wastewater Discharge may require pretreatment of Wastewater before Discharge, restriction of peak flow Discharges, Discharge of certain Wastewater only to specified sewers of the City, relocation of point of Discharge, prohibition of Discharge of certain Wastewater components, restriction of Discharge to certain hours of the day, payment of additional charges to defray increased costs of the City created by the Wastewater Discharge, and such other conditions as may be required. Except as otherwise provided in this Section 33-253 and subparts thereof, FEWD permits are subject to the same provisions in this Ordinance applicable to Other User Permits.

Sec. 33-253-04. [Sec. 13-24-53-04] **Permit Application Required for New Construction and Others.**

Any newly constructed building or redevelopment resulting in a new FEWD establishment shall complete and file with the Division of Public Works, an application in the form prescribed by the Division of Public Works. The applicant may be required to submit, in units and terms appropriate for evaluation, the following information:

- (a) Name and address of applicant;
- (b) Volume of Wastewater to be Discharged;
- (c) Time of daily food preparation operations;
- (d) Description of food preparation, dining room capacity by seats, number of employees, and size of kitchen;
- (e) Type of FOG treatment; and
- (f) Any other information as may be deemed by the Approving Authority to be necessary to evaluate the permit application.

The Division of Public Works, subject to its discretion, may require other FEWDs (*e.g.*, existing FEWDs) to submit permit applications. The Division of Public Works, after evaluating the data furnished by the applicant, may require additional information. After evaluation and acceptance of the data furnished, an on-site inspection of the waste Discharge system, treatment systems, or other systems relating to the waste Discharge

may be required. The Approving Authority may then issue a FEWD Permit subject to the terms and conditions provided herein.

Sec. 33-253-05. [Sec. 13-24-53-05] **Duration of FEWD Permits.**

FEWD Permits shall be issued for a specified time period, not to exceed five (5) years. If the Permittee is not notified by the City thirty (30) days prior to the expiration of the permit, the permit shall be extended under Sec. 33-224(b) until such time as the City (1) reissues a new FEWD permit or (2) decides that a new FEWD permit should not be reissued. The terms and conditions of the permit may be subject to modification and change by the City during the life of the permit as limitations or requirements as identified in Sections 33–243 and 33-244 are modified and changed or as otherwise deemed appropriate by the Control Authority. See Section 33-225 pertaining to modification of permits, including FEWD permits.

Sec. 33-253-06. [Sec. 13-24-53-06] **Revocation of Food Establishment Wastewater Permit.**

In addition to causes set forth in Section 33-225, the Division of Public Works may revoke the FEWD permit of any permittee who is found to be in violation of this Ordinance or who:

- (a) Fails to install grease pretreatment devices as required by permit;
- (b) Fails to fulfill reporting requirements or pretreatment maintenance as required by permit;
- (c) Refuses reasonable access to the permittee’s premise for the purpose of inspection or monitoring; or
- (d) Violates any condition of the FEWD permit.

Sec. 33-253-07. [Sec. 13-24-53-07] **Grease Pretreatment Required.**

(a) Grease Reduction Equipment/Oil and Grease Limit

FEWDs shall make Wastewater acceptable under the limitations established herein (*see, e.g.*, Section 33-244(a)(2) setting forth a FOG limit of 100 mg/l) before Discharging to any public sewer. All permittees are required to install an approved type of grease removal equipment (“GRE”) in the waste line leading from the food preparation area, or from sinks, drains, appliances, dish washers, mop sinks, floor drains, and other fixtures or equipment used in food preparation or cleanup where grease may be introduced into the sewerage system. Such grease Pretreatment devices shall be installed to remove grease from Wastewater and shall be maintained in efficient operating conditions by periodic removal of the accumulated grease. No such collected grease shall be introduced into any drainage piping or public sewer. Such grease may, however, be hauled by a licensed waste hauler to the City’s WWTP subject to the provisions of this Ordinance.

(b) Segregation of Oils, Greases and Greasy Solids

Each FEWD shall also be required to provide a collection drum or container for the purpose of physically segregating oils, greases, and greasy solids. FEWDs shall establish procedures for personnel to practice maximum segregation of oils, greases, and greasy solids to the collection drum or container prior to washing and other water cleaning, which goes into sewers. The FEWD is responsible for the proper removal and disposal by appropriate means of the material captured from either grease pretreatment devices on Wastewater lines or the collection drum for segregating oils, grease, and greasy solids.

(c) Training Program to Assure Proper Handling of Grease Waste

Upon notification from the Division of Public Works, the FEWD shall undertake a training program to assure that its employees are familiar with and implement a program to assure that grease waste is properly handled. Recordkeeping and reporting of such training program, and other food and grease related activities may be required.

Sec. 33-253-08. [Sec. 13-24-53-08] **Maintenance Reports.**

The FEWD shall maintain records of grease Pretreatment device cleaning, maintenance, and grease removal on site. The Division of Public Works may require the FEWD to provide results of periodic measurements of its Discharge, which may include chemical analysis of oil and grease content and measurements of FOG content in GRE. FEWDs shall allow the City or its representative ready access at all reasonable times to all parts of the premises for purposes of sampling and inspections.

Sec. 33-253-09. [Sec. 13-24-53-09] **Penalty for Violation and Civil Liability.**

Any person(s) Discharging Wastewater in violation of a FEWD Permit and/or this Ordinance is subject to fines, penalties, cost recovery, injunction, termination of sewer service, permit revocation, and/or such other remedies as are available to the Control Authority.

Sec. 33-253-10. [Sec. 13-24-53-10] **Surcharges for Oil and Grease.**

The Division of Public Works may impose and modify such additional surcharges, as it deems appropriate, to address disproportional costs or other concerns associated with the Discharge of FOG (*e.g.*, the impact on the collection system).

Secs. 33-253-11—33-253-20. [Sec. 13-24-53-11 -- 20] **Reserved.**

Sec. 33-254 – 33-259. [Sec. 13-24-54 -- 59] **Reserved.**

DIVISION 4. REVIEW AND ENFORCEMENT

Secs. 33-260 -- 33-269. [Sec. 13-24-60 -- 69] **Reserved.**

Section 33-270 [Sec. 13-24-70] **Violations and Enforcement Actions.**

(a) Enforcement

A violation of any of the foregoing may result in enforcement actions including, among other things, administrative fines, civil penalties, withdrawal of the privilege to use the City of Memphis Wastewater System, and suspension or termination of the existing permit (*e.g.*, waste hauler permit) and/or prohibition from obtaining a new permit.

(b) Criminal Penalties

Any person in violation of this Ordinance shall be guilty of a misdemeanor and subject to punishment as provided in section 1-24-1. Any person who willfully and negligently violates permit conditions may be subject to other criminal penalties, including criminal penalties imposed by the State of Tennessee and/or the United States.

(c) Damaging Sewerage Works

The prohibitions and requirements of Section 33-30 (Damaging Sewerage Works) are hereby incorporated by reference. A violation of Section 33-30 is also a violation of Article IV of this Ordinance.

Sec. 33-271. [Sec. 13-24-71] **Local Hearing Authority.**

There is hereby created and established a local hearing authority to be known as the Memphis Wastewater Hearing Authority and referred to hereinafter as the "Hearing Authority."

Sec. 33-272. [Sec. 13-24-72] **Purpose.**

The Hearing Authority shall serve as the local hearing authority as prescribed in Tenn. Code Ann. § 69-3-124 and shall be responsible for the review of orders issued or actions undertaken by the Director of Public Works or his designee pursuant to the Sewer Use Ordinance, pretreatment statutes codified at Tennessee Code Annotated §§ 69-3-123 through 69-3-129, and such requirements as set forth in the National Pollutant Discharge Elimination System ("NPDES") permits issued to the City of Memphis.

Sec. 33-273. [Sec. 13-24-73] **Composition, Length of Term, Officers.**

(a) The Hearing Authority shall be composed of the following seven (7) members and two (2) alternates who shall be appointed by the Mayor subject to approval by the Memphis City Council, and shall constitute the voting members of the Hearing Authority:

Representative Group (# of members)	Length of Term (years)
Industry (2)	1
Private Citizenry (3)	2
Engineering/Science (2)	2
Public Interest Group/University (2)	1

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

(c) One (1) alternate shall be appointed from the "Industry" group and one (1) from the "Public Interest/University" group.

(d) A chairperson of the Hearing Authority shall be elected at the first meeting of each newly appointed Hearing Authority from among its own membership to serve for a term of one (1) year. Another member shall serve as vice chair for a period of one (1) year upon a majority vote of all members.

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

- (f) The Hearing Authority may issue subpoenas requiring attendance of witnesses and production of such evidence as requested, administer oaths, and take testimony as the Hearing Authority deems necessary to fulfill its purpose.
- (g) No member or alternate shall participate in the appeal of any matter in which the member or alternate has a direct personnel or financial interest.

Sec. 33-274. [Sec. 13-24-74] Removal.

Members may be removed from the Hearing Authority for continued absence from meetings or other just cause in accordance with the procedure for removal of board or commission members set forth within House Rule Ordinance No. 1852 of the City Charter.

Sec. 33-275. [Sec. 13-24-75] Power and Duties.

In addition to any other duty or responsibility otherwise conferred upon the Hearing Authority by this Chapter, the Hearing Authority shall have the duty and power as follows:

- (a) To recommend to the Director of Public Works as the local administrative officer that this Article or any provision included within this Chapter be amended or modified;
- (b) To establish, modify, or amend procedural rules governing hearings, orders, issuance of permits, and all other matters not specifically requiring a hearing, provided that such rules do not conflict with applicable State or Federal law or the City Code of Ordinances;
- (c) To establish a schedule of the amount of civil penalty that can be assessed for certain specific violations or categories of violations in accordance with T.C.A. § 69-3-125(a)(3);
- (d) To hold meetings and such special meetings as the Hearing Authority may find necessary;
- (e) To hold hearings upon appeals from orders or actions of the Director of Public Works as the local administrative officer in accordance with Tennessee Code Annotated § 69-3-124;
- (f) To hold hearings related to the issuance, reissuance, suspension, revocation, or modification of an SIU Discharge Permit or Other User Permit and issue appropriate orders related thereto;
- (g) To hold such other hearings related to any aspect or matter in the administration of this Chapter and to make such determinations and issue such orders as may be necessary to effectuate the purpose of this Chapter;
- (h) To obtain assistance upon request from the Director of Public Works or his designee as the Hearing Authority might need;
- (i) In addition to any other power granted by this title, the Hearing Authority is granted the authority to review the assessment of a civil penalty against any person in the amount not to exceed the sum of ten thousand dollars (\$10,000) per day for each day of violation during which the act or omission continues or occurs in accordance with Tennessee Code Annotated § 69-3-125;
- (j) The decision of the Hearing Authority shall become final and binding on all parties unless appealed to the courts as provided in Section 33-176, which governs appeals.

Sec. 33-276. [Sec. 13-24-76] **Appeal.**

Pursuant to Tennessee Code Annotated § 69-3-124(b), an appeal may be taken from any final order or other final determination of the Hearing Authority by any party who is or may be adversely affected thereby, to the chancery court pursuant to the common writ of certiorari set out in Tennessee Code Annotated § 27-8-101, within sixty (60) days from the date such order or determination is made.

Sec. 33-277. [Sec. 13-24-77] **Quorum.**

A quorum of the Hearing Authority must be present at any regular or special meeting in order to conduct a hearing. Four (4) members of the authority shall constitute a quorum.

Sec. 33-278. [Sec. 13-24-78] **Members to Be Residents of the City.**

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

Sec. 33-279. [Sec. 13-24-79] **Members Oath.**

Each member of the Hearing Authority shall take an oath to faithfully perform the duties imposed upon him without fear or favor, and in full accordance with the constitution and laws of the State and the ordinances of the City.

Sec. 33-280. [Sec. 13-24-80] **Hearings.**

Any hearing or rehearing brought before the Hearing Authority shall be conducted in accordance with Tenn. Code Annotated Section 69-3-124.

Sec. 33-281. [Sec. 13-24-81] **Administrative Order/Emergency Order Procedures.**

(a) Complaint issued by Director or His Designee

- (1) Whenever the Director or his/her designee has reason to believe that a violation of any provision of the pretreatment program (including but not limited to a violation of the Sewer Use Ordinance, SIU Discharge Permit or Other User Permit) or orders of the Hearing Authority issued pursuant thereto has occurred, is occurring, or is about to occur, the Director or his/her designee may cause a written complaint to be served upon the alleged violator or violators.
- (2) The complaint should specify the provision or provisions of the pretreatment program (including but not limited to a violation of the Sewer Use Ordinance, SIU Discharge Permit or Other User Permit) or order alleged to be violated or about to be violated, the facts alleged to constitute a violation thereof, may order that necessary corrective action be taken within a reasonable time to be prescribed in such order, and shall inform the violators of the opportunity for a hearing before the Hearing Authority.
- (3) Any such order shall become final and not subject to review unless the Person or Persons named therein request by written petition a hearing before the Hearing Authority, no later than thirty (30)

days after the date such order is served; provided, however, that the Hearing Authority may review such final order on the same grounds upon which a court of the state may review default judgments.

(b) Emergency Circumstances

- (1) Whenever the Director or his/her designee finds that an emergency exists imperatively requiring immediate action to protect the public health, safety or welfare, the health of animals, fish or aquatic life, a public water supply, or the facilities of the POTW, the Director or his/her designee may, without prior notice, issue an order reciting the existence of such an emergency and requiring that such action be taken as the Director or his designee deems necessary to meet the emergency (*e.g.*, immediate termination of sewer service).
- (2) If the violator fails to respond, or is unable to respond, to the Director or his/her designee's order, the Director or his/her designee may take such emergency action, as he deems necessary, or contract with a qualified person or persons to carry out the emergency measures. The Director or his designee may assess the Person or Persons responsible for the emergency condition for actual costs incurred by the POTW and local agencies in meeting the emergency.
- (3) Any Person to whom an emergency order is issued shall comply with the emergency order immediately, but on petition to the Hearing Authority shall be afforded a hearing as soon as possible, but in no case shall such hearing be held later than three (3) days from the receipt of such petition by the Hearing Authority.

(c) Except as otherwise expressly provided, any notice, complaint, order, or other instrument issued by or under authority of this Division 4 may be served on any person affected thereby personally, by the Director or any person designated by him/her, or such service may be made in accordance with Tennessee statutes authorizing service of process in civil action. Proof of service shall be filed in the office of the Director.

(d) User compliance with the requirements of an Administrative Order or Emergency Order does not relieve the User of liability for any violations occurring before or after receipt of the Order. Failure of a User to comply with any condition or requirement set forth in an Administrative Order or Emergency Order is a violation and is independently enforceable for each day of violation. An Administrative Order and Emergency Order have the full force of law and are enforceable in a court of law. Nothing in this section shall limit the authority of the Control Authority to take any action, including emergency actions or any other enforcement action, whether or not an Administrative Order or Emergency Order has been issued.

Sec. 33-282. [Sec. 13-24-82] **Violations and Penalties.**

(a) Violations

- (1) Any Person including, but not limited to, residential, carwash, restaurant, waste haulers, commercial facilities, or Industrial Users, who does any of the following acts or omissions shall be subject to a civil penalty of up to ten thousand dollars (\$10,000) per day for each day during which the act or omission continues or occurs:
 - (A) Violates an effluent standard or limitation imposed by the pretreatment program (including a violation of the Sewer Use Ordinance);
 - (B) Violates the terms or conditions of an SIU Discharge Permit or Other User Permit;

- (C) Fails to complete a filing requirement of the pretreatment program (including a violation of a filing requirement of the Sewer Use Ordinance);
 - (D) Fails to allow or perform an entry, inspection, and monitoring or reporting requirement of the pretreatment program (including the Sewer Use Ordinance);
 - (E) Fails to pay user or cost recovery charges imposed by the pretreatment program (including the Sewer Use Ordinance); or
 - (F) Violates a final determination or order of the Hearing Authority or the Director or his designee.
- (2) Any civil penalty may be assessed in the following manner:
- (A) The Director or his/her designee may issue an assessment against any Person or Industrial User responsible for the violation;
 - (B) Any Person or Industrial User against whom a civil penalty assessment has been issued may secure a review of such assessment by filing with the Director or his/her designee a written petition setting forth the grounds and reasons for his/her objections and asking for a hearing in the matter involved before the Hearing Authority and, if a petition for review of the assessment is not filed within thirty (30) days after the date the assessment 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 Director or his/her designee's assessment, the Director or his/her designee 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) In assessing the civil penalty, the Director or his/her designee may consider the following factors:
 - (i) Whether the civil penalty imposed will be a substantial economic deterrent to illegal activity;
 - (ii) Damages to the POTW, including compensation for the damage or destruction of the facilities of the POTW, and also including any penalties, costs, and attorneys' fees incurred by the Control Authority as the result of the illegal activity, as well as the expenses involved in enforcing this section and the costs involved in rectifying any damages;
 - (iii) Cause of the Discharge or violation;
 - (iv) The severity of the Discharge and its effect upon the facilities of the POTW and upon the quality and quantity of the receiving waters;
 - (v) Effectiveness of action taken by the violator to cease the violation;
 - (vi) The technical and economic reasonableness of reducing or eliminating the Discharge; and
 - (vii) The economic benefit gained by the violator.

(E) The Director or his/her designee may institute proceedings for assessment in the chancery court of the county in which all or part of the pollution or violation occurred, in the name of the Control Authority.

(3) The Division of Public Works may establish a schedule of the amount of civil penalty which can be assessed by the Director or his/her designee for certain specific violations or categories of violations.

(b) Imprisonment

In accordance with TCA 6-54-306, any violation of this Ordinance shall be subject to a maximum imprisonment under State law of thirty (30) days. A violator may be subject to a greater length of imprisonment under Federal and/or State law.

(c) State or Federal Enforcement

Notwithstanding anything to the contrary, violation of a pretreatment program requirements by a User may subject a User to an enforcement action by TDEC, EPA, or a citizen suit including but not limited to the following:

(1) In the case of civil enforcement under the federal Clean Water Act by EPA or a citizen suit, a User may be subject to, among other things, civil penalties of \$55,800 per day, per violation, and such additional amounts as provided for by the Civil Monetary Penalty Inflation Adjustments in 40 C.F.R. § 19.4.

(3) Any person who negligently or knowingly violates any requirement imposed in a pretreatment program including, but not limited to, SIU Discharge Permit or Other User Permit (*e.g.*, hauled Wastewater Permit or Food Establishment Wastewater Permit conditions) may be subject to criminal penalties under the Clean Water Act.

(d) Interest/Lien

Interest may accrue on unpaid balances. A lien against the User's property may be sought for unpaid charges, fines, and penalties.

Sec. 33-283. [Sec. 13-24-83] Damages Assessment.

(a) The Director or his/her designee may assess the liability of any polluter or violator for damages to the pretreatment agency resulting from any Person's or Industrial User's pollution or violation, failure, or neglect in complying with any permits or orders issued pursuant to the provisions of the pretreatment program or Sections 33-275, 33-281, and 33-282, herein.

(b) Any polluter or violator against whom a damage assessment has been issued may secure a review of such assessment by filing with the Hearing Authority an appeal asking for a hearing in the matter. If an appeal from such assessment is not made to the Hearing Authority by the polluter or violator within thirty (30) days of notification of such assessment, he/she shall be deemed to have consented to such assessment and it shall become final.

- (c) Damages may include any expenses incurred in investigating and enforcing the pretreatment program or Tennessee Code Annotated, Section 69-3-123 through 69-3-129 in removing, correcting, and terminating any pollution, and also compensation for any actual damages caused by the pollution or violation.
- (d) Whenever any assessment has become final because of a person's failure to appeal within the time provided, the Director may apply to the appropriate court for a judgment and seek execution on such judgment. The court, in such proceedings, shall treat the failure to appeal such assessment as a confession of judgment in the amount of the assessment.

Sec. 33-284. [Sec. 13-24-84] **Additional Enforcement Provisions.**

(a) Other Enforcement Actions

In addition to the enforcement remedies and responses otherwise identified in Sections 33-270 through 33-283 of this Ordinance, noncompliance by a User may subject a User to enforcement response(s) including, but not limited to, a phone call, e-mail, Notice of Violation, increased monitoring, Consent Order or Agreement, Show Cause Request, case referral to Federal or state government, or such other remedy as the Control Authority deems appropriate. These enforcement responses include:

- (1) Notice of Violation: The Control Authority may issue a Notice of Violation to a User when the Control Authority determines that a User violated, or continues to violate, any provision of this Ordinance, an SIU Discharge Permit, Other User Permit, enforcement Order issued hereunder, or any Pretreatment Standard or Pretreatment Requirement. The Notice of Violation may request that the User promptly respond to the Control Authority and to identify, among other things, an explanation of the cause(s) of the violation and a plan for the satisfactory correction and prevention of future violations. Submission of the response by a User does not relieve the User of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this section shall limit the authority of the Control Authority to take any action, including emergency actions or any other enforcement action, whether or not a Notice of Violation has been issued.
- (2) Increased Monitoring: The Control Authority, in response to User violation(s), may require the User to increase the sampling and monitoring of its Discharge or the Control Authority may undertake increased sampling and monitoring of the User's Discharge. If increased monitoring is undertaken by the Authority, the costs associated with such increased sampling and monitoring may be charged to the User.

The increase in a User's sampling and monitoring activities in response to violation(s) may be imposed upon the Industrial User by the Control Authority issuing a modification to the User's SIU Discharge Permit or Other User Permit, issuing an Administrative Order, or by issuing any other appropriate mechanism. An option the Control Authority, subject to its discretion, may include in an SIU Discharge Permit or Other User Permit is a permit condition which automatically provides for increased sampling upon User noncompliance.

- (3) Consent Order or Consent Agreement: The Control Authority may enter into a Consent Order or Consent Agreement when the Control Authority determines that a User violated, or continues to violate, any provision of this Ordinance, a SIU Discharge Permit, Other User Permit or enforcement Order issued hereunder, or any Pretreatment Standard or Pretreatment Requirement. A Consent Order or Consent Agreement may provide for monetary penalties for past violation(s), stipulated monetary penalties for future violation(s), an enforceable compliance schedule setting forth specific

action(s) to be taken by the User to correct noncompliance within a specified time period, and/or such other conditions as the Control Authority deems appropriate.

Failure of a User to comply with any condition or requirement set forth in a Consent Order or Consent Agreement is a violation of this Ordinance and each day of a violation is independently enforceable. A Consent Order and Consent Agreement have the full force of law and are enforceable in a court of law. A Consent Order is subject to judicial approval as a precondition to its effectiveness whereas a Consent Agreement is not subject to such judicial approval prior to its adoption.

- (4) Show Cause Request: The Control Authority may issue a Show Cause Request to a User when the Control Authority determines that a User violated, or continues to violate, any provision of this Ordinance, a SIU Discharge Permit, Other User Permit, enforcement Order issued hereunder, or any Pretreatment Standard or Pretreatment Requirement. A Show Cause Request may provide for the User to appear before the Control Authority (at a Show Cause Meeting) and show cause as to why a proposed or subsequent enforcement action should not be taken. Nothing in this section shall limit the authority of the Control Authority to take any action, including emergency actions or any other enforcement action, whether or not a Show Cause Request has been issued or a Show Cause Meeting has been held.
- (5) Referral to State or Federal Government: The Control Authority may refer a matter to a Federal and/or state government for enforcement by such governmental entity when the Control Authority determines that a User violated, or continues to violate, any provision of this Ordinance, an SIU Discharge Permit, or enforcement Order issued hereunder, or any Pretreatment Standard or Pretreatment Requirement. The Control Authority may assist the Federal and/or state government in a Federal or state-initiated enforcement action against a User.

(b) City Enforcement Options Not Limited

Nothing in this Ordinance, the Control Authority's Enforcement Response Plan, or any other provision of Memphis' approved pretreatment program shall be intended to limit the enforcement discretion of the Control Authority as otherwise provided for by law.

(c) User Liability for Causing City Violations

A User shall be liable for any penalty imposed upon the City (whether the penalty is a result of a judicial or administrative trial or hearing or the settlement of a judicial or administrative penalty action) where the City's violation was caused by the User, either alone or in conjunction with the Discharge(s) from other source(s). Where the User has violated a Local Limit under Section 33-244(c) and a violation of the NPDES Permit applicable to the City's POTW subsequently occurred for the same Pollutant or associated Pollutant(s), a rebuttable presumption is deemed to exist that the permittee caused the violation of the NPDES Permit. The User shall have the burden of proof to demonstrate that its Discharge did not cause, in whole or part, the City to violate its NPDES permit limitation.

(d) Exhaustion of Administrative Remedies and Appeals

Any issue that was decided by the Hearing Authority in a prior hearing or could have been decided by the Hearing Authority had the Permittee or Defendant, as applicable, appealed the matter, shall be binding upon such Permittee or Defendant in subsequent hearing(s) unless there is a change in law (*e.g.*, a court overturned the Hearing Authority's decision or the underlying Ordinance standard has been amended) or a significant change in the underlying facts.

(e) Need to Halt or Reduce Activity not a Defense

It shall not be a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. See Section 33-246(e), requiring the reduction in production as necessary to achieve compliance.

(f) Duty to Mitigate.

The User shall take all reasonable steps to minimize or prevent any Discharge which has a reasonable likelihood of adversely affecting human health or the environment or any action which has the reasonable likelihood of obstructing flow in the sewer collection system.

Sec. 33-285. [Sec. 13-24-85] **Special Fund.**

All damages and/or penalties assessed and collected under Section 33-282 and/or 33-283 shall be placed in a special fund by the pretreatment agency and allocated and appropriated to the City of Memphis for the administration of its pretreatment program.

Sec. 33-286. [Sec. 13-24-86] **Public Notification and Significant Noncompliance.**

(a) Publication of SNC

As provided for by 40 C.F.R. § 403.8, the Control Authority may publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the City, of Industrial Users, which at any time during the year were in significant noncompliance with applicable Pretreatment Requirements. For purposes of this provision, a significant Industrial User (or any Industrial User which violates subparts (3), (4), or (8) of this part) is in significant noncompliance if its violation meets one or more of the following criteria:

- (1) Chronic violations of Wastewater Discharge limits, defined here as those in which sixty-six (66) percent or more of all the measurements for each Pollutant taken during a six (6) month period exceed (by any magnitude) a numeric Pretreatment Standard or Pretreatment Requirement, including instantaneous limits, for the same Pollutant parameter;
- (2) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three (33) percent or more of all the measurements for each Pollutant parameter taken during a six-month period equal or exceed the product of the numeric Pretreatment Standard or Pretreatment Requirement, including instantaneous limits, multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other Pollutants except pH);
- (3) Any other violation of a Pretreatment Standard or Pretreatment Requirement (Daily Maximum, long term average, instantaneous limit or narrative standard) that the Control Authority determines has caused, alone, or in combination with other Discharges, Interference or Pass-Through (including endangering the health of POTW personnel or general public);
- (4) Any Discharge of a Pollutant that has caused imminent endangerment to human health, welfare, or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or reduce such a Discharge;

- (5) Failure to meet, within ninety (90) days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;
- (6) Failure to provide, within forty-five (45) days after the due date, Federal or State required reports such as baseline monitoring reports, ninety (90)-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules (however an Industrial User is not in Significant Noncompliance if the late report only pertains to the reporting of a Pollutant value for surcharge purposes, not for compliance purposes);
- (7) Failure to accurately report noncompliance;
- (8) Any other violation or group of violations, which may include a violation of Best Management Practices, the Control Authority determines will adversely affect the operation or implementation of the Control Authority's pretreatment program.

(b) Publication of non-SNC Violations

Notwithstanding any provision to the contrary, the Control Authority may publish in a newspaper of general circulation any other noncompliance that does not meet the criteria or is not addressed in paragraph 33-286(a) above (*e.g.*, exceedance of the TRC by a non-Significant Industrial User).

Secs. 33-287--33-289. [Sec. 13-24-87 -- 89] **Reserved.**

DIVISION 5. REVIEW AND OVERSIGHT OF OUTLYING JURISDICTIONAL PROGRAMS WITH PERMITTED INDUSTRIAL USER AND/OR OTHER DISCHARGES TO MEMPHIS STP(S)

Sec. 33-290. [Sec. 13-24-90] Purpose of This Division

- (a) Inasmuch as Memphis is the NPDES permittee that owns and operates WWTPs that receive wastewater, not only from discharges within the City but discharges from facilities located outside of the City's corporate limits, this Division of Article IV is drafted to provide a mechanism to assure that (i) Industrial User permits for discharge to Memphis issued by Outlying Jurisdictions impose requirements at least as stringent as that required by federal law, Tennessee law, and as set forth in this Article and (ii) Outlying Jurisdictions do not approve any discharges that would enter Memphis' sewers or WWTPs (*e.g.*, Discharges originating from outside the corporate limits of the Outlying Jurisdiction) without Memphis' approval.
- (b) The provisions of this Division are modeled after the Clean Water Act ("CWA") §§ 401 and 402(b) provisions and implementing regulations (*see, e.g.*, 40 C.F.R. §§ 122.4(a), 123.44 and 124.53) wherein EPA or an approved NPDES state review, comment upon, and potentially object to a draft permit proposed to be issued by the other governmental entity.

Sec. 33-291. [Sec. 13-24-91] Prohibitions Applicable to Outlying Jurisdiction Issuance of Industrial User Permits for Discharge to Memphis

- (a) No permit may be issued by an Outlying Jurisdiction to an Industrial User to Discharge to a Memphis WWTP when:
 - (1) The conditions of the Industrial User permit do not provide for compliance with the applicable requirements of CWA and regulations, Tennessee pretreatment Rules, and Article IV of this Ordinance of Memphis;
 - (2) The Outlying Jurisdiction has failed to provide Memphis an opportunity to review and object to an Industrial User permit under section 33-292;
 - (3) The Outlying Jurisdiction has failed to provide Memphis the requested information under section 33-292(b); and/or
 - (4) Memphis has objected to issuance of the permit under § 33-292 and (i) the permit has not been changed to resolve the objection(s) or (ii) Memphis and the Outlying Jurisdiction have not otherwise resolved the issue(s).
- (b) No User shall introduce Sewage or Wastewater to the Memphis POTW, including to the sewers, pipes, and other conveyances that convey wastewater to the Memphis WWTP if:
 - (1) A permit cannot be issued to that User under section 33-291(a), above;
 - (2) The Industrial User is an existing source and has been identified as a significant Industrial User by the Outlying Jurisdiction and/or Memphis and a permit has not been issued to such Industrial User within 180 days of being identified as a Significant Industrial User;
 - (3) A permit has not yet been issued to a new source unless the new source facility is designated as a Non-Significant Categorical Industrial User; or
 - (4) The User is located in an Outlying Jurisdiction which does not have a written agreement with Memphis allowing the discharge of its Users to the Memphis POTW.
- (c) Unless Memphis agrees in writing, in no event shall an Outlying Jurisdiction allow any person (including any Industrial User) located outside of its jurisdictional boundaries to introduce sewage or wastewater to that Outlying Jurisdiction's sewer system such that it would discharge to the Memphis POTW, including to the sewers, pipes, and other conveyances that convey wastewater to the Memphis WWTP.
- (d) Issuance of a permit by an Outlying Jurisdiction or other authorization of the Outlying Jurisdiction for a User to discharge in contravention of the requirements set forth in this Division, once approved as part of Memphis' pretreatment program, shall be deemed a violation by the Outlying Jurisdiction of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1251 *et seq.*, Tennessee Water Quality Control Act ("TWQCA"), T.C.A. §§ 68-3-101 *et seq.*, and Article IV of this Ordinance.
- (e) The introduction of sewage or wastewater to the Memphis POTW, including sewers, pipes, and other conveyances that convey wastewater to the Memphis WWTP, in contravention of the requirements set forth in this Division, once approved as part of Memphis' pretreatment program, shall be deemed a violation by an Industrial User in an Outlying Jurisdiction of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1251 *et seq.*, Tennessee Water Quality Control Act ("TWQCA"), T.C.A. §§ 68-3-101 *et seq.*, and Article IV of this Ordinance.

Sec. 33-292. [Sec. 13-24-92] Memphis Review of and Objections to Outlying Jurisdiction Permits.

- (a) Before issuing, reissuing, or modifying an Industrial User permit for a Discharge to the Memphis WWTP, an Outlying Jurisdiction shall provide a draft of the permit to Memphis and provide Memphis a minimum of thirty (30) days to review and comment upon the draft permit. Memphis may extend the time to comment on the draft permit for an additional thirty (30) day period for an existing permitted facility, and sixty (60) day period for a newly permitted facility, upon providing the Outlying Jurisdiction written notice of such extension.
- (b) If Memphis needs more information (*e.g.*, Industrial User permit application, Outlying Jurisdiction rationale for the permit conditions) regarding its evaluation of the proposed Industrial User permit, Memphis may request that the Outlying Jurisdiction provide Memphis the requested information. The time periods under section 33-292(a), above, are automatically extended during the pendency of the request until Memphis receives all the requested information.
- (c) Memphis may object to the issuance, reissuance, or modification of an Industrial User permit by an Outlying Jurisdiction. Such objection may identify permit conditions in the draft permit that must be changed (*e.g.*, modified or deleted) or additional conditions that must be added to the permit.
 - (1) In objecting to the Industrial User permit, Memphis shall provide a statement of the reason(s) for the objection(s) and the actions that must be taken by the Outlying Jurisdiction to eliminate the objection. These changes may be based upon the specific wording of a federal, Tennessee, or Memphis requirement or Memphis' general approach for implementing requirements for Industrial Users.
 - (2) An objection may be based upon the objective that Industrial Users in Outlying Jurisdictions should not be subject to more lenient requirements than Industrial Users located in Memphis.
 - (3) Objections may address any provisions of the proposed permit as well as the absence of permit conditions, including those relating to effluent limitations, the maintenance of records, reporting, monitoring, sampling, enforcement, or assuring that Memphis receives notice and information from the Industrial User (*e.g.*, slug reports, permit applications, etc.).
 - (4) Unless Memphis agrees to withdraw its objections, if the Outlying Jurisdiction does not resubmit a permit revised to resolve an objection to Memphis' satisfaction, the permit shall not be issued by the Outlying Jurisdiction to the Industrial User.
- (d) Where a Memphis objection is not resolved:
 - (1) If an unresolved Memphis objection involves a proposed modification to the Industrial User permit, then the permittee can continue to discharge to Memphis under the preexisting unmodified Industrial User permit for the remaining term of the permit unless precluded by subsequent legal requirements.
 - (2) If an unresolved Memphis objection involves a new Industrial User permit, the Industrial User may not discharge to Memphis unless it obtains a valid Industrial User permit. The Industrial User may request that Memphis issue the permit under section 33.293.
 - (3) If an unresolved Memphis objection involves the reissuance of an Industrial User permit, the Industrial User may continue to discharge to Memphis under the preexisting permit, subject to the limitation in section 33-294(b).
- (e) In addition, Memphis may provide recommendations with respect to the proposed permit issuance, reissuance, or amendment. Failure of the Outlying Jurisdiction to follow a recommendation does not trigger the requirements of section 33-291(a).

- (f) Notwithstanding anything to the contrary, nothing herein shall be deemed to require Memphis to review Industrial User permits issued by Outlying Jurisdictions.

Sec. 33-293. [Sec. 13-24-93] Memphis Issuance of Industrial User Permits for Dischargers in Outlying Jurisdiction

- (a) Where an unresolved Memphis objection exists, the Industrial User may request that Memphis issue an Industrial User permit authorizing the discharge to the Memphis sewers and WWTP. Memphis may condition its willingness to issue the permit to an Industrial User located in an Outlying Jurisdiction, on the Industrial User entering into a separate written agreement with Memphis wherein the Industrial User agrees to be subject to such conditions as Memphis deems appropriate, including, but not limited to, being subject to:
 - (1) Memphis' pretreatment Ordinance,
 - (2) Announced and unannounced inspections and sampling by Memphis, and/or
 - (3) Any and all enforcement actions as deemed appropriate by Memphis, including agreeing to be subject to administrative actions before Memphis and judicial actions in Tennessee State Courts, subject to the civil penalty amounts and damages as provided in Tennessee law and/or Memphis' Ordinance. Notwithstanding this provision, the Industrial User does not waive any arguments as to whether it actually committed the alleged violation.
- (b) A permit issued by Memphis to an Industrial User in an Outlying Jurisdiction may be appealed to the Memphis Hearing Authority.
- (c) Wherein Memphis issues a permit to an Industrial User in an Outlying Jurisdiction, nothing herein shall be deemed to waive federal, State, and local legal obligations of the Industrial User that apply in the Outlying Jurisdiction.

Sec. 33-294. [Sec. 13-24-94] Miscellaneous Provisions Regarding Outlying Jurisdictions Issuance of Permits

- (a) For the purposes of this Division, an "Outlying Jurisdiction" means a city, town, county, district, association, or other public body created by or pursuant to state law in which an Industrial User is located outside the Memphis City limits that discharges sewage and/or wastewater to a sewer system located in that jurisdiction, wherein the sewage and/or wastewater empties into the Memphis sewage system for eventual treatment at the Memphis WWTP(s). An "Outlying Jurisdiction" also includes a state that is approved pursuant to 40 C.F.R. § 403.10(e), that issues permits to Industrial User(s) for discharging sewage and/or wastewater to a sewer system located in that state, wherein the sewage and/or wastewater empties into the Memphis sewage system for eventual treatment at the Memphis WWTP(s). The City of Memphis is not an "Outlying Jurisdiction."
- (b) Where an Industrial User in an Outlying Jurisdiction has submitted a timely and complete permit renewal application or request for permit reissuance, in no event shall the existing permit, if not reissued by the expiration date, be continued for a period longer than six (6) months.

Secs. 33-295--33-299. [Sec. 13-24-95 -- 99] **Reserved.**

DIVISION 6. MISCELLANEOUS PROVISIONS

Sec. 33-300. [Sec. 13-24-100] **Reservation of Rights.**

Nothing contained in Articles I, II, III, IV, V or otherwise contained in a City Ordinance shall be construed to interfere with any additional requirements that may be imposed by the Control Authority subject to its sole discretion. Notwithstanding any other pretreatment program provision to the contrary, nothing in this Ordinance, any other City Ordinance, or in the City's pretreatment program shall be deemed a legally binding commitment under the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, the Tennessee Water Quality Control Act of 1977, T.C.A. §§ 69-3-101 *et seq.*, and applicable regulations (*e.g.*, 40 C.F.R. Part 403, Rule 1400-40-14) for the City to undertake pretreatment implementation or enforcement activities beyond the minimum otherwise required by these Federal/state laws and regulations. Nevertheless, the City maintains its discretionary authority to undertake pretreatment activities beyond the minimum required.

Sec. 33-301. [Sec. 13-24-101] **Special Agreements or Arrangements.**

Nothing contained in this Ordinance shall be construed as prohibiting any special agreement or arrangement between the Control Authority and any Person, or for the Control Authority to otherwise waive requirements herein, when conditions and circumstances making such special agreement(s), arrangement(s), or waiver(s) advisable and/or necessary, in the opinion of the Control Authority, are present. In no event shall special agreement(s), arrangement(s), or waiver(s) permit any Industrial User to violate applicable minimum Federal or State pretreatment requirements (*e.g.*, National Categorical Pretreatment Standards) as set forth in 40 C.F.R. Part 403 and Rule 1400-40-14.

Secs. 33-302--33-309. [Sec. 13-24-102 -- 109] **Reserved.**

SECTION 6. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that the provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases, or parts is held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

SECTION 7. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that this Ordinance shall take effect from and after the date it shall have been passed by the Council, signed by the Chairman of the Council, certified and delivered to the Office of Mayor in writing by the comptroller and become effective as otherwise provided by law.

Frank Colvett, Jr., Chairman
Memphis City Council

ATTEST:

Comptroller

SUBSTITUTE ORDINANCE NO. _____
**A SUBSTITUTE ORDINANCE TO AMEND THE CITY OF MEMPHIS CODE
OF ORDINANCES CHAPTER 16 “HEALTH AND SANITATION”, TO
PROTECT PUBLIC HEALTH AND THE ENVIRONMENT, PRESERVE THE
MEMPHIS SAND AQUIFER, AND PROMOTE ENVIRONMENTAL JUSTICE**

WHEREAS, the City of Memphis relies on the groundwater of the Memphis Sand Aquifer for its drinking water supply and, according to the United States Geological Survey (“USGS”), Memphis and Shelby County (population more than 950,000) comprise one of the largest metropolitan areas in the world that relies exclusively on groundwater for its municipal water supply; however, despite the importance of ensuring that Memphis’ drinking water resources remain plentiful and uncontaminated, the existing system of federal, state, and local review for many development projects does not adequately consider risks to groundwater in many situations.

WHEREAS, the potential risks to groundwater resulting from improper siting and routing of underground hazardous liquids transportation infrastructure do not receive sufficient scrutiny at any level of government in Tennessee.

WHEREAS, recognizing the important and traditional role of city government in protecting the quality of the drinking water of its citizens, the Memphis City Council has determined a need to ensure increased oversight of structures that may impact the City’s drinking water supply, and particularly the Memphis Sand Aquifer or Wellhead Protection Areas.

WHEREAS, acknowledging that patterns of racial, ethnic, and economic inequality in the United States have resulted in the inequitable geographic concentration of potential environmental hazards, the Memphis City Council has determined that this increased level of oversight must also ensure that new development in the City does not cause adverse impacts on the minority populations, low-income populations, and neighborhoods historically burdened by environmental pollution.

WHEREAS, experience has shown that companies handling hazardous liquids are not always able to fully remediate environmental damage caused by accidents, leaving local governments responsible for expending resources to complete the remediation, such that it is in the fiscal stewardship interest of Memphis to regulate the transport of hazardous liquids.

WHEREAS, because the long-term success of the City of Memphis depends on thoughtful and deliberate planning, the City must carefully consider where underground infrastructure is sited to ensure that future growth and development is not unduly constrained.

WHEREAS, the Federal Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.*, requires states to protect public water supplies, and pursuant to the Act the United States Environmental Protection Agency has authorized the Tennessee Department of Environment and Conservation (“TDEC”) to enforce the Act.

WHEREAS, TDEC, pursuant to the Tennessee Safe Drinking Water Act of 1983, T.C.A. §§ 68-221-701 *et seq.*, promulgated regulations, including Tenn. Comp. R. & Regs. 0400-45-01-.34, and those state regulations identify the important role of local governments in protecting public drinking water, including through the enactment of ordinances to implement or support the Wellhead Protection Plans developed by public water system operators.

WHEREAS, TDEC has stated that Tennessee does not have an Executive Order or specific language within a rule or statute that requires or provides TDEC the explicit authority to consider environmental justice within its environmental regulatory program actions.

WHEREAS, the locating of new underground hazardous liquids transportation infrastructure in minority, low-income neighborhood would adversely affect property values disproportionately in these neighborhoods.

WHEREAS, various infrastructure has been located above the Memphis Sand Aquifer and already poses a significant threat to the viability of the City’s drinking water supply and wherein the routing and siting of further underground infrastructure that poses significant additional risks should be avoided.

WHEREAS, USGS determined that there is broad agreement in the scientific community that a continuing concern exists for a major destructive earthquake in the New Madrid seismic zone, that structures in Memphis are vulnerable and at risk from severe ground shaking, and that Memphis would be severely impacted by such earthquakes.

WHEREAS, the City deems it necessary for all the reasons above to assess the associated risks inherent in the locating and routing of new underground hazardous liquids transportation infrastructure in Memphis.

WHEREAS, Memphis City Charter, Section 409, grants the City power to pass all laws to preserve the health of the City.

WHEREAS, Memphis City Charter, Section 405, grants the City power to regulate the keeping and storage of combustible articles.

WHEREAS, Memphis City Charter, Section 369, grants the City power over all affairs in the City in which the general welfare of the inhabitants is interested.

WHEREAS, Memphis City Charter, Section 834, grants the City power to provide rules and regulations for the use, handling, storage and sale of inflammable liquids and the products thereof.

WHEREAS, the Memphis City Council hereby adopts the following requirements designed to preserve the drinking water supply of the City of Memphis, and particularly the Memphis Sand Aquifer; to ensure that future potentially hazardous development does not further inequitably concentrate environmental pollutants in already burdened communities; and to protect the health and well-being of the people of Memphis.

NOW, THEREFORE BE IT ORDAINED by the Memphis City Council that:

Section 1, Chapter 16, Article XIII shall be added and entitled “Aquifer Pollution Control”, as follows:

I. Definitions

For the purposes of this section:

1. **Development:** Any man-made change defined as the construction of buildings or other structures, mining, dredging, paving, filling, grading or site clearing, and grubbing in amounts greater than ten cubic yards on any lot or excavation.
2. **Groundwater:** Any waters of the State as defined in T.C.A. § 69-3-103 (Tennessee Water Quality Control Act), occurring below the surface of the ground not contained by artificial barriers.
3. **Hazardous liquids:** Any of the following materials, when in liquid form: anhydrous ammonia, crude oil, non-fuel petroleum products (including methanol, ethylene, propylene, butadiene, benzene, toluene, and xylene and any other flammable, toxic, or corrosive products obtained from distilling and processing crude oil or other hydrocarbon compounds), non-petroleum biofuels (such as biodiesel, kerosene, and ethanol), petroleum fuel products (including diesel fuel, gasoline, jet fuel, and any other flammable, toxic, or corrosive products obtained from distilling and processing crude oil or other hydrocarbon compounds), sodium hydroxide (caustic soda solutions), and sulfuric acid (including spent sulfuric acid). Natural gas or mixtures of natural and artificial gas are not hazardous liquids for the purpose of this ordinance, even when in liquid form.

4. **Underground hazardous liquids transportation infrastructure:** Any structure or combination of structures intended to move hazardous liquids from one location to another, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground. Underground hazardous liquids transportation infrastructure includes the following structures, so long as they are used for or intended for use for the transportation of hazardous liquids: pipes and pipelines (as well as associated valves and appurtenances), pumping units and any associated assemblies, and metering and delivery stations.
5. **Wellhead Protection Area:** The surface and subsurface area surrounding a water well, well field or spring supplying a public water system. The Wellhead Protection Area contains both the Wellhead Protection Zone (Zone 1) and the Wellhead Management Zone (Zone 2), as described in Tenn. Comp. R. & Regs. 0400-45-01-.34.

II. Underground Infrastructure Advisory Board

1. There is created an Underground Infrastructure Advisory Board (“Board”), whose purpose is to review particular development projects within the City of Memphis, as described in this Ordinance, and submit advisory opinions to the Memphis City Council (“Council”) regarding those projects.
2. The Board shall consist of one representative from the Memphis Division of Engineering, one representative from the Memphis Division of Public Works, one representative from the Memphis and Shelby County Division of Planning and Development (as appointed by the Director of that Division), one representative from Memphis Light, Gas and Water (“MLGW”), one representative from the Council, two representatives of the Greater Memphis Chamber of Commerce, one representative of the University of Memphis, and one citizen representative with a proven track record of working to promote environmental justice in the Memphis community.
3. The members of the Board shall be selected as follows:
 - a. the Mayor of the City of Memphis will appoint the representative of the Memphis Division of Engineering and the representative of the Memphis Division of Public Works;
 - b. the Director of the Memphis and Shelby County Division of Planning and Development will appoint the representative of that division;
 - c. the President of MLGW will appoint the representative of that entity;
 - d. the chairperson of the Council will appoint the representative of that body;

- e. the Mayor of the City of Memphis will appoint two representatives of the Greater Memphis Chamber of Commerce, which representatives shall be confirmed by the Council;
 - f. the Mayor of the City of Memphis will appoint a representative of the University of Memphis, which representative shall be confirmed by the Council; and
 - g. the Mayor of the City of Memphis will appoint a citizen member with a proven track record of working to promote environmental justice in the Memphis community, which representative shall be confirmed by the Council.
4. The Board shall meet as needed in order to review applications for Underground Infrastructure Permits, as described in Sections III and IV below, and provide advisory opinions to the Council regarding those permits.

III. Development of Underground Hazardous Liquids Transportation Infrastructure Prohibited

New development (including construction or installation of new structures) of underground hazardous liquids transportation infrastructure is prohibited throughout the City of Memphis, unless in compliance with an Underground Infrastructure Permit issued by the Council. This prohibition will not apply to private or public waste water, septage, or sewerage infrastructure.

IV. Underground Infrastructure Permit Applications

1. Any person seeking Council approval to construct, install, expand, or otherwise develop underground hazardous liquids transportation infrastructure within the City of Memphis shall first submit to the Board an application for an Underground Infrastructure Permit. The application shall include:
 - a. a description of the planned development, including a description of the type and volume of hazardous liquids to be transported;
 - b. documentation of all other required local, state, and federal permits necessary for the development;
 - c. written confirmation from MLGW confirming that the planned development does not pass within 1,000 feet of all Wellhead Protection Areas and all existing public water supply wells as reflected in MLGW's Wellhead Protection Plan;
 - d. a site plan that shows:
 - i. the area of the development that is in the City of Memphis; and
 - ii. the location of all known existing private water supply wells within 1,000 feet of the project boundary, to be determined by the applicant after reasonable investigation;

- e. an analysis of the potential for the development to cause disproportionate adverse impacts on minority populations, low-income populations, and neighborhoods historically burdened by environmental pollution;
 - f. an analysis of any potential adverse environmental, groundwater, and drinking water impacts resulting from the development;
 - g. an analysis of the estimated short-term and long-term remediation costs associated with any such potential adverse impacts, and the long-term fiscal viability of the applicant to pay such remediation costs, including the extent to which the applicant has cash reserves or insurance available to pay such remediation costs;
 - h. a copy of all certificates of insurance for all insurance policies that may provide coverage for remediation costs or liability claims arising from any leak, spill or discharge of hazardous liquids;
 - i. a detailed description of the abandonment or closure plan for the underground hazardous liquids transportation infrastructure, including how any structures would be removed upon abandonment or otherwise safely abandoned, what conditions would constitute such abandonment, how the City would be notified in case of abandonment, an analysis of the estimated costs of removal, and the long-term fiscal viability of the applicant to pay such costs; and
 - j. any other additional information as may be requested by the Board regarding the proposed development, its potential impacts on the environment, drinking water, or the public interest, hydrogeologic information, and monitoring and mitigation measures.
2. After receiving any such application, the Board shall ensure that the application is complete, and request further information from the applicant as may be required. The Board shall also seek comments on the application from the following:
 - a. MLGW;
 - b. Memphis and Shelby County Land Use and Development Services; and
 - c. the Shelby County Groundwater Quality Control Board.
3. The Board shall solicit and collect public comments regarding the application. The Board shall:
 - a. give public notice of the application, which must include access to the application materials and a means for the public to submit comments to the Board; and
 - b. accept public comments for at least 30 days from the public notice of the application.
4. The Board may request that the Council allocate reasonable funding as required for the Board to process and analyze a particular application.

5. The Board shall hold a public hearing on the application, allowing a presentation by the applicant and comments from members of the public. At least 30 days prior to holding the public hearing, the Board must give notice to the applicant and members of the public regarding the time and date of the hearing, as well as providing public access to the application materials.
6. Following the public hearing, the Board may request such additional information from the applicant or others as the Board deems appropriate; otherwise no new information shall be submitted to the Board by the public or the applicant. If the Board deems it appropriate, the Board may hold a subsequent public hearing based upon the nature of the information submitted to the Board after a public hearing.
7. After full consideration of all application materials and all comments received, and any additional information that the Board may, in its discretion, request, the Board will vote to determine their recommendation. A majority vote of the members present shall be required for a passage of any matter before the Board.
8. The Board shall select one or two appointees to present their recommendation to the Memphis City Council at the next scheduled Planning and Zoning Committee Meeting following a majority vote.
9. The Board shall only issue an advisory opinion recommending that the Memphis City Council approve the application if the Board finds that approval would be in the public interest. Such a finding must include a determination that:
 - a. the development will not go through or pass within 1,000 feet of any Wellhead Protection Area, as delineated in the most recent Wellhead Protection Plan finalized by MLGW;
 - b. MLGW has no objections to the development;
 - c. the project poses no unacceptable risk of adverse environmental, groundwater, or drinking water impacts resulting from the proposed development, or any future land uses associated with the development;
 - d. the application presents no significant risk that the City will be responsible for expending resources on environmental remediation should an unanticipated accident or event cause such adverse impacts, or should the infrastructure be abandoned; and
 - e. the development will cause no disproportionate adverse impacts on minority populations, low-income populations, or neighborhoods historically burdened by environmental pollution.

10. Board's advisory opinion shall be placed on the agenda of the next Council Full Meeting following the Board's submission of its advisory opinion to the Planning and Zoning Committee.
11. The Council may take up the Board's advisory opinion and recommendation at whenever the Council so chooses. Upon taking up the Board's advisory opinion, the Council may vote on whether to approve or reject the Underground Infrastructure Permit application, or to hold the vote until a later Council Meeting. Any approval of the permit application must be accompanied by the Council's determination, based on a majority vote of present Council Members, that the project is in the public interest.
12. Any person who may be aggrieved by the Council's decision regarding the permit application may have the decision reviewed by the courts, according to the general procedures for the common law writ of certiorari specified at Tenn. Code Ann. §§ 27-9-101 *et seq.* Any person seeking such review shall, within sixty (60) days of the Council's decision, file a petition of certiorari in the Circuit Court of Shelby County, the Chancery Court of Shelby County, or any other court with jurisdiction.

V. Existing Development

1. Development of underground hazardous liquids transportation infrastructure that would be prohibited without an Underground Infrastructure Permit, which has completed construction and is in operation at the time this ordinance becomes effective may continue operation without applying for an Underground Infrastructure Permit.
2. The owner or operator of such existing underground hazardous liquids transportation infrastructure must apply for and receive an Underground Infrastructure Permit prior to initiating any addition to or expansion of such infrastructure, unless covered by one of the exceptions to permit requirements listed in Part VI of this ordinance.

VI. Exceptions to Permit Requirements

An Underground Infrastructure Permit is not required for:

1. maintenance, repairs, and replacement of existing underground hazardous liquids transportation infrastructure, so long as in compliance with all other local, state, and federal authority, and so long as the repairs and replacement do not represent a significant increase in capacity, expansion of footprint, or change in operations;

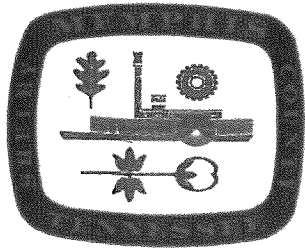
2. development of underground hazardous liquids transportation infrastructure to be located within the property boundaries of an oil refinery, oil terminal, associated docks or processing facilities, or a retail service station and providing service to that oil refinery, oil terminal, associated docks or processing facilities, or retail service station; or
3. development (including construction, installation, maintenance, repairs, replacement, addition, and/or expansion) of underground hazardous liquids transportation infrastructure that directly provides, or intends to provide, fuel services to airports and other terminals engaged in the transportation of passengers or cargo.

VII. Compliance with Other Authority

1. All activities and development being considered by the Board and the Council under this ordinance shall also comply with all other relevant local ordinances and regulations, as well as all relevant state and federal laws and regulations.
2. Any approval of an application for an Underground Infrastructure Permit by the Council shall not be taken as a finding of public purpose, public benefit, or public use in the context of any other legal or administrative proceedings, including eminent domain proceedings, and conveys no additional rights or privileges to applicant beyond those specifically enumerated in the Underground Infrastructure Permit.
3. To the extent that the development regulated by this ordinance is also regulated by any other local, state, or federal regulation, and simultaneous compliance with both this ordinance and those other regulations is not possible, the more restrictive or protective of the two shall apply.

VIII. Savings Clause

Should any section or provision of this ordinance be declared invalid, such decision shall not affect the validity of the ordinance as a whole, or any other part thereof.



Memphis City Council Summary Sheet

1. Description of the Item (Resolution, Ordinance, etc.)

A resolution to accept and appropriate grant funds from the USDOT-Pipeline and Hazardous Materials Safety Administration in the amount of One Hundred Twenty Thousand Dollars (\$120,000.00) with a City match of 20% in the amount of Thirty Thousand Dollars (\$30,000.00) for a large-scale pipeline training program.

2. Initiating Party (e.g. Public Works, at request of City Council, etc.)

The Division of Fire Services is awarded this grant and serves as the fiscal agent for the award.

3. State whether this is a change to an existing ordinance or resolution, if applicable.

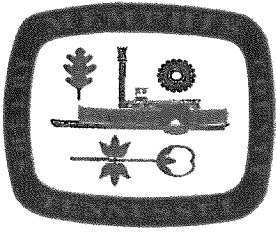
This item does not change an existing ordinance or resolution.

4. State whether this requires a new contract, or amends an existing contract, if applicable.

This is a new grant award pending Council approval.

5. State whether this requires an expenditure of funds/requires a budget amendment.

Acceptance will require an amendment to the FY22 Misc Grant Budget to appropriate funds in the amount of \$120,000.00 and requires a City match of 20% in the amount of \$30,000.00.



A resolution to accept and appropriate Interagency Hazardous Materials Public Sector Training and Planning Grant Program funds from USDOT-Pipeline and Hazardous Materials Safety Administration in the amount of One Hundred Twenty Thousand Dollars (\$120,000.00) to be used for a large-scale pipeline training prop.

WHEREAS, The City of Memphis Division of Fire Services has been awarded grant funds in the amount of One Hundred Twenty Thousand Dollars (\$120,000.00) from the USDOT-Pipeline and Hazardous Materials Safety Administration for a large-scale pipeline training prop with a City match of 20% in the amount of Thirty Thousand Dollars (\$30,000.00); and

WHEREAS, These funds will be used for the construction of a large-scale pipeline training prop, to provide pipeline incident response training; and

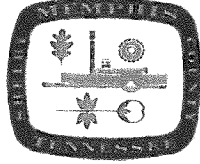
WHEREAS, It is necessary to accept the grant funding and amend the FY22 Misc Grant Budget to establish funds for the Interagency Hazardous Materials Public Sector Training and Planning Grant Program; and

WHEREAS, It is necessary to allocate and appropriate One Hundred Twenty Thousand Dollars (\$120,000.00) for the USDOT-Pipeline and Hazardous Materials Safety Administration- Interagency Hazardous Materials Public Sector Training and Planning Grant Program.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Memphis that the USDOT-Pipeline and Hazardous Materials Safety Administration-Interagency Hazardous Materials Public Sector Training and Planning Grant Program funds in the amount of One Hundred Twenty Thousand Dollars (\$120,000.00) be accepted by the City of Memphis.

BE IT FURTHER RESOLVED, that the FY22 Misc Grant Budget be and is hereby amended by appropriating the Expenditures and Revenues for the USDOT-Pipeline and Hazardous Materials Safety Administration-Interagency Hazardous Materials Public Sector Training and Planning Grant Program as follows:

Revenue	
Federal Grants	\$120,000.00
Expenses	
Professional Services	\$120,000.00



Memphis City Council Summary Sheet

1. Description of the Item (Resolution, Ordinance, etc.)

A Resolution approving the sale of a City owned property known as 2451 Brooklyn Avenue Memphis, TN 38114, Parcel 061014 00010.

2. Initiating Party (e.g. Public Works, at request of City Council, etc.)

General Services

3. State whether this is a change to an existing ordinance or resolution, if applicable.

N/A

4. State whether this will impact specific council districts or super districts.

District 4/ Super District 8

5. State whether this requires a new contract, or amends an existing contract, if applicable.

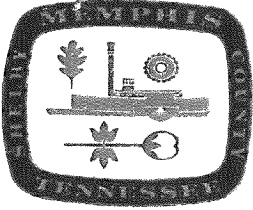
N/A

6. State whether this requires an expenditure of funds/requires a budget amendment

This resolution does not require an expenditure of funds or budget amendment.

7. If applicable, please list the MWBE goal and any additional information needed

N/A



A Resolution approving the sale of a city owned property known as 2451 Brooklyn Avenue Memphis, TN 38114, Parcel ID# 061014 00010

Whereas the City of Memphis owns the property known as 2451 Brooklyn Avenue, Memphis, TN 38114 (“The Property”) and is further identified by Shelby County Tax Assessor as Parcel # 061014 00010 containing 0.095 acres, more or less;

Whereas the sale of the City owned parcel will increase the General Fund, generate tax revenue and eliminate blight and maintenance cost for the City of Memphis;

Whereas Janice Hill Green, submitted an offer of Two Thousand Four Hundred Dollars (\$2,400.00) and submitted an earnest money deposit of ten percent equaling \$240.00; and

Whereas it is deemed to be in the best interest of the Citizens of the City of Memphis and County of Shelby that said sale be accepted subject to City Ordinance 5637, Amendment to Section 2-291(A) of the City’s Code of Ordinance.

Now, therefore be it resolved by the Council of the City of Memphis that the offer made by Janice Hill Green, on the above described parcel is hereby accepted subject to the City Ordinance 5637, Amendment to Chapter 2, Article V, Division 2, Section 1, Section 2-291(A)1 which states in part, “The City Real Estate Manager shall place a value on all properties being considered for sale in a manner herein determined and on all properties having an estimated and probable value of \$10,000.00 or less shall place a value without obtaining an independent appraisal.”

Be it further resolved, that subject to the Ordinance, the City of Memphis Real Estate Department shall prepare and arrange for the execution of the quit claim deed, and any other documents incidental to the completion of the transfer, and the Mayor of the City of Memphis is hereby authorized to execute said deeds or any other documents necessary to complete the sale and conveyance.

A resolution to cease any movement of Tennessee Valley Authority's proposed plan to relocate coal ash to District 3 and urge TVA to not dump within MLGW's service delivery area

WHEREAS, the Memphis City Council's highest priority is to protect the health, safety, and welfare of the residents of the City of Memphis; and

WHEREAS, the Tennessee Valley Authority (TVA) has proposed a plan for the Allen Foster Plant (AFP) to remove coal combustion residuals also known as coal ash (CCR) from the onsite storage units at the East Ash Disposal Area (EADA) and the West Ash Disposal Area (WADA) and relocate coal ash to a close-proximity landfill; and

WHEREAS, coal ash is the waste that is left after coal is burned that mostly comes from coal-fired electric power plants and includes fly ash, which are fine powdery particles that are carried up the smokestack and captured by pollution control devices, as well as coarser materials that fall to the bottom of the furnace; and

WHEREAS, collectively, there are approximately 3.5 million cubic yards of coal ash currently being stored onsite and although coal ash is not considered a hazardous material under the Environmental Protection Agency (EPA), it is known to contain arsenic, lead, mercury, cadmium, chromium and selenium, and many other elements which are harmful to humans, wildlife, and the environment; and

WHEREAS, without proper management, these contaminants can pollute and threaten our waterways, groundwater, drinking water, and the air; and

WHEREAS, the EPA has found that living next to a coal ash disposal site can increase the risk of cancer or other chronic diseases and as a result, the residents of Memphis will be greatly impacted by this proposed plan.

NOW, THEREFORE, BE IT RESOLVED that the Memphis City Council urges the Tennessee Valley Authority to not dump in the communities of its largest customer and encourages TVA to develop a transparent and public process that will eliminate any health risks to the citizens of Memphis.

BE IT FURTHER RESOLVED that the Memphis City Council urges TVA to continue coal ash remediation efforts at the Old Allen Plant but to cease any movement of TVA's proposed plan to relocate coal ash to District 3 and any areas within MLGW's service delivery area, indefinitely.

BE IT FURTHER RESOLVED that the Memphis City Council requests the Tennessee Valley Authority to present quarterly updates to the Memphis City Council on all TVA-related projects within Shelby County.

BE IT FURTHER RESOLVED that the Memphis City Council deems that dumping coal ash in a Memphis landfill is not in the best interest or welfare of the citizens of Memphis and requests the Administration to withhold all permits that may assist in any effort to do so.

Sponsors
Ford Canale
Chase Carlisle
Frank Colvett
Edmund Ford, Sr.
Cheyenne Johnson
Worth Morgan
Patrice Robinson
JB Smiley, Jr.
Jeff Warren

Chairman
Frank Colvett



Memphis City Council Summary Sheet

1. Description of the Item (Resolution, Ordinance, etc.)

This resolution seeks the appropriation of \$1,312,000.00 for the renovation of MPD's Radio Maintenance facility , CIP project #PD04029 funded by G.O. Bonds

2. Initiating Party (e.g. Public Works, at request of City Council, etc.)

Police Services

3. State whether this is a change to an existing ordinance or resolution, if applicable.

No Change to existing resolution or ordinance

4. State whether this will impact specific council districts or super districts.

This facility is located on Flicker St. Dist. 5, Super Dist. 9

5. State whether this requires a new contract, or amends an existing contract, if applicable.

This requires a new construction contract

6. State whether this requires an expenditure of funds/requires a budget amendment

This requires an expenditure of \$1,312,000.00, and is part of the FY20 Capital Improvement Budget funded by G.O. Bonds, CIP project #PD04029

7. If applicable, please list the MWBE goal and any additional information needed

34% MBE, 6% WBE is required as established by the EBO committee.



RESOLUTION

This is a resolution to transfer and appropriate funds to renovate the existing MPD Radio Maintenance Facility on Flicker St., project number PD04029.

WHEREAS, the Council of the City of Memphis approved the renovation of MPD Radio Maint. facility, project No. PD04029, as part of the Police Services FY20 Capital Improvement Budget; and

WHEREAS, bids were received on May 26, 2021 to renovate the existing MPD Radio Maintenance facility with the lowest complying bid amount of \$1,216,316.00 submitted by Barnes & Brower, Inc.; and

WHEREAS, the City of Memphis will enter into a contract with Barnes & Brower, Inc. to renovate the existing MPD Radio Maintenance Facility, Project No. PD04029; and

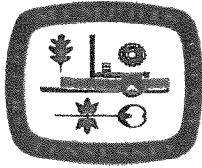
WHEREAS, it is necessary to transfer an Information Technology (IT) allocation of \$550,000 funded by G.O. Bonds, into Contract Construction to renovate the existing MPD Radio Maintenance Facility, project No. PD04029; and

WHEREAS, it is necessary to appropriate total amount of \$1,312,000.00 funded by G.O Bonds in MPD Radio Maintenance facility renovation, project No. PD04029 for expenses to renovate the existing facility as follows:

Contract Amount	\$1,216,316.00
Project Contingencies	\$95,684.00
<hr/>	
Total	\$1,312,000.00

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Memphis that the Fiscal Year 2020 Capital Improvement Budget be and is hereby modified by a transfer of Information Technology (IT) funds in the amount of \$550,000 into Contract Construction allocation, and appropriation of the total amount of \$1,312,000.00 Funded by G.O. Bonds, chargeable to FY20 Capital Improvement Budget and credited as follows:

Project Title:	MPD Radio Maintenance
Project Number:	PD04029
Amount:	\$1,312,000.00



Memphis City Council Summary Sheet

1. Description of the Item (Resolution, Ordinance, etc.)

Resolution to transfer and appropriate construction funds in the amount of \$452,545 for the construction of sidewalks, curb and gutter, pavement and landscaping

2. Initiating Party (e.g. Public Works, at request of City Council, etc.)

This project is initiated by Public Works at the request of Engineering.

3. State whether this is a change to an existing ordinance or resolution, if applicable.

This project does not change an existing ordinance or resolution.

4. State whether this will impact specific council districts or super districts.

This project will impact council district 5 and super district 9

5. State whether this requires a new contract, or amends an existing contract, if applicable.

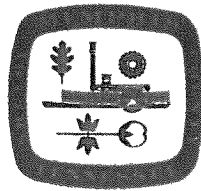
This Resolution does not require a new contract and does not amend an existing contract.

6. State whether this requires an expenditure of funds/requires a budget amendment

This resolution does not require a budget amendment.

7. if applicable, please list the MWBE goal and any additional information needed

This project has an MWBE goal of 27%.



RESOLUTION

This is a resolution to transfer and appropriate construction funds for the construction of sidewalks, curb and gutter, pavement and landscaping.

WHEREAS, the Council of the City of Memphis approved Walker Ave. Streetscape Ph. 2, project number PW04103 and Malone/Holmes to Shelby, project number PW01147 as part of the Public Works Fiscal Year 2022 Capital Improvement Budget; and

WHEREAS, it is necessary to transfer a construction allocation in the amount of \$452,545 funded by G.O. Bonds from Walker Ave. Streetscape Ph. 2, project number PW04103 to Malone/Holmes to Shelby, project number PW01147, for the construction of sidewalks, curb and gutter, pavement and landscaping; and

WHEREAS, it is necessary to appropriate \$452,545 funded by G.O. Bonds to Malone/Holmes to Shelby, project number PW01147; and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Memphis that the Fiscal Year 2022 Capital Improvement Budget be and is hereby amended by transferring a contract construction allocation of \$452,545 funded by G.O. Bonds from Walker Ave. Streetscape Ph. 2, project number PW04103 to Malone/Holmes to Shelby, project number for the construction of sidewalks, curb and gutter, pavement and landscaping; and

BE IT FURTHER RESOLVED, that there be and is hereby appropriated the sum of \$452,545 funded by G.O. Bonds chargeable to the FY 2022 Capital Improvement Budget and credited as follows:

Project Title	Malone/Homes to Shelby
Project Number	PW01147
Total Amount	\$452,545.00

Resolution authorizing the Memphis and Shelby County Division of Planning and Development to perform a review of the City's Landmarks Districts.

WHEREAS, on July 20, 2021, the Memphis City Council approved two additional Landmarks Districts, also known as historic overlay districts: Vollintine-Evergreen and Crosstown; and

WHEREAS, during its deliberations on these two new districts, members of Council inquired as to certain metrics for the existing Districts; and

WHEREAS, the Division of Planning and Development administers the Landmarks Districts and staffs the Memphis Landmarks Commission; and

NOW, THEREFORE, BE IT RESOLVED BY THE MEMPHIS CITY COUNCIL does hereby authorize the Memphis and Shelby County Division of Planning and Development to perform a review of the City's Landmarks Districts. This review shall include, but shall not be limited to, the following metrics:

1. Current and historic assessed value of residential properties within the Landmarks Districts relative to those throughout the City of Memphis;
2. Demographics of the Landmarks Districts;
3. Total value of residential building permits issued per year within the Landmarks Districts relative to those throughout the City of Memphis;
4. Current and historic homeownership rates within the Landmarks Districts; and
5. Processes for the creation of historic overlay districts in peer cities.

BE IT FURTHER RESOLVED BY THE MEMPHIS CITY COUNCIL that the Memphis and Shelby County Division of Planning and Development shall report the findings of this review to the Council no later than January 1, 2022.

Sponsor
Worth Morgan

Frank Colvett, Jr., Chairman