

Substitute Ordinance No.: 5795

AN ORDINANCE AMENDING THE MEMPHIS AND SHELBY COUNTY UNIFIED DEVELOPMENT CODE AS ADOPTED BY THE CITY OF MEMPHIS AUGUST 10, 2010, AND BY SHELBY COUNTY AUGUST 9, 2010, AS AMENDED, TO REVISE AND ENHANCE THE JOINT ZONING AND SUBDIVISION REGULATIONS AS RECOMMENDED BY THE MEMPHIS AND SHELBY COUNTY OFFICE OF PLANNING & DEVELOPMENT AND THE LAND USE CONTROL BOARD.

WHEREAS, By the provisions of chapter 165 of the Private Acts of the General Assembly of the State of Tennessee for the year 1921, authority was conferred upon the legislative body of the City of Memphis, Tennessee, to establish districts or zones within the corporate territory of the City of Memphis and to establish zoning regulations pertaining thereto, and to amend said zones or districts and zoning regulations pertaining thereto from time to time; and

WHEREAS, By the provisions of chapter 613 of the Private Acts of the General Assembly of the State of Tennessee for the year 1931, the legislative bodies of the City of Memphis and the County of Shelby were given authority to establish districts or zones within the territory in Shelby County, Tennessee, outside of, but within five miles of the corporate limits of the City of Memphis, Tennessee, and to establish zoning regulations pertaining thereto, and to amend said zones or districts and zoning regulations pertaining thereto from time to time; and

WHEREAS, By the provisions of chapter 625 of the Private Acts of the General Assembly of the State of Tennessee for the year 1935, authority was conferred upon the legislative body of the County of Shelby, to establish districts or zones within the unincorporated territory of Shelby County and outside the five-mile zone of the corporate limits of the City of Memphis, Tennessee, and to amend said zones or districts and zoning regulations pertaining thereto from time to time; and

WHEREAS, by the provisions of chapter 470 of the Private Acts of 1967, the General Assembly of the State of Tennessee conferred upon the legislative body of Shelby County the authority to regulate the subdivision or re-subdivision of land into two or more parts; and

WHEREAS, by the provisions of section 2 of chapter 470 of the Private Acts of 1967, the General Assembly of the State of Tennessee conferred upon the legislative bodies of the City of Memphis and the County of Shelby the authority to regulate the subdivision and re-subdivision of land within three miles of the corporate limits of the City of Memphis into two or more parts; and

WHEREAS, by provisions of T.C.A. title 54, ch. 10 [§ 54-10-101 et seq.], the General Assembly of the State of Tennessee conferred on the legislative body of Shelby County the authority to open, close or change public roads within the areas subject to its jurisdiction; and

WHEREAS, the Unified Development Code was adopted by the city of Memphis on August 10, 2010, and by Shelby County on August 9, 2010, as the new regulations for zoning and subdivisions in the city of Memphis and unincorporated Shelby County; and

WHEREAS, the governing body of the City of Memphis is one of the entities identified by the Unified Development Code as one that may initiate amendments to the Code; and

NOW, THEREFORE, BE IT ORDAINED BY THE MEMPHIS CITY COUNCIL that the following ordinance be adopted to amend the Unified Development Code to create a Wellhead Overlay Protection District for the City of Memphis, which shall read as follows:

Chapter 8.12, WellHead Overlay Protection District

8.12.1 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.

The state of Tennessee adopted the Tennessee Safe Drinking Water Act of 1983, Tenn. Code Ann. §§ 68-221-701, *et seq.* and the Tennessee Water Quality Control Act of 1977, Tenn. Code Ann § 69-3-101, *et seq.* (the "Tennessee Water Acts") to protect the quality and quantity of drinking water in Tennessee.

The Tennessee Water Acts vest control and responsibility in the Commissioner of the Tennessee Department of Environment and Conservation ("TDEC") to protect all waters of the State and to provide general supervision of all public water systems throughout the state.

The Tennessee Water Acts 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, Wellhead Protection Plans as required by the TDEC Regulations; the current Wellhead 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 Wellheads 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 Wellheads within which certain land use activities are restricted or prohibited.

(2) An area immediately surrounding a Wellhead 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 Wellhead areas and within the corporate limits of the City of Memphis and included in the Wellhead protection plan prepared by MLGW and approved by TDEC.

(C) Statement of purpose.

(1) The purpose of this Ordinance is to protect the quantity and quality of 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, waste material or contaminant substance defined in Tennessee Code Annotated 69-3-101 *et seq* or in Tennessee Code Annotated § 68-221-703. The City of Memphis creates the Wellhead Protection Overlay District to implement the stated purposes.

(2) The Wellhead Overlay Protection 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 Wellhead 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. An officer of Memphis Light Gas and Water Division (“MLGW”), who shall be designated by the Board of MLGW, will act for the City and MLGW (“Wellhead Administrator”) in the administration of this overlay ordinance.

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

8.12.2 DEFINITIONS.

For the purpose of this Ordinance, the definitions in the **Tennessee Safe Drinking Water Act of 1983, Tenn. Code Ann. §§ 68-221-703** and in the **Tennessee Water Quality Control Act of 1977, Tenn. Code Ann § 69-3-103**, 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 COMPLIANCE. 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.

CONTAMINANTS, POLLUTION OR POLLUTANT MATERIALS. Any pollution or pollutant material defined in Tennessee Code Annotated § 69-3-103 or any contaminant defined in Tennessee Code Annotated § 68-221-703.

GOVERNING BODY. The Memphis City Council.

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

8.12.3 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 of those land uses and activities listed below as contained in Section 0400-45-01-.34(1)(d)(8) of the February, 2019 (Revised) Rules and Regulations of the Tennessee Department of Environment and Conservation, Division of Water Resources, and as defined in the Memphis and Shelby County Unified Development Code that are 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 Wellhead Administrator located at MLGW's main offices:

- (1) Automobile repair;
- (2) Convenience stores with gas pumps, gas stations, service stations and truck stops and tractor trailer (fueling of);
- (3) Junkyards and salvage yards;
- (4) Machine shops and metal fabrication shops;
- (5) Chemical manufacturers;
- (6) Electronic and electrical equipment manufacturers;
- (7) Boat manufacturers;
- (8) Oil distributors, petroleum bulk stations and terminals;

- (9) Crude oil pipelines located within rights-of-way that did not exist as of the passage of this Ordinance;
- (10) Bus and truck terminals;
- (11) Storage or mixing areas for commercial fertilizers, pesticides and herbicides;
- (12) Landfills and dumps;
- (13) Facilities that generate, treat or dispose of hazardous waste;
- (14) Concentrated animal feedlots;
- (15) Golf courses and
- (16) Resource extraction facilities.

(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 Wellhead 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 compliance with this ordinance from the Wellhead 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 Wellhead Administrator determines that additional information is necessary to completely evaluate the proposed development, the Wellhead Administrator may refer the development plan to MLGW's water division staff and /or contracted consultants for review and investigation prior to making a decision on the plan for a certificate of compliance.

(D) Compliance. No structure or use shall hereafter be located, extended, converted or structurally altered in a Wellhead 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 Wellhead Administrator shall make the necessary interpretation. The Wellhead 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.

(2) The person contesting the Wellhead Administrator's interpretation of a Wellhead Protection Area, 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. using 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 Wellhead 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 crude oil pipelines, including any activities related to the maintenance, repair, or replacement thereof, or the construction of any new or existing crude oil pipeline or structure or any activity 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 and providing service to or associated with that oil refinery, oil terminal, associated docks or processing facilities, or retail service station. Any expansion that would enable the increase in the volume of existing crude oil pipelines in the Wellhead Overlay Protection District may be pursued through the Special Exception process (see Chapter 9.14). New crude oil pipelines within existing rights-of-way located in the Wellhead Overlay Protection District may be pursued through the Special Use Permit process outlined in this Ordinance.

(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 Overlay Protection 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.

8.12.4 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 Chapter 9.6, Application Requirements of the UDC.
- B. The Zoning Administrator in consultation with the Wellhead Administrator shall establish and publish specific submittal requirements for development and special use permits applications.
- C. Upon completion of the technical review, the Wellhead Administrator may meet with the applicant to discuss any changes in development design and/or requirements.
- D. The Zoning Administrator shall prepare a report that reviews the application in light of comments provided by the Wellhead 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.

8.12.5 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.

8.12.6 Governing Body Action

- A. The LUCB's recommendation and conditions of approval shall be forwarded to the 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 body.
- B. The governing body 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 body 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 Wellhead Administrator. The governing body shall approve or disapprove the development and special use permit and shall set forth any conditions imposed.

8.12.7 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 body 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.

8.12.8 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 best management practices appropriate for the activity are used and 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.
 - 1. The Zoning Administrator, following consultation with the Wellhead Administrator, if appropriate, shall act on the revised plan within 21 days.

8.12.9 Revisions to Approved Special Use Permits

Revisions to approved Special Use Permits shall be classified as minor modifications, which may be approved by the Wellhead 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 Wellhead 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 Wellhead 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 Wellhead 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 Wellhead Administrator, if appropriate, shall act on the revised plan within 21 days.

8.12.10 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 Overlay Protection 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.

8.12.11 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.

8.12.12 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.

8.12.13 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.

8.12.14 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.

8.12.15 VARIANCE REGULATIONS.

- (A) The provisions of this section shall apply exclusively to areas of Wellhead Overlay

Protection 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 Wellhead Administrator has had an opportunity to review the application and make a written recommendation to the Board. The Wellhead 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 applications 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 Adjustment 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 Wellhead 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.

8.12.16 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 [to be redacted in any plans presented publicly to LUCB or the Governing Body];

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

property[to be redacted in any plans presented publicly to LUCB or the Governing Body]; 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 of, 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 governing body may amend or condition the plan and grant final approval of such a plan, as amended or conditioned after only one review.

8.12.17 MISCELLANEOUS

(A) COMPLIANCE WITH TDEC REGULATIONS. MLGW shall comply with TDEC's regulations requiring submission of an updated Wellhead 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.

SPONSORS:
Councilmembers
Ford, Smiley and Colvett

FRANK COLVETT, JR.
Chairman

