

AN ORDINANCE ESTABLISHING A SURFACE AND STORMWATER UTILITY
FOR THE CITY OF HOPKINSVILLE, KENTUCKY

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
HOPKINSVILLE, KENTUCKY AS FOLLOWS:

SECTION ONE

Article 1 Title

Section 1.01 This ordinance shall be known as the Surface and Stormwater Utility Ordinance for the City of Hopkinsville, Kentucky.

Article 2 Purpose of Ordinance

Section 2.01 The purpose of this ordinance is to safeguard the lives, health, safety, welfare, and property of the public; promote sound development policies and construction procedures which respect the city's watercourses; establish minimum requirements and procedures to control the adverse impacts associated with increased surface and stormwater runoff; provide for the planning, design, construction, use, maintenance, repair and inspection of the surface and stormwater systems; establish programs and regulations to assure the quality of the water in such a system; decrease drainage-related damage to public and private property; meet the requirements of the National Pollutant Discharge Elimination System (NPDES) Phase II regulations as established by the Clean Water Act; and minimize flooding and provide for the enforcement of the provisions of this ordinance within the City of Hopkinsville.

Section 2.02 This ordinance complements other city ordinances and regulations regarding protection of the surface and water systems.

Article 3 Public Purpose

Section 3.01 This ordinance is enacted to protect and preserve the public health, safety, and welfare of the residents of the City of Hopkinsville. The provisions of this ordinance shall be liberally construed to accomplish this purpose.

Article 4 Findings of Fact

Section 4.01 It is hereby determined that:

- a) Land development projects and associated increases in impervious cover alter the hydrologic response of local watersheds and increase surface and stormwater runoff rates and volumes, flooding potential, stream channel erosion, and sediment transport and deposition; and
- b) Surface and stormwater runoff contributes to increased quantities of water-borne pollutants; and
- c) Surface and stormwater runoff, soil erosion and non-point source pollution can be controlled and minimized through the regulation of surface and stormwater runoff from development sites; and

d) The regulation of surface and stormwater runoff discharge from land development projects and other construction activities in order to control and minimize increases in surface and stormwater runoff rates and volumes, erosion, and non-point source pollution associated with surface and stormwater runoff is in the public interest and will prevent threats to public health and safety; and

e) Existing surface and stormwater runoff and drainage systems must be adequately maintained, operated and replaced through a funding program that is fair and equitable; and

f) All developed real property within the service area contributes runoff that impacts the surface and stormwater management system and should participate financially in the development, operation, maintenance, and administration of the surface and stormwater management system; and

g) The extent of a parcel's impervious surfaces and rate of surface and stormwater runoff from such parcel are primary factors determining the parcel's contribution to flow rate and quantity of runoff and impacts upon the surface and stormwater management system; and

h) The public health, safety, and welfare is adversely affected by poor ambient water quality and flooding results from the quality and quantity of surface and stormwater; and

i) All real property in the City either uses or benefits from a properly maintained surface and stormwater system; and

j) The extent of use of the surface and stormwater system by each property is dependant on factors that influence runoff, including but not limited to, land use and the amount of impervious surface on the property; and

k) The costs of improving, maintaining, operating, and monitoring the surface and stormwater system should be allocated, to the extent practicable, to all property owners/developers/applicants based on the impact of runoff from the impervious areas of their property on the surface and stormwater management system; and

l) Management of the surface and stormwater system to protect the public health, safety, and welfare requires adequate revenues and it is in the interest of the public to finance surface and stormwater management adequately with a user fee system that is reasonable and equitable so each user of the system pays to the extent to which he contributes to the need for it.

Article 5 Limit of Liability

Section 5.01 Nothing contained in this ordinance is intended to be or shall be construed to create or form the basis for liability on the part of the City, its officers, employees, agents or the utility, for any injury or damage resulting from flooding or flood related events due to improperly sized drainage facilities or surface and storm events which exceed design capacities.

Section 5.02 Floods from surface and stormwater runoff may occasionally occur which exceed the capacity of surface and stormwater drainage facilities constructed and maintained under this ordinance. The City's adoption of this ordinance does not imply that property responsible for the surface and stormwater drainage shall always be free from surface and stormwater flooding or riverine floods. Further, this ordinance does not purport to reduce the need or the necessity for any property owner/developer/applicant to obtain flood insurance.

Article 6 Utility Program Elements

Section 6.01 The utility shall establish a program which will include: stormwater mapping, public education and outreach, public involvement and participation, illicit discharge detection and elimination, construction site runoff control, post construction management for development

- x) Any other item that could affect the proper function of the surface and stormwater management system
- xi) Description of needed maintenance

Section 29.05 After notification is provided to the owner/developer/applicant of any deficiencies discovered from an inspection of a surface and stormwater management system, the owner/developer/applicant shall have 30 days or other time frame mutually agreed to between utility and the owner/developer/applicant to correct the deficiencies. The utility shall then conduct a subsequent inspection to ensure completion of the repairs.

Section 29.06 If repairs are not undertaken or are not found to be done properly, then enforcement procedures of this ordinance shall be followed by the Utility.

Section 29.07 If, after an inspection by the Utility, the condition of a surface and stormwater management facility presents an immediate danger to the public health or safety because of an unsafe condition or improper maintenance, the Utility shall take such action as may be necessary to protect the public and make the facility safe. Any cost incurred by the Utility shall be assessed against the owner/developer/applicant(s).

Article 30 Maintenance Agreement

Section 30.01 Prior to the issuance of any permit for which surface and stormwater management is required, the Utility shall require the owner/developer/applicant to execute maintenance agreement binding on all subsequent owner/developer/applicant(s) of land served by a private surface and stormwater management facility.

Section 30.02 Such agreement shall provide for access to the facility at reasonable times for regular inspections by the utility or its authorized representative to ensure that the facility is maintained in proper working condition to meet design standards.

Section 30.03 The agreement shall be recorded by the owner/developer/applicant with the County Clerk.

Article 31 Maintenance Responsibility of Drainage Facilities

Section 31.01 The owner/developer/applicant of the property on which work has been done pursuant to this ordinance for private surface and stormwater management facilities, or any other person or agent in control of such property, shall maintain in good condition and promptly repair and restore all grade surfaces, walls, drains, dams and structures, vegetation, erosion and sediment control measures, and other protective devices. Such repairs or restoration and maintenance shall be in accordance with approved plans.

Section 31.02 If a private drainage facility serves multiple lots and the responsibility for maintenance has not been specified on the subdivision plat or other legal document, maintenance responsibility shall rest with the homeowners association, if one exists, or otherwise with the properties served by the facility, or finally, with the owner/developer/applicant(s) of the property on which the facilities are located.

and re-development, capital improvement, watershed planning, operation and maintenance, and pollution prevention and good housekeeping.

Article 7 Program Coordination

Section 7.01 The utility shall coordinate surface and stormwater management programs and services by forming agreements with other departments, governmental entities or special districts in order to achieve a comprehensive approach to surface and stormwater management. The utility shall endeavor to eliminate or reduce duplication and to achieve maximum program benefits in the most cost efficient manner.

Article 8 Compatibility with Other Requirements

Section 8.01 This ordinance is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of this ordinance should be considered minimum requirements, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

Section 8.02 Approvals issued pursuant to this ordinance do not relieve the owner/developer of the responsibility to secure required permits or approvals for activities regulated by any other applicable code, rule, act, or ordinance.

Article 9 Creation of a Surface and Stormwater Utility Board

Section 9.01 A Surface and Stormwater Utility is created and known as the Surface and Stormwater Utility of the City of Hopkinsville.

a) The Surface and Stormwater Utility will be governed by a five (5) member board appointed by the Mayor of the City of Hopkinsville and approved by City Council. One of the five members shall be appointed from the City Council and shall serve a one (1) year term.

b) Each board member will be appointed to a four (4) year term. The initial appointments will have staggered terms with two (2) members serving a two (2) year term, one (1) member serving a three (3) year term and one (1) member serving a four (4) year term. Appointments thereafter will be for a four (4) year term.

c) The utility will adopt and establish the necessary policies and procedures to manage and operate the utility.

d) The utility will set an appropriate level of compensation for board members.

e) The utility will coordinate, contract and oversee work responsibilities as they pertain to surface and stormwater; the Planning Commission will be responsible for administration and enforcement; Hopkinsville Water Environment Authority will be responsible for monitoring water quality, testing, and billing; and the Public Works Department will be responsible for maintenance, construction, construction management, and inspections.

Article 10 Authority

Section 10.01 The utility shall have the authority and responsibility to coordinate and oversee the following:

a) Exercising of all lawful powers necessary and appropriate for the construction, purchase, condemnation, acquisition, maintenance, management, operation and regulation of surface and stormwater drainage systems.

b) Developing, adopting and carrying out policies and procedures as needed to implement this ordinance and to carry out other responsibilities including, but not limited to, the billing and collection of monthly stormwater management fees.

c) Preparing and updating, as needed, Engineering Standards to establish minimum requirements for design and construction of drainage facilities. The Engineering Standards shall be consistent with this ordinance and approved by City Council.

d) Administering and enforcing this ordinance and all procedures relating to the planning, acquisition, design, construction and inspection of new surface and stormwater facilities.

e) Preparing, updating, administering and enforcing as needed Maintenance Standards to establish minimum requirements for the maintenance of drainage facilities to function as intended, protect water quality and provide flood control. The Maintenance Standards shall be consistent with this ordinance and approved by City Council.

f) Developing and implementing a program that includes administration, inspection and enforcement activities as they pertain to private drainage facilities to ensure continued compliance with the requirements of this ordinance and other ordinances.

g) Advising City Council on an annual basis on matters relating to the utility.

h) Preparing a Master Drainage Plan for approval by the City Council including an annual work program to implement the projects.

i) Developing a budget for review and approval by City Council.

j) Establishing and implementing programs to protect and maintain water quality and to manage surface and stormwater runoff to maintain compliance to the maximum extent possible with applicable water quality standards established by state and/or federal agencies as now or hereafter adopted.

k) Performing a financial review, analysis and audit of the utility's revenues, expenses, indebtedness, fees and accounting and recommend fees and financial policy to the City.

l) Carrying out such other responsibilities as required by this ordinance or other City ordinances or programs consistent with the Master Drainage Plan.

m) Conducting public education programs related to protection and enhancement of the drainage system.

n) Establishing an accounting and collection system for surface and stormwater management fees established to fund the utility.

Article 11 City and User Responsibilities

Section 11.01 The City shall use reasonable diligence and care to maintain free flow of surface and stormwater and to avoid any interruption in service. The use of the surface and storm drainage on the premises of the user shall be at the risk of the user, and the responsibility and the liability of the City shall be publicly owned property or easements which have been designated as public surface and storm drainage systems.

Article 12 Meetings

Section 12.01 The utility shall establish a regular meeting schedule and shall meet at least quarterly. All utility meetings shall be open to the public, and reasonable notice of the time and place thereof shall be announced. The utility shall keep a record of its meetings including attendance of its members, minutes, resolutions, findings, recommendations, and actions.

Article 13 Planning

Section 13.01 The utility will prepare a Master Drainage Plan for review and approval by City Council. The utility shall recommend supplements or updates to the Plan adopted by the City every seven (7) years.

Section 13.02 The utility may conduct drainage studies and develop drainage projects. Drainage projects shall be developed according to City ordinances and standard engineering practices. Drainage projects will be designed and implemented according to the scope of work found in the master drainage plan and available funding.

Section 13.03 The utility will prepare and update an Emergency Operation Plan, as part of the City's overall Emergency Operation Plan.

Section 13.04 The utility will prepare and update mapping utilizing the latest technology as it pertains to flooding, storm sewer systems and drainage ways.

Article 14 Facility Ownership

Section 14.01 The City of Hopkinsville has property interest in all elements of the surface and storm drainage system in the public right-of-way. Ownership extends to all the easements or tracts dedicated to and accepted by the City. The utility shall act as the agent for the City in the management, operation and maintenance of the surface and storm drainage system. All other surface and stormwater drainage systems are considered private systems and are the responsibility of the property owner/developer/applicant to operate and maintain.

Section 14.02 All funds on deposit in the City's stormwater management fund and future revenues of said fund shall be transferred to the utility.

Section 14.03 The City may accept, upon recommendation by the utility, ownership (or other property interest) and the responsibilities for privately built drainage facilities when all of the following conditions are met:

- a) Ownership of the facility by the City would provide a public benefit; and
 - b) Necessary and appropriate property interest are offered by the property owner/developer/applicant at no cost; and
 - c) The facility substantially meets current standards, as determined by the utility, or is brought up to current standards by the owner/developer/applicant; and
 - d) There is access for maintenance in accordance with criteria established by the utility;
- or
- e) The City, through the utility, has adequate resources to maintain the facility.

Article 15 Definitions

Section 15.01 The following words and phrases, when used in this ordinance shall have the following meaning:

- a) Applicant – Any person who has applied for a permit under the terms and conditions of this ordinance.
- b) "As-Built" – A final drawing of the actual installation of structures, materials and equipment.

c) **Best Management Practices (BMP)** – Refers to physical, structural, and/or managerial practices that when used singly or in combination, prevent or reduce pollution of water and have been approved by the utility. BMPs include, but are not limited to, infiltration, retention and/or detention, bio-filtration facilities, open ditches with check dams, filter fabric strips, oil/water separators, wet ponds, constructed wetlands, erosion and sedimentation control, and other treatment/abatement facilities. BMPs include, but are not limited to, structural solutions covered by the terms best available technology (BAT) and all known available and reasonable methods of treatment (AKART).

d) **Clearing** – The removal of trees and brush from the land but shall not include the ordinary mowing of grass.

e) **Connection Charges** – Charges imposed as a condition of connecting to the utility system so each connecting property bears its equitable share of the cost of the public drainage system and of the costs of facilities that benefit the property; these charges include the general facilities charge and direct facility charge.

f) **Design Surface and Storm Event** – The owner/developer/applicant is responsible for storing the difference in pre- and post-development discharge and/or maintaining the post-development discharge for a 2 year, 10 year and 100 year surface and storm event with a three hour duration.

g) **Detention Facility** – A structure designated to detain design frequency stormwater runoff on-site and then releases the runoff at a controlled rate at a defined discharge point.

h) **Developer** – A person, partnership, firm or corporation who is the owner or is acting as agent in the request for a building/zoning permit.

i) **Development** – Any artificial change to property including, but not limited to, building or other structures, mining, dredging, filling, all land-disturbing activities, clearing, grading, landscaping, paving, excavation, or drilling operations, any activity that requires a permit or approval including, but not limited to, a building permit, grading permit, shoreline substantial development permit, conditional use permit, unclassified use permit, zoning variance or reclassification, planned unit development, subdivision, short subdivision, master plan development, building site plan, or right-of-way use permit.

j) **Drainage Easement** – A right granted by a landowner to a grantee allowing the use of private land for surface and stormwater management purposes.

k) **Drainage Facilities** – Shall include but not be limited to all surface and stormwater runoff conveyance and containment facilities including streams, pipelines, channels, ditches swamps, lakes, wetlands, closed depressions, infiltration facilities, retention/detention facilities, erosion/sedimentation control facilities, and other drainage structures and appurtenances, both natural and manmade.

l) **Drainage System** – Natural and structural channels, swales, ditches, swamps, rivers, streams, creeks, wetlands, branches, reservoirs, ponds, drainage ways, inlets, catch basins, gutters, pipes, culverts, bridges, head walls, surface and storm sewers, lakes, and other physical works, properties, and improvements that transfer, control, convey or otherwise influence the movement of surface and stormwater runoff.

m) **Ditch** – A natural or artificial drainage way with a top width less than 10 feet at the design flow depth.

n) **Emergency** – Any natural or man-made event or set of circumstances that disrupts or threatens to disrupt or endanger the operation, structural integrity or safety of the drainage system; endangers the health and safety of the public; or otherwise requires immediate action by the utility.

o) **Erosion** – The wearing away of land surface by action of wind, water, gravity, ice or other geological agents or a combination of those forces.

p) **Erosion and Sediment Control** – Any temporary or permanent measures taken to reduce erosion, control siltation and sedimentation, and ensure that sediment-laden water does not leave the site.

q) **Exception** – Relief from specific mandates of a minimum requirement.

r) **Flood Hazard Boundary Map (FHBM)** – The latest revision of the official map of the City of Hopkinsville, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been defined as Zone A.

s) **Flood Insurance Rate Map (FIRM)** – The map delineating special flood hazard areas effective November 1, 1977 (or latest revision) that was prepared by the Federal Insurance Administration for the City, or as subsequently amended or revised by the Federal Emergency Management Agency.

t) **Grading** – Any act by which soil is cleared, stripped, stockpiled, excavated, scarified, filled or any combination thereof.

u) **Illicit Discharge** – All non-surface and stormwater discharges to surface and stormwater drainage systems that cause or contribute to a violation of state water quality, sediment quality, or ground water quality standards including, but not limited to, sanitary sewer connections, industrial process water, interior floor drains, car washing, and gray water systems.

v) **Impervious Surface** – Developed areas of land that prevent, retard or significantly impede the infiltration of surface and stormwater into the soil mantle and/or cause water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions prior to development. Typical impervious surface areas include, but are not limited to, roofs, sidewalks, walkways, patios, swimming pools, private driveways, parking lots, access extensions, alleys and other paved, engineered, compacted or gravel surfaces containing materials that prevent or significantly impede the natural infiltration of surface and stormwater into the soil.

w) **Land Disturbing Activity** – Any activity that results in a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, demolition, construction, clearing, grading, filling and excavation.

x) **Maintenance Standards** – Standards which include minimum requirements for maintaining drainage facilities so they function as intended and provide water quality protection and flood control.

y) **Master Drainage Plan** – The latest version of the City of Hopkinsville's Master Drainage Plan as adopted by City Council of the City of Hopkinsville. The Plan recommends the form, location, and extent of quantity and quality control measures that would satisfy legal constraints, water quality standards and community standards and identifies the institutional and funding requirements for plan implementation.

z) **One Hundred-Year, 3-Hour Storm Event (100-year, 3-hour storm)** – A storm which produces 4.1 inches of rain, occurring within a three (3) hour duration.

aa) **Owner** – The legal, beneficial, equitable owner or owners of land including the holder of an option or contract to purchase (whether or not such option or contract is subject to any conditions), a lessee (if he is authorized under the lease to exercise the rights of the landowner), or any other person having a proprietary interest in land.

bb) **Pollution** – The contamination or other alteration of the physical, chemical, or biological properties of any natural waters including change in temperature, taste, color, turbidity, or odor of the water, or the discharge of any liquid, gaseous, solid, radioactive, or other substance into any such water as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety, welfare or to domestic, commercial industrial, agricultural, recreational or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

cc) **Pollutant** – Any substance which, when added to water, would contaminate or alter the chemical, physical, or biological properties of any waters of the City's drainage system or of the state. This includes a change in temperature, taste, color, turbidity, or odor of the waters or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the City's drainage system or of the state as will or is likely to create a nuisance. It also includes any substance which renders such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial use, or to livestock, wild animals, birds, fish, or other aquatic life.

dd) **Private Drainage System** – Drainage systems located on private property and designed to discharge directly as through pipes, channels, etc., or indirectly as sheet flow, subsurface flow, and etc., into the City's drainage system.

ee) **Procedure** – A process adopted by the utility to implement this ordinance or to carry out other responsibilities as may be required by this ordinance, other ordinances or municipal order of the City or other agencies.

ff) **Property Owner/Developer/Applicant** – The person, firm, partnership, or corporation who is the owner of record as listed in the Christian County Property Valuation Office assessment rolls.

gg) **Public Surface and Stormwater System** – Those elements of the surface and stormwater system maintained and operated by the City: 1. Located on property owned by the City or in the public right-of-way; or 2. Located on property which the City has an easement, license or other right of use for Utility purposes.

hh) **Receiving Waters** – Bodies of water or surface water systems receiving water from upstream manmade (or natural) systems.

ii) **Redevelopment** – On an already developed site, the creation and/or addition of impervious surfaces, structural development including construction, installation, or expansion of a building or other structure, and/or replacement of impervious surface that is not part of a routine maintenance activity, and land-disturbing activities associated with structural or impervious redevelopment.

jj) **Retention/Detention Facility (R/D)** – A type of drainage system designed either to hold water for a considerable length of time and then release it by evaporation, plant transpiration and/or infiltration into the ground; or to hold surface and stormwater runoff for short period of time and then release it to the surface and stormwater management system.

kk) **Runoff Control BMPs** – BMPs that are intended to control or manage the rate and/or quantity of surface and stormwater runoff.

ll) **Service Area** – All land within the corporate limits of the City including all land areas legally annexed thereto.

mm) **Site Plan** – A plan which indicates the character of the existing site, topography, natural drainage features on or adjacent to the site, the location and dimensions of all impervious surfaces, flow arrows indicating the direction of surface and stormwater flows on-site, and any off-site flows entering the site, the proposed method of utilizing the existing drainage system.

nn) **Source Control BMP** – A structure or operation intended to prevent pollutants from coming into contact with surface and stormwater through physical separation of areas or careful management of activities that are sources of pollutants. A few examples of source control BMPs are erosion control practices, maintenance of surface and stormwater facilities, constructing roofs over storage and working areas, and directing wash water and similar discharges to the sanitary sewer or a dead end sump. (Determined by the shortest flow path.)

oo) **Stormwater Management** – The planning, design, engineering, construction, regulation, improvement, repair, maintenance, and operation of facilities and programs relating to stormwater floodplains, flood control, grading, erosion, pollutant capture and/or

transformation and sediment control for the protection of public health, safety, welfare and natural resources meeting state and federal regulatory requirements.

pp) Stormwater Management Plan – A plan approved by the Surface and Stormwater Utility of Hopkinsville, Kentucky, which includes either a small parcel or large parcel erosion and sediment control plan and/or a water quality control plan.

qq) Surface and Stormwater – That portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes, or other features of a surface and stormwater drainage system into a defined surface water-body or a constructed infiltration facility.

rr) Surface Water – The naturally occurring water that flows over or is stored on the earth's surface.

ss) Unsafe Condition – Any condition on any premises which is a hazard to public health or safety that does or may impair or impede the operation or functioning of any portion of the public drainage system or which may cause damage thereto.

tt) Utility – The surface and stormwater utility component of the City of Hopkinsville as created by Ordinance_____.

Article 16 Permits and Approvals

Section 16.01 The utility will issue two (2) types of permits in conjunction with the permits required for the Stormwater Management Ordinance, Flood Damage Prevention and Surface Water Courses and Drainage Ways.

Section 16.02 The permits are:

- a) Drainage System Connection Permit and
- b) Clearing and Grading Permit.

Section 16.03 The utility shall require a surety and shall not release the surety until the work associated with the permit has been completed according to plans as accepted by the utility for construction.

Article 17 Permit Required

Section 17.01 A land owner/developer/applicant shall receive a Clearing and Grading Permit before any land disturbance activity begins.

Section 17.02 A land owner/developer/applicant shall receive a Drainage System Connection Permit before construction begins.

Article 18 Application Requirements

Section 18.01 Unless specifically excluded by this ordinance, any owner/developer/applicant desiring a permit shall submit to the utility a permit application on a form provided by the utility for that purpose.

Section 18.02 Unless otherwise excepted by this ordinance, a permit application must be accompanied by the following in order for the permit application to be considered: a surface and stormwater management plan, a maintenance agreement and a non-refundable permit review fee.

Section 18.03 The application shall have a provision which shall be signed by the owner/developer/applicant granting right of entry onto property in which a permit is being sought to the Utility or Utility agent.

Section 18.04 The surface and stormwater management plan shall be prepared to meet the requirements of the utility, and the utility at its discretion may require the plans to be completed by a engineer licensed in the Commonwealth of Kentucky. The maintenance agreement shall be prepared to meet the requirements of the utility and fees shall be those established by the City Council of Hopkinsville, Kentucky.

Article 19 Application Procedure

Section 19.01 Permit applications shall include the following: two copies of the surface and stormwater management plan, two copies of the maintenance agreement, and any required review fees.

Section 19.02 Within fifteen (15) business days of the receipt of a complete permit application, including all documents as required by this ordinance, the utility shall inform the owner/developer/applicant whether the application, plan and maintenance agreement are approved or disapproved.

Section 19.03 If the permit application, surface and stormwater management plan or maintenance agreement are disapproved, the owner/developer/applicant may revise the surface and stormwater management plan or maintenance agreement. If additional information is submitted, the utility shall have ten (10) business days from the date the additional information is received to inform the owner/developer/applicant that the plan and maintenance agreement are either approved or disapproved.

Section 19.04 If the permit application, final surface and stormwater management plan and maintenance agreement are approved by the utility, an appropriate permit shall be issued upon the posting of a surety instrument in the full amount of the improvement.

Article 20 Fees for Permits, Applications and Specific Services

Section 20.01 The utility shall develop for City Council review and adoption a schedule of fees, charges and refund status for all permits and specific services provided by the utility. The fee amount shall cover all costs related to the service provided. The fees and charges referenced below are separate from the stormwater management fee adopted by Ordinance _____.

Article 21 Permit Expiration

Section 21.01 All permits issued for this ordinance shall expire 12 months from the date of issuance unless construction is commenced prior to this date or an extension of time is approved by the utility. An extension of an expired permit shall be issued by the utility following the submission of a written request if, in the opinion of the utility, the subject property or affected surrounding area has not been altered in a manner which requires alteration to the surface and stormwater management plan.

Section 21.02 A renewal of an expired permit may be issued by the utility following a re-submittal of the permit application form, and review by the utility to determine if any changes have occurred in project site conditions or surface and stormwater management plan requirements since the original permit was issued. If such changes have occurred, the utility may require the owner/developer/applicant to resubmit the surface and stormwater management plan for a new review.

Section 21.03 The refusal of the utility to reissue an expired permit shall contain the reasons for such refusal.

Section 21.04 A permit shall not expire while a request for an extension is pending; the request for extension shall have been made prior to the expiration of the permit.

Article 22 Transfer of Permit

Section 22.01 A permit may be reassigned or transferred to a new owner/developer/applicant/operator only if the current owner/developer/applicant/operator:

- a) Gives at least 90 days' advance notice to the utility and the utility approves the permit transfer. The notice to the utility must include a written certification by the new owner/developer/applicant and/or operator which states that the new owner/developer/applicant/operator has no immediate intent to change the operations and processes; and
- b) Identifies the specific date on which the transfer is to occur; and
- c) Transferee acknowledges full responsibility for complying with the existing surface and stormwater permit.

Article 23 Permit Suspension and Revocation

Section 23.01 Any permit issued under this ordinance may be suspended or revoked by the utility for:

- a) Any violation(s) of the conditions of the surface and stormwater management plan approval; or
- b) Changes in site runoff characteristics upon which a permit / approval or waiver was granted; or
- c) Construction is not in accordance with the approved surface and stormwater management plan; or
- d) Noncompliance with correction notice(s) or stop work order(s) issued for the construction of the surface and stormwater management facility; or
- e) An immediate danger exists in a downstream area in the opinion of the utility; or
- f) Noncompliance with or failure to implement any provision of the permit; or
- g) A violation of any provision of this ordinance or other applicable law, ordinance, rule or regulation relating to the project; or
- h) The creation of any condition or the commission of any act during construction or development which constitutes or creates a hazard or nuisance, or which endangers the life or property of others.

Section 23.02 A permit may be reinstated by the utility when:

- a) The utility or an agent acting upon its behalf has inspected and approved the corrections to the surface and stormwater management facility, or the elimination of the hazard

or nuisance and/or the utility is satisfied that the violation of the ordinance, law, or rule and regulation has been corrected.

Article 24 Inspection of Surface and Stormwater Facilities

Section 24.01 Inspections may be conducted by the utility on any reasonable basis including, but not limited to, routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of existing private facilities; inspections of facilities and/or equipment accepted by the utility under specific warranties may be re-inspected at the utility's discretion and, if necessary, re-inspected at anytime during the warranty period; inspections and documentation of newly installed drainage facilities; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type that are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards.

Section 24.02 Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges of surface water, groundwater, and material drainage control facilities; and evaluating the condition of drainage control facilities.

Article 25 Inspection Reports

Section 25.01 Written inspection reports shall be made of the periodic inspections necessary during construction of surface and stormwater management systems to ensure compliance with the approved plans.

Section 25.02 Written inspection reports shall include:

- a) The date and location of the inspection; and
- b) Whether construction was in compliance with the approved surface and stormwater management plan; and
- c) Any variations from the approved construction specifications; and
- d) Any violations that exist.

Section 25.03 The owner/developer/applicant and on-site personnel shall be notified in writing when violations are observed. Written notification shall describe the nature of the violation and the required corrective action.

Section 25.04 No work shall proceed until the utility inspects and approves the work previously completed and furnishes the owner/developer/applicant with the results of the inspection reports as soon as possible after completion of each required inspection.

Article 26 Right of Entry

Section 26.01 In the event an owner/developer/applicant or on-site personnel impede or attempt to impede in any manner utility personnel or duly appointed agents of the utility from performance of inspections as outlined in this ordinance, a search warrant as authorized by the laws of the Commonwealth of Kentucky shall be obtained to assure the inspection process can be completed as required and mandated.

Article 27 Records of Installation and Maintenance Activities

Section 27.01 Parties responsible for the operation and maintenance of a surface and stormwater management facility including, but not limited to, the owner/developer/applicant shall make records of the installation and of all maintenance and repairs, and shall retain the records for at least five (5) years. These records shall be made available to the utility during inspection of the facility and at other reasonable times upon request.

Article 28 "As-built" Inspection Requirements

Section 28.01 Upon completion of construction, it shall be required that an "as-built" drawing of the surface and stormwater management facility shall be prepared in paper and digital forms.

- a) The "as-built" drawing shall show at least the following:
 - i) Property boundaries, with dimensions and indications of north direction and abutting street(s),
 - ii) Location and scale size of existing buildings,
 - iii) Course of the surface and storm drainage side sewer, its connection with the building(s) and all dimensions,
 - iv) Any additional information as may be deemed pertinent by the utility.

Section 28.02 The utility shall permanently retain a copy of all surface and storm drainage facility "as-builts" on file.

Article 29 Maintenance Inspection

Section 29.01 The utility shall ensure that preventative maintenance is performed by inspecting surface and stormwater management systems.

Section 29.02 Inspection shall occur during the first year of operation and at least once every 5 years thereafter. In addition, a maintenance agreement between the owner/developer/applicant and Utility shall be executed for privately owned surface and stormwater management systems as described in this ordinance.

Section 29.03 Inspection reports shall be maintained by the utility for all surface and stormwater management systems.

Section 29.04 Inspection reports for surface and stormwater management systems shall include the following:

- a) The date of inspection,
- b) Name of inspector,
- c) The condition of:
 - i) Vegetation or filter media
 - ii) Fences or other safety devices
 - iii) Spillways, valves, or other control structures
 - iv) Embankments, slopes, and safety benches
 - v) Reservoir or treatment areas
 - vi) Inlet and outlet channels or structures
 - vii) Underground drainage
 - viii) Sediment and debris accumulation in storage and fore bay areas
 - ix) Any nonstructural practices to the extent practicable

Section 31.03 Drainage facilities shall be maintained so that they operate as intended. Maintenance shall be in accordance with the project operation and maintenance plan if applicable.

Section 31.04 No person shall cause or permit any drainage system to be obstructed, filled, graded, or used for disposal of debris.

Section 31.05 All surface and storm drainage facilities shall be maintained in accordance to the standards as set forth by the utility. The owner/developer/applicant of facilities shall be required to maintain these facilities in a clean condition at least semi-annually, in conformance with the approved design.

Section 31.06 These facilities shall be subject to an annual inspection by the utility or its designee and any and all deficiencies noted in writing shall be corrected within 30 calendar days of written notice to the owner/developer/applicant.

Article 32 Failure to Maintain Practices

Section 32.01 If a responsible party fails or refuses to meet the requirements of the maintenance covenant, the utility, after reasonable notice, may correct a violation of the design standards or maintenance needs by performing all necessary work to place the facility in proper working condition.

Section 32.02 In the event the surface and stormwater management facility becomes a danger to public safety or public health, the utility shall notify the party responsible for maintenance of the surface and stormwater management facility in writing.

Section 32.03 Upon receipt of that notice, the responsible person shall immediately affect maintenance and repair of the facility in an approved manner.

Section 32.04 After proper notice, the utility may assess the owner/developer/applicant(s) of the facility for the cost of repair work and any penalties; and the cost of the work shall be a lien on the property.

Article 33 Drainage Easement Requirements

Section 33.01 The property owner/developer/applicant and the utility shall enter into a Drainage System Extension Agreement whenever new development involves any of the following:

- a) Work in the public drainage system or within the right-of-way.
- b) Work in an accepted drainage easement or a drainage feature that has public significance in conveying surface and stormwater runoff.
- c) The Drainage System Extension Agreement will incorporate by reference the plans and calculations specifically addressing the proposed modifications and/or changes to the public system.
- d) The plans, specifications and calculations will be reviewed and approved prior to the signing of the Agreement.
- e) The utility will accept the new facilities once the facilities have been built according to the approved plans, specifications and calculations, as confirmed by the utility. "As-Built"

drawings will be completed and submitted. All applicable fees and charges shall be paid prior to acceptance.

f) The property owner/developer/applicant shall be required to provide surety devices, in the form approved by the utility, for drainage system extensions prior to signing the agreement. Construction will not begin until the Agreement has been verified and approved.

g) A one-year warranty period following acceptance shall be required and appropriate surety provided as part of the Agreement.

h) It is the property owner/developer/applicant's responsibility to identify and obtain all other permits/approvals required for any proposed work.

Article 34 Assumption of Maintenance by City of Facilities on Public Property

Section 34.01 The utility is authorized to assume the maintenance of surface and storm drainage facilities on public property or in public rights-of-way if:

a) All of the requirements of the drainage plan have been fully complied with;

b) The facilities have been inspected and approved in accordance with the utility; and

c) All necessary easements entitling the City to properly maintain the facility have been conveyed to the City and recorded.

Article 35 Emergency Conditions

Section 35.01 Notwithstanding any other provisions of this ordinance, whenever it appears to the utility that conditions covered by this ordinance exists requiring immediate action to protect the public health, safety, or public resources, the utility is authorized to the extent permitted by law, to enter at all reasonable times in or upon any property, public or private, for the purpose of inspecting and investigating such emergency conditions. The utility may without prior notice order the immediate discontinuance of any activity leading to the emergency condition.

Article 36 Penalties and Enforcement

Section 36.01 Failure to comply with and provisions of this ordinance shall subject the offending party (owner/developer/applicant) to the enforcement and penalties herein set forth.

Section 36.02 Violation(s) of the provisions of this ordinance or failure to comply with any of its requirements, including violations of conditions and safeguards established in connection with the implementation, enforcement and operation shall constitute an offense under this ordinance and shall result in a fine.

Section 36.03 The provisions of this chapter may be enforced by the Code of Ordinance Enforcement Board established in Ordinance 24-2002 and/or violation through the powers delegated to the Flood Safety Officer. The Flood Safety Officer may also become certified as a Code Enforcement Officer.

Section 36.04 Any person who violates this chapter or fails to comply with any of its requirements shall be fined not more than \$500.00 nor less than \$10.00.

Section 36.05 Each day such violation continues after receipt of a notice of violation shall be considered a separate offense. Nothing herein shall prevent the Utility from taking such other lawful action as is necessary to prevent or remedy any violation.

SECTION TWO

If any section, subsection, sentence, clause or phrase of this ordinance is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remaining portions of this ordinance.

SECTION THREE

All ordinances or parts of ordinance in conflict with this ordinance are hereby repealed.

SECTION FOUR

This ordinance shall take effect upon publication.

**ORDINANCE 32-2005
SURFACE AND STORMWATER UTILITY**

PUBLICLY READ AND PASSED FIRST TIME: November 15, 2005

PUBLICLY READ AND PASSED SECOND TIME: December 6, 2005

APPROVED: Richard G. Liebe
Richard G. Liebe
Mayor

ATTEST: T. Mark Withers, II
T. Mark Withers, II
CAO/City Clerk