



**Memphis City Council  
Summary Sheet  
Revision to Stormwater Ordinance**

1. Revision to Stormwater Ordinance # 4538 to amend Chapter 33, Article IV, of the City of Memphis Code of Ordinances to create the Memphis Stormwater Board and modify provisions related to civil penalties.
2. Department of Public Works (Storm Water Program).
3. This is a change to an existing ordinance.
4. This does not require a new contract or an amendment to an existing contract.
5. This does not require an expenditure of funds or a budget amendment.

**AN ORDINANCE TO AMEND CHAPTER 33, ARTICLE IV, OF THE CITY OF  
MEMPHIS CODE OF ORDINANCES TO CREATE THE  
MEMPHIS STORMWATER BOARD AND MODIFY PROVISIONS RELATED  
TO CIVIL PENALTIES**

**WHEREAS**, the City of Memphis is authorized to regulate storm water discharges in accordance with applicable state law in order to protect the public health; and

**WHEREAS**, the City of Memphis is further authorized to impose a civil penalty and assess damages against any person who violates the provisions of the City's storm water ordinance; and

**WHEREAS**, the imposition of such civil penalties and assessment of damages by the City are subject to review by a board established to hear appeals by any person incurring a damage assessment or civil penalty; and

**WHEREAS**, the administration seeks to amend Chapter 33, Article IV, of the existing City Code of Ordinances to establish such board and make additional changes deemed necessary to further enhance the City's compliance with the NPDES permit issued by the Tennessee Department of Environment and Conservation ("TDEC") and applicable regulations which govern storm water discharges into the City of Memphis MS4 Storm Water System.

**SECTION 1. NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS**, that Chapter 33, Article IV, is hereby amended as follows:

**(1) By deleting the language set forth in Section 33-249 and replacing such language to read as follows:**

**Section 33-249 – Civil Penalty for Violation**

- A.** Any person who violates the provisions of this chapter shall be subject to a civil penalty of not less than fifty dollars (\$50.00) or more than five thousand dollars (\$5,000) per day for each day of violations. Each day of violation may constitute a separate violation. The imposition of a civil penalty under this section may be in addition to the recovery of damages as provided in subsection D, below.
- B.** The City shall give the violator thirty-days (30) notice of the assessment of any penalty.
- C.** In assessing a civil penalty, the City may consider the following factors:
  - 1. The harm done to the public health or the environment;

2. Whether the civil penalty imposed will be substantial economic deterrent to the illegal activity;
  3. The economic benefit gained by the violator;
  4. The amount of effort put forth by the violator to remedy this violation;
  5. Any unusual or extraordinary enforcement costs incurred by the City;
  6. The amount of penalty established by ordinance or resolution for specific categories of violations, if applicable; and
  7. Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.
- D. The City may also assess damages proximately caused by the violator to the City which may include any reasonable expenses incurred in investigating and enforcing violations of this chapter, or any other actual damages caused by the violation.
- E. The violator may appeal the civil penalty or damage assessment by filing a petition for review with the **Memphis Stormwater Board** in accordance with **Section 33-255**. If a petition for review of such damage assessment or civil penalty is not filed within thirty (30) days after the damage assessment or civil penalty is served in any manner authorized by law, the violator shall be deemed to have consented to the damage assessment or civil penalty and it shall become final.
- F. The alleged violator may appeal a decision of the **Memphis Stormwater Board** pursuant to title 27, chapter 9 of the Tennessee Code Annotated.
- G. Whenever any damage assessment or civil penalty has become final because of a person's failure to appeal the damage assessment or civil penalty, the City may apply to the appropriate chancery court for a judgment and seek execution of such judgment. In accordance with TCA 68-221-1106(e) the court, in such proceedings, shall treat the failure to appeal such damage assessment or civil penalty as a confession of judgment.

(2) **By deleting Section 33-250 in its entirety.**

(3) **By revising Section 33-252 to read as follows:**

Section 33-252 Damages – Disposition of funds.

All damages and civil penalties collected under the provisions of Section 33-249, following the adjustment for the expenses incurred in making such collections

shall be allocated and appropriated to the Storm Water Management Program for its administration.

**(4) By deleting Section 33-254 in its entirety.**

**SECTION 2. BE IT FURTHER ORDAINED THAT** Chapter 33, Article IV, Section 33-222 (3) is hereby amended to state as follows:

**(3) - Best Management Practices for Construction Activities**

The minimum standards for controlling erosion and sedimentation to prevent or minimize the discharge of stormwater from a construction activity, shall be set forth in the Tennessee Department of Environment and Conservation's "Erosion and Sediment Control Handbook" as adopted and amended from time to time. These erosion and sediment control best management practices ("BMPs") apply to all construction activity regardless if there is a discharge of stormwater from the construction site. The City subject to its sole discretion may waive these BMPs for any construction less than 1 acre.

**SECTION 3. BE IT FURTHER ORDAINED THAT,** Chapter 33, Article IV, is further amended by adding the following:

Section 33-255. Memphis Stormwater Board – Created.

(a). There is hereby created and established the Memphis Stormwater Board (hereafter "board") to hear appeals filed by any person relating to an order, permit or such other actions deemed appropriated by the Director or incurring a civil penalty or damage assessment imposed by the City pursuant to the City of Memphis Stormwater Ordinance .

(b). The board may issue subpoenas requiring attendance of witnesses and production of such evidence as requested, administer oaths, and take testimony as the board deems necessary to fulfill its purpose.

(c). The membership of the board shall consist of five members and two alternate members as follows:

<b>Representative Group (# of members)</b>	<b>Initial Length of Term</b>	<b>Subsequent Length of Term</b>
Development or Industrial Community (1)	1	2
Development or Industrial Community (1)	2	2
Private Citizenry (1)	2	2
Civil or Environmental Engineers (2)	1	2
Civil or Environmental Engineers (1)	2	2
Public Interest Group/University (1)	2	2

(1) The members and the alternates shall be appointed by the Mayor and confirmed by the Council.

(2) Each member and alternate member appointed by the Mayor 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.

(3) Each member shall serve without compensation and may be reappointed, but do not succeed themselves automatically.

(4) Each member shall serve for a term of two (2) years. However, the initial term of two of the original members representing the Civil or Environmental Engineers Group and one of the original members representing the Development or Industrial Community Group shall expire after one (1) year and the term of the remaining original members shall expire after two (2) years. Subsequent terms for every group shall expire after two (2) years.

(d). The board shall annually select one of its members to serve as chair and another member to serve as vice chair for a period of one year upon a majority vote of all members.

(e). The board 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 board's technical secretary.

(f). No member shall participate in the appeal of any matter in which the member has a direct personal or financial interest.

(g). Three members shall constitute a quorum, and the concurrence of a majority of the board present and voting in any matter shall be required for a determination.

(h). Members may be removed from the board for continued absence from meetings or other just cause in accordance with the procedure for removal of Board or Commission members set forth within Home Rule Ordinance No. 1852 of the City Charter.

(i). An appeal may be taken from any final order or other final determination of the board 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.

(j). Each member of the board 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 of Memphis.

**SECTION 4.** 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 5.** 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.

Bill Morrison  
Council Chairman

Attest:

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Comptroller



## Memphis City Council Summary Sheet Revision to Sewer Ordinance

1. Revision to the Sewer Ordinance to amend Chapter 33, Article III, of the City of Memphis Code of Ordinances to create the Memphis Wastewater Hearing Authority and to clarify the Administration and Enforcement provisions.
2. Department of Public Works (Environmental Engineering).
3. This is a change to an existing ordinance.
4. This does not require a new contract or an amendment to an existing contract.
5. This does not require an expenditure of funds or a budget amendment.

**AN ORDINANCE TO AMEND, CHAPTER 33, ARTICLE III, OF THE CITY OF MEMPHIS CODE OF ORDINANCES TO CREATE THE MEMPHIS WASTEWATER HEARING AUTHORITY AND TO CLARIFY THE ADMINISTRATION AND ENFORCEMENT PROVISIONS INCLUDED THEREIN**

**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;

**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 create the Memphis Wastewater Hearing Authority and to clarify the administration and enforcement provisions currently set forth within Chapter 33 of the Sewer Use Ordinance.

**SECTION 1. NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS**, that Chapter 33, Article III, Division 5, is hereby amended to state as follows:

**DIVISION 5. REVIEW AND ENFORCEMENT**

Section 33-171. 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".

Section 33-172. 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 – 69-3-129, and such requirements as set forth in the National Pollutant Discharge Elimination System (“NPDES”) permit issued to the City of Memphis.

Section 33-173. Composition, Length of Term, Officers.

A. The hearing authority shall be composed of the following seven (7) members 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:

<b>Representative Group (# of members)</b>	<b>Length of Term (years)</b>
Industry (1)	1
Private Citizenry (3)	2
Engineering/Science (2)	2
Public Interest Group/University (1)	1

B. 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.

C. The Director of Public Works or his designee shall serve as the hearing authority’s technical secretary.

Section 33-174. 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 Home Rule Ordinance No. 1852 of the City Charter.

Section 33-175. Powers 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:

1. 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;
2. 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;

3. To hold meetings and such special meetings as the hearing authority may find necessary;
4. 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;
5. To hold hearings relating to the issuance, reissuance, suspension, revocation or modification of an industrial wastewater discharge permit and issue appropriate orders relating thereto.
6. To hold such other hearings relating 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 purposes of this Chapter;
7. To obtain assistance upon request from the Director of Public Works or his designee as the hearing authority might need;
8. 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 an 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;
9. 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.

#### Section 33-176. 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.

#### Section 33-177. 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.

#### Section 33-178. Members to be Residents of City.

The members of the hearing authority shall be residents of the city and shall have been for at least three (3) consecutive years immediately preceding their appointment.

Section 33-179. 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.

Section 33-180. Hearings.

Any hearing or rehearing brought before the Local Hearing Authority shall be conducted in accordance with Tenn. Code Annotated Section 69-3-124.

**SECTION 2. 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 3. 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.

Bill Morrison  
Council Chairman

Attest:

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Comptroller