

**Ordinance No. 052410-300**

**AN ORDINANCE TO AMEND IN TOTAL  
ARTICLE XXV LAND DISTURBANCE AND LANDSCAPING  
OF THE ZONING ORDINANCE OF THE CITY OF  
MONTEVALLO, ALABAMA AND TO BE KNOWN AS THE  
LAND DISTURBANCE ORDINANCE OF THE  
CITY OF MONTEVALLO, ALABAMA**

**WHEREAS**, the sedimentation of streams, lakes and other waters of this state constitutes a major pollution problem, the discharge and surface water runoff of sediment adversely affects the safety, use and stability of public ways, drainage channels and private property, and otherwise poses a threat to the public health, safety and welfare; and,

**WHEREAS**, the purpose of this Ordinance is to provide for the creation, administration, control and enforcement of a program to reduce erosion and sedimentation problems and which will permit the development in the City of Montevallo (City) to continue with the least detrimental effects from pollution by sedimentation; and,

**WHEREAS**, it is the purpose of this Ordinance to protect and maintain the environment of the City and the short-term and long-term public health, safety and general welfare of the citizens of the City by controlling discharges and surface runoff of eroded soil, sediment and other pollutants, thereby, maintaining and improving the quality of the community waters into which the stormwater outfalls flow, including, without limitation, the lakes, streams, ponds, wetlands, sinkholes and groundwater of the City, preserving and protecting the City's investment in the safety and use of its roads, rights of way, storm sewer system and other public property, and preventing the creation of hazards and/or nuisances; and,

**WHEREAS**, this Ordinance controls the discharge and surface runoff of eroded soil, sediment and other pollutants from land on which land-disturbing activities are conducted, to the maximum extent practicable, and provides enforcement procedures and penalties to ensure compliance with such controls; and,

**WHEREAS**, it is further the purpose of this Ordinance to enable the City to comply with the NPDES permit and applicable regulations (40 C.F.R ¶ 122.26) for stormwater discharges; and,

**WHEREAS**, the objectives of this Ordinance are to:

- A. Control filling, grading, dredging and other land disturbances which may increase erosion, and correct or eliminate the adverse effects of land disturbances made prior to the effective date of this Ordinance; and,
- B. Establish a permit process and required erosion control methods for land disturbance within the City; and,
- C. Maintain and enhance community waters into which storm water outfalls flow, including, but not limited to, lakes, rivers, streams, ponds, wetlands, sinkholes, and

groundwater of the City; and,

- D. Preserve and enhance the landscape by encouraging the maximum retention of natural topographic features, such as drainage swales, streams, slopes, ridge lines, rock outcroppings, vistas, natural plant formations and trees; and,
- E. Minimize water runoff and soil erosion problems incurred in grading; and,
- F. Minimize the effects of grading to ensure that the natural character of steep slopes is retained; and,
- G. Provide for inspections, surveillance and monitoring procedures necessary to determine compliance and noncompliance with any land-disturbing activity permits; and,

**WHEREAS**, the control of soil erosion and discharge of sediment as a result of land-disturbing activities, in addition to concerns for the quality of stormwater runoff and discharge, also is necessary and desirable to protect the safety, use or stability of public ways, prevent public nuisances, endangerment to property and hazards to persons;

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Montevallo, Alabama that the following Land Disturbance Ordinance be, and the same is hereby ordained as follows:

## **ARTICLE I. STATUTORY AUTHORIZATION.**

The Legislature of the State of Alabama has in Title 11, Chapter 45, Sections 1-11, and Chapter 89C, of the Code of Alabama, 1975, as amended, authorized local government units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry and to promote the discovery, control, and elimination, wherever practicable, of storm water discharges into municipal separate storm sewers. Therefore, the City of Montevallo, Alabama does ordain as follows:

### ***Section 1.01 Statement of Purpose.***

The purpose of this Ordinance is to protect, maintain and enhance the environment of the City of Montevallo, hereinafter referred to as the City, and the short-term and long-term public health, safety and general welfare by controlling erosion resultant from land disturbing and construction activities. The specific objectives of this Ordinance include:

- A. Control filling, grading, dredging and other land disturbances which may increase erosion, and correct or eliminate the adverse effects of land disturbances made prior to the effective date of this article;
- B. Establish a permit process and required erosion control methods for land disturbance within the City;
- C. Maintain and enhance community waters into which storm water outfalls flow, including, but not limited to, lakes, rivers, streams, ponds, wetlands, sinkholes, and groundwater of the City;
- D. Preserve and enhance the landscape by encouraging the maximum retention of natural topographic features, such as drainage swales, streams, slopes, ridge lines, rock outcroppings, vistas, natural plant formations and trees;
- E. Minimize the effects of grading to ensure that the natural character of steep slopes is retained;
- F. To minimize the effects of land disturbance and grading activities, all development projects shall be phased or as sectors sequentially advanced as the construction of improvements are completed.
- G. Minimize water runoff and soil erosion problems incurred in grading.
- H. To require the submittal of a Land Disturbance application and appropriate Best Management Practices Plan (BMP) plan prior to any land disturbing activities in accordance with the provisions contained herein;
- I. To prevent land change which could lead to erosion without proper authorization from the City;
- J. To comply with the National Pollutant Discharge Elimination System (NPDES) permit and applicable regulations (40 CFR ¶ 122.26) for storm water discharges; and
- K. To correct or eliminate existing conditions which are resulting in or could result in erosion.

## **ARTICLE II. DEFINITIONS.**

For the purpose of this Ordinance, the following terms, phrases and words and their derivatives shall have the meaning assigned herein:

*Administrator.* The person or his/her duly authorized representative designated by the City Council to supervise the operations of the Land Disturbance program and who is charged with certain responsibilities and duties by this Ordinance.

*Adverse Impact.* Any deleterious effect on waters or wetlands, including their quality, quantity, surface area, species composition, aesthetics, or usefulness for human or natural uses which are or may potentially be harmful or injurious to human health, welfare, safety or property or to biological productivity, diversity or stability, or which would unreasonably interfere with the enjoyment of life or property.

*Agriculture.* Activities undertaken on land for the production of crops, plants and animals which are useful to man.

*Alabama Department of Environmental Management (hereafter abbreviated as "ADEM").* The State of Alabama regulatory agency, created under Code of Alabama 1975, § 22-22A-1, et seq., responsible for administering and enforcing the stormwater laws of the United States of America and the State of Alabama.

*Applicant.* Any person, firm, corporation or government entity who executes the necessary forms to procure approval of a Land Disturbance Permit from the City of Montevallo.

*Best Management Practices (BMPs).* BMPs mean planning, project phasing, schedules of activities, implementation, operating and maintenance procedures, management strategies, effective treatment practices, and to the extent necessary, post-construction follow-up continuing maintenance, that meet or exceed recognized effective industry standard practices, that meet or exceed the technical standards and guidelines of the Alabama Handbook, and that meet or exceed the requirements of this Ordinance, that are implemented to prevent/minimize pollutant discharges to the maximum extent practicable. BMPs also include effective practices to control pollutant discharges from land disturbance activities associated with pre-construction testing, site assessment, surveying, and other pre-construction development support activities. BMPs also include effective practices to control pollutant discharges from spillage or leakage, stormwater transport, storage, treatment, or disposal.

BMPs also mean full implementation and continued maintenance of effective structural and non-structural practices and planning/management strategies to ensure effective erosion and sediment control, and prevent/minimize the introduction of pollutants to stormwater and to treat stormwater to remove pollutants to the maximum extent practicable prior to discharge. BMPs also mean the treatment of construction associated de-minimus non-stormwater or process wastewater discharges authorized by ADEM. BMPs also include implementation of effective construction site nutrient management practices, temporary, annual, or perennial vegetated filter strips, and stream bank management practices. A BMP can be a single practice or more than one practice that combined will provide continuing effective treatment.

Any management practice, structure, or procedure, that is not recognized as a BMP based on performance, not installed/implemented correctly, not maintained, not adequately or properly located/sited, not suitable for the specific site conditions, not designed or configured to control potential or existing site conditions where the BMP is located, including but not limited to, steep slopes or grades, soils, potential precipitation and size of drainage area, which is not consistent with effective erosion and sediment control, that does not meet or exceed recognized effective industry standard practices, or not in accordance with the Alabama Handbook or other ADEM-recognized BMP documents, is not considered or recognized as a BMP under this Ordinance.

*City.* The City of Montevallo, Alabama.

*Clean Water Act.* The Federal Water Pollution Control Act, as amended, codified at 33 U.S.C. ¶ 1251, et seq., and regulations promulgated thereunder.

*Clearing.* The removal of trees and brush from the land, not including the ordinary mowing of grass or the maintenance of previously cleared areas.

*Community Waters.* Any or all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wetlands, wells, groundwater and other bodies of natural or artificial surface or subsurface water into which the City of Montevallo MS4 flows.

*Contour.* A line of equal elevation above a specified datum, usually mean sea level.

*Contour line.* A line joining points having or representing equal elevations.

*Discharge.* The passing of water or other liquid through an opening or along a pipe, conduit or channel; the rate of flow of water, silt, or other mobile substance which emerges from a pipe, conduit or channel, usually expressed as cubic feet per second, gallons per minute or million gallons per day.

*Drainage.* The removal of surface water from a given area either by gravity or by pumping; commonly applied to surface water and groundwater.

*Drainage area.* That area contributing runoff to a single point measured in a horizontal plane, which is enclosed by a ridge line; the area of a drainage basin or watershed, expressed in acres, square miles or other unit of area.

*Engineer.* A person currently licensed by the Alabama State Board of Registration for Professional Engineers and Land Surveyors to provide engineering services.

*Erosion.* Wearing away of lands by running water or winds.

*Erosion control.* The application of measures to reduce erosion of land surfaces.

*Floodplain.* Floodplain is any land area that is susceptible to flooding. (As identified by the Federal Emergency Management Agency in its Flood Insurance Study (FIS), dated September 29, 2006, with accompanying maps and other supporting data and any revision thereto).

*Floodway (Regulatory).* Regulatory Floodways are the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without

cumulatively increasing the water surface elevation more than a designated height. (As identified by the Federal Emergency Management Agency in its Flood Insurance Study (FIS), dated September 29, 2006, with accompanying maps and other supporting data and any revision thereto).

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

*Inspector.* The Administrator, City Engineer, or his/her designee, responsible for periodic inspections, investigations, monitoring, observation, measurement, enforcement, sampling and testing to verify compliance with the provisions of this Ordinance and the specific BMP plans and controls for the land disturbing activities.

*Land Disturbance.* Any land change which may result in soil erosion from water or wind, or movement of sediments, directly or indirectly, to the MS4 and/or community waters, including, but not limited to, construction activities, clearing, dredging, grading, excavating, transporting and filling of land.

*Municipal separate storm sewer system (herein abbreviated as "MS4").* A system of municipal separate storm sewers, including roads with drainage systems, streets, catch basins, curbs, gutters, easements, swales, ditches, man-made channels and storm drains, carrying storm water runoff which is directly or indirectly discharged to community waters.

*National Pollutant Discharge Elimination System (NPDES).* The national program (40 C.F.R. ¶ 122.26) for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits for the discharge of pollutants into waters of the State of Alabama.

*Notice of Intent ("NOI").* A written notice by a discharger to the Director of ADEM that the person wishes his or her discharge to be authorized under a general storm water discharge permit authorized by state and federal regulations.

*Outfall.* A point source (meaning any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged, but not including return flows from irrigated agriculture or agricultural water runoff) at the point of a discharge to waters of the United States of America.

*Permit.* Any permit issued pursuant to this article.

*Permittee.* A person, party, government entity and all others who receive a permit to discharge under the NPDES.

*Pollutant.* Includes, but is not limited to, the pollutants specified in Code of Ala. 1975, § 22-22-1 (b) (3) and any other effluent characteristics specified in a permit.

*Pollution.* A condition created by the presence of harmful or objectionable content in water.

*Pollutant loading.* The amount of a pollutant entering the MS4.

*Qualified credentialed professional.* A Professional Engineer, an Alabama Natural Resources Conservation Service professional designated by the State Conservationist, or a Certified Professional in Erosion and Sediment Control (CPESC). A QCP includes a registered landscape architect, a registered land surveyor, a Professional Geologist, a registered forester, a Registered Environmental Manager as determined by the National Registry of Environmental Professional (NREP), and a Certified Professional Soil Scientist (CPSSC) as determined by ARCPACS, and other accepted professional designations, certifications, and/or accredited university programs that can document requirements regarding proven training, relevant experience, and continuing education, that enable recognized individuals to prepare CBMPPs, to make sound professional judgments regarding Alabama NPDES rules, the requirements of this Ordinance, planning, design, implementation, maintenance, and inspection of construction sites, receiving waters, BMPs, remediation/cleanup of accumulated offsite pollutants from the regulated site, and reclamation or effective stormwater quality remediation of construction associated land disturbances, that meet or exceed recognized technical standards and guidelines, effective industry standard practices, and the requirements of this Ordinance. The QCP shall be in good standing with the authority granting the licensure, registration or designation. The QCP shall be familiar, and have expertise, with current industry standards for BMPs and must be able to inspect and assure that nonstructural BMPs or other pollution control devices (silt fences, erosion control fabric, rock check devices, etc.) and erosion control efforts, such as grading, mulching, seeding and growth management, or management strategies have been properly implemented and regularly maintained according to good engineering practices and the requirements of any permit issued pursuant to this Ordinance.

Other registered or certified professionals such as a professional engineer or a landscape architect, registered land surveyor, registered architect, registered geologist, registered forester, registered environmental Administrator as determined by the National Registry of Environmental Professionals (NREP), Certified Professional Soil Scientist (CPSS) as determined by the American Registry of Certified Professionals in Agronomy, Crops and Soils (ARCP ACS), who can document the necessary education, training, and professional certification, registration, or credentials acceptable to the official and can demonstrate proven experience in the field of erosion and sediment control shall be considered a qualified credentialed professional. The qualified credentialed professional must be in good standing with the authority granting the registration. The qualified credentialed professional must be familiar, and have expertise, with current industry standards for erosion and sediment controls and must be able to inspect and assure that nonstructural BMPs or other pollution control devices (silt fences, erosion control fabric, rock check devices, etc.) and erosion control efforts, such as grading, mulching, seeding and growth management, or management strategies have been properly implemented and regularly maintained according to good engineering practices and the requirements of this permit. A professional engineer (PE) registered in the state must certify the design and construction of structural practices such as spill prevention control and counter measures (SPCC) plan containment structures, dam construction, etc.

*Sediment.* Solid material settled from suspension in a liquid that has been transported and deposited from its site of origin by air, water, ice or gravity as a product of erosion and has come to rest on the earth's surface either above or below a water surface, usually, inorganic or organic particles originating from weathering, chemical precipitation, or biological activity.

*Silviculture.* The care and cultivation of forest trees, including site preparation, planting,

pruning, thinning and harvesting.

*Site.* Any tract, lot or parcel of land or combination of contiguous tracts, lots or parcels of land which is in one ownership, and any combination of tracts, lots and parcels which are contiguous, are owned by two (2) or more parties and are to be developed as a unit, subdivision or project.

*Stabilization.* The prevention of soil movement by any of various vegetative and/or structural means.

*Storm water.* The excess water running off from the surface of a drainage area during and immediately after a period of rain. It is that portion of the rainfall and resulting surface flow that is in excess of that which can be absorbed through the infiltration capacity of the surface of the basin.

*Storm water management.* The incorporation of a variety of activities and equipment into a plan to address concerns associated with storm water for the purpose of preventing pollution, improving water quality, keeping pollutants out of runoff, and the implementation of best management practices.

*Storm water management program (herein referred to as "the management program" or "the program").* A program which covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and, where necessary, intergovernmental coordination, to reduce the discharge of pollutants, to the maximum extent practicable, using management practices control techniques and system design and engineering methods and such other provisions which are appropriate.

*Storm water permit.* A permit which grants permission to the holder to discharge storm water to the MS4 pursuant to the NPDES.

*Stream.* A course of running water usually flowing in a particular direction in a definite channel and discharging into some other course of running water or body of water.

*Structural controls.* Measures incorporated into existing storm water drainage systems or newly constructed systems to prevent or minimize the discharge of pollutants for the purpose of maintaining and/or improving water quantity and quality management; quantitative control by a system of vegetative and structural measures that control the increased volume and rate of surface runoff caused by man-made changes to the land; qualitative control by a system of vegetative, structural and other measures that reduce or eliminate pollutants that might otherwise be carried by surface runoff.

*Utility.* A business or service which is engaged in regularly supplying the public with some commodity or service which is of public consequence and need, such as electricity, gas, water, telephone service and telegraph service.

*Variance.* The modification of the minimum land disturbance requirements in situations in which exceptional circumstances, applicable to the site with respect to which the variance is requested, exist so that strict adherence to the provisions of this article would result in unnecessary hardship and the granting of such modification would not result in a condition contrary to the intent of this article.

*Water Quality.* Characteristics of storm water runoff that relate to the physical, chemical, biological, or radiological integrity of water.

*Water Quantity.* Characteristics of storm water runoff that relate to the rate and volume of storm water runoff.

### **ARTICLE III. GENERAL PROVISIONS.**

#### ***Section 3.01 Lands to Which This Ordinance Applies.***

This Ordinance applies to all land disturbance activities undertaken within the jurisdiction of the City of Montevallo.

#### ***Section 3.02 Land Disturbance Activities.***

Land disturbance activities shall include any land change which may result in soil erosion from water or wind, or movement of sediments, directly or indirectly, to the Municipal Separate Storm Sewer System (MS4) and/or community waters, including, but not limited to, clearing, dredging, grading, excavating, transporting and filling of land, except the term shall not include the following:

- A. Agriculture;
- B. Silviculture; (see Article VII. Definitions);
- C. Such minor land disturbing activities as home gardens, landscaping, home repairs, home maintenance work and other related activities that result in minor soil erosion;
- D. The construction of single family residences when built separately on lots within a subdivision which has a current City Land Disturbance permit issued pursuant to this Ordinance, provided that excavation is limited to trenches for the foundation, basements, utility service and sewer connections, and minor grading for driveways, yard areas and sidewalks;
- E. Minor subsurface exploratory excavations under the supervision of soils engineers or engineering geologists;
- F. Digging of water wells or environmental monitoring wells;
- G. Construction, installation or maintenance of overhead electrical, telephone, and cable television lines and poles, provided these activities do not pose a significant threat of contamination to community waters; and
- H. The opening of individual burial sites in property which has been approved for such use by all necessary governmental authorities.

These excluded activities may be undertaken without a permit; however, the persons conducting these excluded activities shall remain responsible for otherwise conducting such activities in accordance with the provisions of this Ordinance and any other applicable law, including the proper control of sedimentation and runoff to the MS4.

### ***Section 3.03 General Requirements for Land Disturbance Activities.***

All land disturbance activities subject to this Ordinance shall be undertaken in accordance with the following requirements:

- A. Land disturbing or construction activities for a residential development that exceeds five (5) acres or a commercial development that exceeds ten (10) acres shall be phased or developed as sectors and sequentially advanced as the construction of improvements are completed, except as determined by the City Engineer.
- B. No land disturbing or construction activities may commence prior to the approval of a preliminary plat or a site development plan, as may appropriate. In the event of a violation of this provision, no development approvals will be issued until all site violations have been remedied. Development approvals include, but are not limited to, building permits, building inspections, Certificates of Occupancy, site plan approvals, subdivision approvals, and zoning approvals.
- C. Persons conducting or who have conducted land disturbing and construction activities, and owners of property upon which land disturbance activities have been conducted, shall take all reasonable measures referred to, and provided for, in this Ordinance to protect all public and private property from damage caused by such activities and to reduce storm water pollution to the maximum extent practicable as determined by the Administrator.
- D. Stripping of vegetation, grading, excavation, and other development activities shall be conducted in such a manner to minimize erosion. Clearing and grubbing must be held to the minimum necessary for grading and equipment operation.
- E. Other than land-clearing activities required to install the appropriate BMP in accordance with the BMP plans, any down-slope erosion and sediment control measures, on-site stream channel protection, and up-slope diversion of drainage required by the BMP plan shall be in place and functional prior to the commencement of any clearing or earth moving operations, and shall be maintained throughout the construction period. Temporary measures may be removed at the beginning of the workday but must be replaced at the end of the workday.
- F. To the extent necessary, sediment in runoff water shall be trapped by the use of sediment basins, silt traps or similar measures until the disturbed area is stabilized.
- G. Structural controls shall be designed and implemented as required to prevent erosion. All surface water flowing toward the disturbed area shall, to the maximum extent possible, be diverted using berms or channels as necessary. Erosion and sediment control measures shall be designed according to the size and slope of the disturbed and/or drainage areas to effectively detain runoff and prevent erosion.
- H. Unless otherwise approved by the Administrator, natural vegetation not in the actual clearing and grubbing limits shall be retained, protected and supplemented. Construction activities should accommodate the contours of the land and preserve as many trees and other natural vegetation as possible. Trees and natural vegetation should be removed only when necessary for construction of buildings or installation of infrastructure. The preservation of natural vegetation is encouraged to provide a natural buffer zone, which minimizes erosion potential, protects water quality, and provides aesthetic benefits. A natural stream flowing to and through the site shall be maintained in its natural channel and provided with a vegetative buffer zone.

- I. Adequate protective measures must be provided for the containment of hazardous substances and other materials with potential to pollute the MS4, including petroleum products, lubricants, and paint.
- J. Storm water runoff from the site shall contain no visible floating oil or scum. It shall not cause an unnatural color in the receiving water, nor shall it result in an odor in the community waters. Storm water discharge from the site shall not contain any materials in concentrations sufficient to be dangerous or otherwise detrimental to humans, livestock, wildlife, plant life, fish and aquatic life in the community waters.
- K. All control measures shall be checked and repaired as necessary to prevent contamination of community waters, including within twenty-four (24) hours after any rainfall exceeding three-quarters (0.75) inches per twenty-four (24) hour period.
- L. Upon completion of land disturbing activities, property owners and their agents shall be responsible for leaving slopes so that they will not erode, through such methods as re-vegetation, mulching, rip-rapping or gunniting. Regardless of the chosen method, the objective shall be to leave the site erosion-free.
- M. Temporary soil stabilization must be implemented to disturbed areas to the maximum extent feasible within fourteen (14) calendar days on areas that will remain unfinished for more than 30 days. Soil stabilization refers to measures which protect soil from the erosive forces of wind, raindrop impact, and storm water runoff, and includes the growing of grass, sod, and application of mulch, straw, fabric mats, and the early application of gravel base on areas to be paved.
- N. Permanent soil stabilization must be applied to disturbed areas to the maximum extent feasible within fourteen (14) calendar days of completion of grading.
- O. A permanent vegetative cover shall be established on disturbed areas not otherwise permanently stabilized.
- P. Land disturbance activities in subdivisions are considered as required improvements subject to the provisions of the Subdivision Regulations of the City of Montevallo, including bonding.

### ***Section 3.04 Special Mining and Resource Extraction and Reclamation.***

- A. Operational Regulations.
  - 1. The regulations set forth in this Section or set forth elsewhere in this Section, when referred to in this Section, are the operational regulations of Subsection 2, Sections 2 and 5 of this Article.
  - 2. No pit, spoil, tailings, waste or material incidental or accessory to surface mining shall be located closer to adjacent property lines, public road rights-of-way, lakes or rivers than 200 feet, and not closer than 500 feet to a private residence or public building. This setback may be excepted provided the adjacent property has a legally existing strip or surface mine in operation thereon and further provided the owner(s) or the surface mineral rights has provided the operator or permittee with a consent for same in writing.
  - 3. The operator or permittee shall divert water from the active pit areas in a manner designed to reduce siltation, erosion or other damage to streams and natural watercourses. As mining begins, all drainage ways which flow from the active pit areas must be

protected.

4. All roads must be maintained in a manner approved by the City Engineer to reduce dust.
5. The general operation of the dumping of pit, soil, tailings, waste or other materials, shall be in a manner that pollution of streams or lakes are controlled in conformance with regulations of the Environmental Protection Agency and the Alabama Department of Environmental Management.
6. The use of explosives for the purpose of blasting in connection with surface mining shall be done in accordance with the rules, regulations, and standards as set forth by the U.S. Bureau of Mines, the coal mining laws of the State of Alabama and the open pit and quarry safety rules of the State of Alabama. No blasting shall be performed after sunset or before sunrise, except as required, to comply with the above regulations.
7. The Administrator or his/her representative or a person designated by the City of Montevallo may enter upon the affected lands at any reasonable time for the purpose of inspection to determine whether the provisions of this Section are being complied with.

#### B. Insurance and bonds.

1. The application for a Land Disturbance Permit for mining, quarrying, extracting, or other removal by open pit, strip, shaft, slope, drift, or any other method of removal of all mineral or other earth products of every kind shall be accompanied by a certificate of insurance certifying that the applicant has in force a public liability insurance policy issued by an insurance company authorized or licensed to do business in the State of Alabama covering all strip or surface mining operation of the applicant on lands or premises affected by such application and affording personal injury and property damage protection. The insurance shall cover the operator, all of its agents and employees, and shall not be less than one million dollars (\$1,000,000) for personal injury and one million (\$1,000,000) for property damage. The Administrator may waive the provisions of this subsection upon the operator posting securities, in the amount of one million dollars (\$1,000,000), of the same type and in the same manner as specified in this Section.
2. Each application for a permit shall be accompanied by a bond in accordance with this Ordinance per acre of affected land. State bonding requirements shall be credited toward the bond per acre required herein. No bond however, shall be for less than five thousand dollars (\$5,000). Any bond herein required to be filed with the City by the applicant shall be payable to the City of Montevallo for the surface mining and reclamation fund and conditioned that the operator shall faithfully perform all applicable requirements of the permit. Such bonds shall be signed by the operator, as principal, and by a good and sufficient corporate surety authorized or licensed to do business in the State of Alabama, as surety.
3. In lieu of the hereinabove required bond, the operator may elect to submit to the City cash or negotiable bonds of the United States government, or the State of Alabama, or any municipality within the state. The amount of cash or market value of such securities shall be equal at least to the amount of the bond. The Administrator shall, upon receipt of any such cash or securities, immediately deposit same to the City of Montevallo to be held in trust for the purposes for which such a deposit is made. The Administrator shall at all times be responsible for the custody and safekeeping of such deposits. The operator making the deposit of securities shall be entitled from time to time to demand and receive

from the City, on the written order of release of the Administrator, the whole or any portion of any securities so deposited, upon depositing with the City in lieu thereof cash or other negotiable securities of the classes herein specified having a market value at least equal to the sum of said securities; provided, however, that where securities, deposited as aforesaid, mature or are called, the Administrator, at the request of the operator, shall convert such securities into such other negotiable securities of the classes herein specified as may be designated by the operator. The total coverage of the bond or amount of cash and securities shall be increased or reduced from time to time as land is added or withdrawn from the area covered by the permit as provided in this section.

### ***Section 3.05 Compliance.***

No land disturbing or construction activities hereafter shall be conducted without full compliance with the terms of this Ordinance and other applicable regulations. Owners of property upon which land disturbance activities have been conducted shall comply with all applicable provisions of this Ordinance.

### ***Section 3.06 Abrogation and Greater Restrictions.***

These land disturbance regulations are not intended to repeal, abrogate, or impair any existing ordinance, regulation, covenant or restriction. However, where this Ordinance and other provisions conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

### ***Section 3.07 Interpretation.***

In the interpretation and application of this Ordinance all provisions shall be 1) considered as minimum requirements; 2) liberally construed in favor of the governing body, and 3) deemed neither to limit nor repeal any other powers granted under state statutes.

## **ARTICLE IV. ADMINISTRATION.**

### ***Section 4.01 Designation of Administrator.***

The person or his/her duly authorized representative designated by the City Council to supervise the operations of the Land Disturbance program and who is charged with certain responsibilities and duties by this Ordinance.

### ***Section 4.02 Permit Procedures.***

- A. Application for a Land Disturbance Permit shall be made to the City on forms furnished by the City **PRIOR** to any development activities. No land disturbing activities shall be conducted within the City until a Land Disturbance Permit has been issued by the Administrator allowing such activity pursuant to the provisions of this Ordinance.
- B. All applications for a Land Disturbance Permit shall be accompanied by a non-refundable application fee according to the current schedule of fees and bonds established by the City Council. This covers administrative costs associated with processing and reviewing the land disturbance permit application.

- C. Completed application forms, along with the associated fee, are to be returned to the Administrator. Upon receipt of a complete application, the Administrator will forward the application to the City Engineer for review. After evaluating the information provided, the City Engineer will forward the application and his recommendations to the City Council, which will either deny or approve an application for a City Land Disturbance Permit. An approved application may require the applicant to implement additional structural and non-structural Best Management Practices to reduce or eliminate potential discharge pollutants. If the application is denied, the Administrator shall notify the applicant of deficiencies and allow the application to be revised and resubmitted. The re-submittal of a Land Disturbance Permit that has previously been denied shall be accompanied by a non-refundable re-submittal according to the current schedule of fees and bonds established by the City Council. This covers administrative costs associated with processing and reviewing the land disturbance permit application.
- D. It shall be unlawful to commence any land disturbance or construction activities as described in this Ordinance prior to the issuance of a City Land Disturbance Permit. Every Land Disturbance Permit issued by the City of Montevillo shall expire by limitation and become null and void if the work authorized by such Permit is not commenced within ninety (90) days from the date of issuance of such Permit, provided that consecutive renewal of such Permit may be granted, at no additional cost, upon written request to the City with good cause shown. The work authorized by such Permit shall not be suspended or abandoned at any time after work is commenced and shall be carried to completion or the Permit shall be void. If work is suspended or abandoned, required bonds may be used to correct or eliminate erosion, drainage problem or hazardous conditions as provided herein.
- E. The issuance of a Permit shall not prevent the City Engineer from thereafter requiring the correction of errors or changes due to unforeseen problems in permitted plans and specifications. The City Engineer may require that earthwork operations and project design be modified if significant problems occur which were not considered at the time the Permit was issued.
- F. The City Engineer shall be furnished with two (2) sets of permitted plans. Permitted plans and specifications shall not be changed, modified or altered without written authorization from the City Engineer; all work shall be done in accordance with the permitted plans. The City Engineer shall retain one (1) set of permitted plans, specifications and other required documents for a period of not less than one (1) year from date of completion of the work covered therein.
- G. Upon project completion, the applicant shall notify the Administrator and request termination of permit coverage. The Administrator shall grant termination within thirty (30) days unless it is determined by the City Engineer that the applicant has failed to meet the requirements of this Ordinance, particularly that regarding proper soil stabilization.

***Section 4.03 Land Disturbance Permit Application Requirements.***

The application for the City Land Disturbance Permit shall include, at minimum, the following information:

- A. Name and telephone number of applicant;
- B. Business or residence address of applicant;

- C. Name and address of owner of subject property;
- D. Designated Point of Contact for the project;
- E. Address and legal description of subject property;
- F. Name and address of contractor and any applicable subcontractors who shall perform the land disturbing activity;
- G. The nature, extent and purpose of the land disturbing activity, including the size of the area for which the permit shall be applicable and a schedule for the starting and completion dates of the land disturbing activity;
- H. A Best Management Practices Plan outlining specific measures used to control erosion and storm water discharge from the site;
- I. A map or plot of the property upon which land disturbance activities are to be conducted, prepared by a registered land surveyor, detailing present topography, properties immediately adjacent to the subject site, and all existing improvements, including, but not limited to, grades and elevations of streets, sidewalks, drainage and utility facilities;
- J. All proposed contours;
- K. An erosion control plan prepared by a qualified credentialed professional indicating erosion control devices, soil stabilization specifications, and storm water management measures designed to reduce erosion and minimize impact to the MS4;
- L. Land disturbance activities greater than one (1) acre, or part of a larger development or project that is, or will eventually be, larger than one (1) acre in size require an NPDES permit issued by ADEM authorizing the discharge of storm water. If an NPDES permit is required, a copy of the Notice of Intent (NOI) shall be submitted to the Administrator prior to the land disturbance activities. If the current NPDES permit should expire during land disturbance activities, a copy of the new NOI and ADEM's subsequent verification of coverage shall be submitted to the Administrator;
- M. Bonding instrument as required in Section 4.07;
- N. Any other information deemed necessary by the Administrator to effectively evaluate the potential for contamination of the MS4 by erosion and storm water runoff.

***Section 4.04 Availability of Permit.***

An approved copy of the Land Disturbance Permit shall be maintained at the office of the designated contact person and at the permitted subject site. The permit shall be made available for inspection at any time by the City Engineer, the Administrator or his/her designee.

***Section 4.05 Transfer of Permit (Prohibited).***

A City Land Disturbance Permit may not be transferred. A new application for a Land Disturbance Permit must be completed with transfer of ownership. The new application will require payment of the application established in Section 3.02 of this Ordinance. The filing of a new Land Disturbance Permit application shall be treated as an interim permit allowing continued operation of the construction site pending review of the amended and/or new application by the Administrator.

#### ***Section 4.06 Signatory Requirements.***

All applications required by this Ordinance to be submitted to the Administrator shall be signed as follows:

- A. If the application is submitted by a corporation, it must be signed by the president or a vice president, secretary or treasurer of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation. Proof of authority of the signatory shall be provided to the Administrator upon his/her request.
- B. If the application is submitted by a limited liability company, it must be signed by the manager or other person who serves the same function as the president of a corporation.
- C. If the application is submitted by a partnership, it must be signed by a general partner or the proprietor.
- D. If the application is submitted by a sole proprietorship, it must be signed by the proprietor.
- E. If the application is submitted by a municipality, the state or federal government, or other municipal, state or federal agency, it must be signed by a principal executive officer of such government or the chief executive officer of the agency, or a senior executive officer having responsibility for overall operations of a principal geographic unit of any such governmental agency.

Any person signing the application or correspondence shall make the following certification as evidenced by Notary: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision and that I have personally examined and am familiar with information therein. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and civil penalty."

#### ***Section 4.07 Bonding Requirements.***

Each Land Disturbance Permit application shall be accompanied by an irrevocable letter of credit, certificate of deposit or certified check, hereafter referred to as "bond", and furnished to the City according to the following provision:

- A. The City Engineer shall require a bond in such amount as specified herein to assure that the work, if not completed or if not in accordance with the permitted plans and specifications will be corrected to eliminate hazardous conditions, erosion and/or drainage problems.
- B. The bond shall contain, or have attached to it as an exhibit, a legal description of the site. The bond shall remain in effect until it has been released in writing by the City Engineer as provided in Section 4.08. A bond with a specific expiration date shall not be acceptable.
- C. The bond for clearing operations only shall be in the amount determined, according to the current schedule of fees and bonds established by the City Council, per acre for each acre, or fraction of an acre, disturbed or affected by such operations.
- D. The bond for earthwork or clearing and earthwork operations shall be in the determined amount, according to the current schedule of fees and bonds established by the City Council,

per acre for each acre, or fraction of an acre, disturbed or affected by such operations.

- E. Clearing or earthwork operations performed in areas designated as or adjacent to floodways or floodplains shall require a bond equal to double the amounts required in subsections (c) and (d) herein.
- F. Each bond shall be issued in the name of the City of Montevallo by a bank which is satisfactory to the City.

#### ***Section 4.08 Release of Bonds.***

One (1) year following the completion of stabilization of the site and upon receipt of written request for the release of bond and the approval of same by the City Engineer, the City shall release the bond to the owner; provided however, that if vegetation has not been established for an entire growing season, the bonds or other surety shall not be released for one (1) year plus one (1) growing season after the vegetation becomes established with standing growth.

### **ARTICLE V. MONITORING AND INSPECTIONS.**

The Administrator or his/her designee may periodically monitor the erosion control and the quality of storm water runoff from land disturbing activities permitted pursuant to this Ordinance.

#### ***Section 5.01 Detections of Illicit Connections, Improper Disposal, and/or Other Discharges***

The Administrator, and his/her authorized designee, shall take the necessary steps to detect and eliminate illicit connections and eliminate improper disposal and/or discharge to the MS4, including the required wet-weather and dry-weather programs to screen illicit connections and improper discharges and identify their source(s) from land disturbing activities.

#### ***Section 5.02 Inspections***

Inspections to monitor the quality of erosion control measures and the quantity of pollutants in storm water discharges from sites permitted pursuant to this Ordinance, and from any other facilities or sites the Administrator deems a potential source of contamination to the community waters, including those facilities and sites which hold current NPDES permits, shall be performed in accordance with the following protocol:

- A. The Administrator, or his/her designee, or the City Engineer, hereafter referred to as "inspector," bearing proper identification may enter all land disturbing activities for regular, periodic inspections, investigations, monitoring, observation, measurement, enforcement, sampling and testing to verify compliance with the provisions of this Ordinance and the specific BMP plans and controls for the land disturbing activities. The inspector shall notify the property owner, his contact person or on-site representative prior to inspection. Inspections shall be conducted at reasonable times to confirm the implementation and maintenance of BMP plans.
- B. Upon refusal by any property owner or his/her designated representative to permit an inspector to enter or continue an inspection, the inspector shall terminate the inspection or

confine the inspection to areas in which no objection is raised. The inspector shall immediately report the refusal and the grounds to the Administrator. The Administrator may seek appropriate compulsory process. The Land Disturbance Permit Applicant is responsible for all costs and expenses incurred by the City during this process, including any court costs or legal fees.

- C. If the Administrator, or his/her designees, has reasonable cause to believe that discharges from the land disturbing activities may cause imminent threat to the human health or the environment, an inspection may take place at any time and without notice to the owner or on-site representative. The inspector shall present proper credentials upon reasonable request by the owner or representative.
- D. At any time during the conduct of an inspection or at such other times, the Administrator or his/her designees, may request additional information from the owner or on-site representative, as may be necessary to effectively inspect the land disturbing activities .
- E. The owner or his/her representative may identify areas of the site, material or processes which contain or which might reveal a trade secret. If the inspector has no clear or convincing reason to question such identification, the inspection report shall note that trade secret information has been omitted. To the extent practicable, the Administrator shall protect all information which is designated as a trade secret by the owner or their representative.
- F. In the event of substantial erosion or pollutant loading to community waters, the Administrator will take the following steps:
  - 4. Field inspection to verify possible sources of erosion and pollution.
  - 5. Informing the owner or on-site representative of the source of the problem and working with them to determine appropriate corrective actions.
  - 6. Following up with the owner or on-site representative to determine the status of corrective actions.
  - 7. Enforcement procedures, if needed, shall be as provided in Article V of this Ordinance.

## **ARTICLE VI. ENFORCEMENT AND ABATEMENT.**

### ***Section 6.01 Unauthorized Discharge***

Any site erosion or discharge of storm water in violation of this Ordinance, or of any condition of a land disturbance permit issued pursuant to this Ordinance is hereby declared a public nuisance and shall be subject to correction and/or abatement in accordance with applicable law.

The following direct or indirect discharges into the MS4 are allowable under the terms of this Ordinance unless determined by the Administrator to be a source of contamination to community waters: landscape irrigation; uncontaminated water from foundation and footing drains; discharges from springs; individual residential car washing; lawn watering; waterline and fire hydrant flushings; or discharges from fire fighting activities.

### ***Section 6.02 Accidental Discharges***

In the event of a discharge of hazardous substance or a significant spill of a hazardous substance to the MS4 which could constitute a threat to human health or the environment, the owner, operator or on-site representative shall give notice to the Administrator and local emergency management authority in the same manner and within the same time as required by state regulations for notice to ADEM.

The owner, operator or on-site representative of such property should take all reasonable steps to minimize adverse impact to the community waters caused by discharges to the MS4, including such improved and additional monitoring as may be necessary to determine the nature and impact of the discharge. Absent a compelling public interest to the contrary, it shall not be a defense for the owner, operator or on-site representative in an enforcement situation that it would have been necessary to halt or reduce business or activity of the site, or any project or facility thereon, to maintain water quality and minimize adverse impact that the discharge may cause.

### ***Section 6.03 Immediate Threats to Public Health and Welfare***

Notwithstanding any other provision in this Ordinance to the contrary, in the event of an immediate threat to the public health or welfare, the Administrator may take all appropriate measures to remove or alleviate such threat.

### ***Section 6.04 Administrative Notification and Enforcement***

A. Notification of Violation.

B. When the Administrator finds that any person is in violation of any provision of this Ordinance, the Administrator or his/her agent may serve upon such person written notice of the violation. Within three (3) calendar days of the date of such written notice, an explanation of the violation, and a schedule for satisfactory correction and prevention, including specific required actions, or an appeal thereof, shall be submitted to the Administrator by the applicant. Submission of such plan in no way relieves the person in violation of said liability for any violations occurring before or after receipt of the notice of violation.

C. Compliance Orders.

When the Administrator finds any person has violated, or continues to violate this Ordinance, a compliance order may be issued to the violator directing that, within a specified time period, adequate structures and BMP measures be installed, procedures implemented or other action taken to remedy such violation. Compliance orders may also contain such other requirements reasonably necessary and appropriate to address such violation, including the construction of appropriate structures, BMP measures, and self monitoring and management practices.

D. Cease and Desist Orders.

When the Administrator finds that any person has violated, or continues to violate, this Ordinance, the Administrator may issue an order to such person to cease and desist all such violations immediately, and direct said person in violation of this Ordinance to:

1. comply with this Ordinance forthwith; or,
2. take such appropriate remedial or preventative action required to properly address a continuing or threatened violation of this Ordinance, including halting operations and terminating the discharge.

E. Liens.

If any person to whom a Compliance Order or Cease and Desist Order is issued fails to take action as required by such order within the time specified in such order, the Administrator shall report such failure to the City Council, and upon the direction of the City Council evidenced by resolution, the Administrator on behalf of the City shall proceed to take the necessary corrective action.

1. The Administrator shall keep an itemized list of the expense of the corrective action.
2. Upon completion of the work, the Administrator shall post a copy of the itemized list of expense for at least five days on or near the chamber door of the City Council, together with a notice of the time when the report of such expense shall be submitted to the City Council for confirmation. Upon the fifth day after posting the itemized list, the Administrator shall submit the itemized list in writing to the City Council showing the cost of the corrective action. Upon confirmation of such report by the City Council evidenced by resolution, the Administrator shall send a bill to the owner of the property for the confirmed expenses, in no event less than a minimum charge according to the current schedule of fees and bonds established by the City Council. Such bill shall bear interest, compounded monthly at the legal rate, from the date on which the work was completed and shall be a lien against the property worked on from the date of confirmation by the City Council. The City may have recourse to any legal remedies for enforcing the lien, including selling the property to satisfy the lien.

***Section 6.05 Unlawful Acts (Misdemeanor).***

It shall be unlawful for any person to:

- A. Violate any provision of this Ordinance.
- B. Violate the provisions of any permit issued pursuant to this Ordinance.
- C. Fail or refuse to comply with any lawful order issued by the Administrator which has not been appealed to the City Council within the time allowed by this Ordinance.

Such person shall be guilty of a misdemeanor and each day of such violation, failure or refusal to comply with this Ordinance shall be deemed a separate offense and punishable accordingly. Any person found to be in violation of any of the provisions of this Ordinance shall be punished by a fine and/or imprisonment pursuant to Section 1-9 of the Code of the City of Montevallo, Alabama and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues, shall be considered a separate offense. Nothing herein contained shall prevent the City of Montevallo from taking such other lawful actions as is necessary to prevent or remedy any violation, including but not limited to requiring the developer to restore to the original state any damage done as a result of the violation.

### ***Section 6.06 Judicial Proceeding and Relief.***

The Administrator may initiate civil proceeding in any court of competent jurisdiction against any person who:

- A. Violates or demonstrates an intention to violate the provisions of this Ordinance;
- B. Violates or demonstrates an intention to violate the provisions of any permit issued pursuant to this Ordinance; or
- C. Fails or refuses or demonstrates an intention to fail or refuse to comply with any lawful order issued by the Administrator which has not been appealed to the City Council within the time allowed by this Ordinance.

## **ARTICLE VII. VARIANCES AND APPEALS.**

### ***Section 7.01 Procedures for Variances and Appeals.***

The City Council of the City of Montevallo may, in appropriate cases and subject to appropriate conditions and safeguards, hear and decide requests for appeals or variance from the requirements of this Ordinance. Variances may be granted provided they would not result in a violation of the ADEM permit regulations or any other state or federal regulation.

- A. The City Council shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the Administrator or his/her designee in the enforcement or administration of this Ordinance.
- B. Variances may be issued for development necessary for the conduct of a functionally dependant use, provided the criteria of this Article are met, no reasonable alternative exists, and the development is protected by methods that minimize erosion and storm water runoff while creating no additional threat to the public safety.
- C. Variances shall not be issued if the proposed land disturbance will adversely impact community waters.
- D. Variances shall not be considered when the conditions from which relief is sought are the result of actions by the applicant.
- E. A party seeking a variance shall submit a written petition for a variance, which sets forth the specific variance sought and the reasons therefore, with supporting data as to why the requested variance should be granted. The petition shall include all information necessary to evaluate the requested variance. The petition for a variance shall be filed with the Administrator.
- F. In reviewing such requests, the City Council shall consider all technical evaluations, relevant factors, and all standards specified in this and other sections of this Ordinance.
- G. Any person aggrieved by the decision of the City Council may appeal such decision to the Circuit Court of Shelby County, Alabama.

### ***Section 7.02 Conditions for Variances.***

A variance may be issued only when all of the following criteria are met:

- A. A finding of good and sufficient cause that does not violate the spirit of this Ordinance.
- B. That exceptional circumstances applicable to the site with respect to which the variance is requested, exist so that strict adherence to the provisions of this Ordinance would result in unnecessary hardship and the granting of such variance would not result in a condition contrary to the intent of this Ordinance.
- C. A determination that the granting of a variance will not result in increased soil erosion, adverse impacts to community waters, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with local existing laws and ordinances or any other state or federal laws or regulations.

The provisions of this Ordinance are minimum standards for erosion and sediment control; therefore, any deviation from the standards herein shall be weighed carefully. Variances shall only be issued upon the determination that the variance is the minimum necessary to afford relief.

The Administrator or his/her designee shall maintain records of all appeal actions and report any variance to ADEM upon request.

Upon consideration of the factors listed above and the provisions of this Ordinance, the City Council may attach such conditions to the granting of variances as it deems necessary to further the objectives of this Ordinance.

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**AND BE IT FURTHER RESOLVED** that Article XXV Land Disturbance and Landscaping of the Zoning Ordinance of the City of Montevallo be, and the same is hereby rescinded; and,

**BE IT FURTHER RESOLVED** that this Ordinance shall become effective when published as required by law.

**ADOPTED and APPROVED** this the 24<sup>th</sup> day of May, 2010.

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Ben W. McCrory, Mayor

ATTEST:

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Herman Lehman, City Clerk