

ORDINANCE NUMBER 2987

AN ORDINANCE RESCINDING ORDINANCE NUMBER 2769 AND AMENDING CHAPTER 5.5; ARTICLE II, ENTITLED “EROSION AND SEDIMENT CONTROL” OF THE VESTAVIA HILLS CODE OF ORDINANCES

RECITALS

WHEREAS, on June 11, 2018, the City Council approved and adopted Ordinance Number 2769; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to rescind Ordinance Number 2769 and further amend Chapter 5.5, Article II, Entitled “Erosion and Sediment Control” of the Vestavia Hills Code of Ordinances in its entirety; and

“WHEREAS, the sedimentation of streams, lakes and other waters of this state constitutes a major pollution problem; and

WHEREAS, sedimentation occurs from the erosion or depositing of soil and other materials into the waters, and control of erosion and sedimentation is deemed vital to the public interest and is necessary to the public health and welfare, and expenditures of funds for an erosion and sedimentation control program shall be deemed to benefit the public health 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 pursuant to the National Pollutant Discharge Elimination System (“NPDES”) permit **ALS000017** from Alabama Department of Environmental Management (“ADEM”) for storm water discharges from the Municipal Separate Storm Sewer System of the City of Vestavia Hills (“MS4”), which will permit the development in the City of Vestavia Hills, (“City”) to continue with the least detrimental effects from pollution by sedimentation: and

WHEREAS, ADEM, pursuant to the authority delegated to it under the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*, has required City to obtain a NPDES permit for storm water discharges from the MS4, effective March 1, 1995 and, therefore, City is subject to the federal storm water laws and regulations contained in 33 U.S.C. ¶ 1342 (P) and 40 C.F.R. 122.26, and is required to adopt a local erosion control ordinance. Act No. 95-775 of the Alabama State Legislature (Code of Alabama 1975, § 11-89C 1-14) and other

provisions of the Code of Alabama 1975 grant the authority to adopt such ordinances to the governing bodies of all Class 1 municipalities within the State of Alabama, to the governing bodies of counties in which Class 1 municipalities are located and to the governing bodies of all other municipalities located within such counties, and where any such other municipality is also located partially within an adjoining county, then the governing body of such adjoining county and which governing bodies are specifically designated in 40 C.F.R. part 122, Appendices F, G, H or I or by ADEM pursuant to the authority delegated to it under the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*; 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 of pollutants to the City's MS4, thereby, maintaining and improving the quality of the community waters into which the storm water outfalls flow, including, without limitation, the lakes, streams, ponds, wetlands, sinkholes and groundwater of the City; and

WHEREAS, this ordinance controls the discharge of certain non-storm water to the MS4 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 storm water discharges; and

WHEREAS, the objectives of this ordinance are to:

- a) Control:
 - i. the contribution of pollutants to the MS4 by storm water discharges associated with land-disturbing activities and
 - ii. the quality of storm water discharged to the MS4 from sites of land-disturbing activity;
- b) Prohibit illicit discharges to the MS4;
- c) Control the discharge to the MS4 of any spills, dumping or disposal of materials other than storm water from sites of land-disturbing activity; and
- d) Carry out all inspections, surveillance and monitoring procedures necessary to determine compliance and noncompliance with land-disturbing activity permits (singular, "Permit" and plural, "Permits").

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA ("CITY COUNCIL") THAT ORDINANCE NUMBER 2769 HEREBY RESCINDED AND THAT CHAPTER 5.5, ARTICLE II ENTITLED "EROSION AND SEDIMENT CONTROL" IS AMENDED IN ITS ENTIRETY, AS FOLLOWS:

**Article 1
DEFINITIONS**

Section 1.01 Definitions.

For the purposes of this ordinance, the following words and terms shall have the meaning assigned to them in this section.

Accidental Discharge - a discharge prohibited by this Article into the MS4 or community water which occurs by chance and without planning or consideration prior to occurrence.

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 plants, crops, and animals which are useful to man.

Alabama Department of Environmental Management (herein 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 storm water laws of the United States of America and the State of Alabama.

Applicant - any person, firm, corporation or governmental agency who executes the necessary forms to procure approval of Best Management Practices Plans from the Official.

Best Management Practices (herein abbreviated as "BMP") - activities, prohibitions of practices, maintenance procedures and management practices designed to prevent or reduce the pollution of waters to the MS4. Best Management Practices also include treatment requirements, operating procedures and practices to control facility site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage and construction sites.

Best Management Practices Plan - (herein abbreviated as "BMP Plan") - a set of drawings and/or other documents submitted by a person as a prerequisite to obtaining a Permit, which contain all of the information and specifications pertaining to BMP.

Clean Water Act - (herein abbreviated as "CWA") - the federal act (33 U.S.C. § 1251 through § 1387) which was formerly referred to as the Federal Water Pollution Control Act and Federal Water Pollution Control Act Amendments of 1972, Public

Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 6-483 and Public Law 97-117, 33 U.S.C. § 1251-1387.

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 and other bodies of natural or artificial surface or subsurface water into which the MS4 outfalls flow.

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.

Erosion Control - the application of measures to reduce erosion of land surfaces.

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

Illicit Connection - any man-made conveyance connecting an illicit discharge directly to the MS4.

Illicit Discharge - any discharge that is not composed entirely of storm water, except discharges pursuant to a NPDES permit (other than NPDES Permit ALS000001) and discharges which are specifically excepted from this ordinance.

Minor Extension - an addition to an existing utility pipeline or other utility line in which the land disturbed consists of fewer than 7,500 linear feet.

Municipal Separate Storm Sewer (herein abbreviated as "MS3") - a conveyance or conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels and storm drains), owned or operated by a city, town or county or other public body (created by, or pursuant to, State law) having jurisdiction over storm water.

Municipal Separate Storm Sewer System (herein abbreviated as "MS4") - a system of municipal separate storm sewers, as defined hereinbefore.

NPDES - National Pollutant Discharge Elimination System.

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 ordinance.

- 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 Alabama 1975, § 22-22-1(b) (3) and any other effluent characteristics specified in a Permit.
- Pollutant Loading* - the amount of a pollutant entering the MS4.
- Qualified Credentialed Professional* - a Certified Professional in Erosion and Sediment Control ("CPESC") as determined by the Soil and Water Conservation Society ("SWCS") or the International Erosion Control Association ("IECA"). 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 Manager 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 ("ARCPACS"), 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 of Alabama 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 are in one ownership, and any combination of tracts, lots and parcels which are contiguous, are owned by two 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 under 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.

Turbidity - a condition in water or wastewater caused by the presence of suspended matter, resulting in the scattering and absorption of light rays. A measure of fine suspended matter in liquids.

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 storm water management 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 ordinance would result in unnecessary hardship and the granting of such modification would not result in a condition contrary to the intent of this ordinance.

Article 2
ADMINISTRATION

Section 2.01

The municipal engineer for the City, the municipal official or employee who is a qualified credentialed professional, such other municipal official or municipal employee who has had sufficient experience dealing with BMP design to enable them to enforce the provisions of this ordinance, an individual or agency contracted to provide such service, shall be responsible, on behalf of the City ("Official"), to enforce the provisions of this ordinance (whenever the word "Official" is used in this ordinance, it shall include the authorized agent of the Official).

Article 3 APPLICATION AND FEES

Section 3.01 Application.

- a. Before the commencement of any land-disturbing activity that is not exempted from obtaining a Permit under this ordinance, the owner of the land on which such activity shall be conducted, or his duly authorized agent, must file with the Department of Building Safety an application for the approval of the owner's BMP Plan. The Official must either approve or disapprove the BMP Plan within fourteen (14) days of the day it is filed with the Official. If the BMP Plan is disapproved, the Official must inform the Applicant, in writing, of the reasons for its disapproval. If the Applicant, on one or more occasions, revises the BMP Plan or submits to the Official additional documents or information in connection with the BMP Plan, the Official must make a written response to the Applicant with respect to whether such revised BMP Plan and/or additional documents and information have been approved or disapproved by the Official. All such additional responses must be made by the Official to the Applicant within fourteen (14) days of the day such revised BMP Plan or additional documents or information are submitted to the Official. The land-disturbing activity may not be commenced prior to the issuance of the Permit by the Official. The issuance of the Permit shall not excuse the owner from the need to obtain other required state and local permits or licenses.
- b. The minimum standards for the issuance of a Permit must meet the requirements of this ordinance
- c. Facilities that are covered under an ADEM NPDES permit for storm water discharge associated with construction activities ("ADEM NPDES permit") shall submit an ADEM Notice of Registration (NOR) with their application. The Notice of Intent (NOI) may be provided until the NOR is received from ADEM. Copies of all monitoring data and reports shall be submitted to the City in the same manner as they are submitted to ADEM and in the frequency specified by the City.

Section 3.02 Permit Application Fee.

Each application for the issuance of a Permit shall be accompanied by a non-refundable fee of four hundred dollars (\$400), for individual single-family residences and one thousand dollars (\$1000), for all other types of land disturbing activities, to help defray the City's cost of processing and reviewing the application and the inspections associated with the application. Sites that are required to have Post-Construction controls as stated in Ordinance Number 2987 will have an additional fee of two thousand dollars (\$2000) to defray the City's cost of processing and reviewing the structure's design and the associated inspection and maintenance BMPs. The applicant must submit three sets of its BMP Plan with its application and fee to the Official.

When work requiring a Land Disturbance Permit is commenced prior to obtaining the permit, the permit applicant shall be required to pay a penalty of one hundred dollars (\$100.00) plus a double permit fee. The payment of the required fee shall not relieve any person from fully complying with all of the requirements of all applicable regulations and codes, nor shall it provide relief from being subject to any of the penalties therein.

Section 3.03 Post Construction Annual Issuance Fee.

An annual issuance fee of \$50.00 will be paid to the City to defray the administrative cost of inspecting Post-Construction controls and maintaining inspection records.

Section 3.04 Data Required on the Application for a Permit.

- a. All applications for a Permit must include the following information:
 1. name of Applicant;
 2. telephone number and e-mail address of applicant;
 3. address where Applicant, or other person who can furnish information about the land-disturbing activity can be reached;
 4. name, address, telephone number, and e-mail address of the owner of the project, the owner of the property on which the project is to be located and the ground lessee of the property, if any, on which the land-disturbing activity is to be conducted if the applicant is not the owner of the project and such property;
 5. legal description and address, if any, of the property upon which the land-disturbing activity is to be conducted;
 6. names, addresses, telephone numbers, and e-mail addresses of all contractors and subcontractors who shall implement any BMP Plan; provided, however, that if the contractor and the subcontractors have not been selected when the application for a permit is filed, the Applicant shall furnish such information to the Official within five (5) days of the day or days on which the contractor and/or subcontractors are selected;
 7. name, address, telephone number, and e-mail address of the qualified credentialed professional who has approved the BMP Plan application (this is required for all land-disturbing activities except those related to the construction of individual single-family residences);
 8. each application for a Permit must be accompanied by a map or a plot of the land on which the land-disturbing activity will be conducted and any other information that is required under the provisions of Article 5.
- b. The detail of the BMP Plan must be commensurate with the size of the project, severity of the site condition and potential for off-site damage, as provided in Article 5

Section 3.05 Maintenance of Records.

Records of compliance with the provisions of the Permit shall be maintained in the office of the owner or the applicant, shall be available to the Contact Person and shall be made available at any time for review by the Official; provided, that if such records are maintained without the State of Alabama and, because of their size, cannot be transmitted to the Official by email, such records must be delivered to the Official (at no expense to the City or the Official) within forty-eight (48) hours of receipt of request for such records.

Section 3.06 Amended Application; Transfer of Permit.

- a. A Permit may be amended, without the payment of an additional fee, upon the filing with the Official of an amended or restated Permit application, containing all

changes from the original application; provided, that the holder of the Permit shows to the reasonable satisfaction of the Official that there are no proposed changes which may affect the quantity and/or quality of storm water runoff. If an amended or restated application is filed with the Official with respect to land-disturbing activities for which a Permit has been issued, such existing Permit shall continue in effect, and the holder of the Permit may continue to operate under it unless and until an amended Permit is issued in response to the amended or restated application ("Amended Permit") at which time the original Permit shall expire and all land-disturbing activities must be conducted in accordance with the Amended Permit.

- b. A Permit may be transferred, without the payment of an additional fee, upon the filing with the Official of an application for transfer; provided, that the holder and proposed transferee of the Permit show to the reasonable satisfaction of the Official that, upon or following the transfer, there will be no proposed changes which may affect the quantity and/or quality of storm water runoff. If there is a request for the transfer of a Permit and there are to be one or more changes in the operation of the project which is the source of the land-disturbing activity which may affect the quantity and/or quality of storm water runoff, the new owner or operator of such project must apply to the City for a new Permit prior to his involvement with the operation of such project.

Section 3.07 Signatory Requirements.

- a) All applications and correspondence required by this ordinance to be submitted to the Official shall be signed as follows:
 1. If an application or correspondence is submitted by a corporation, it must be signed by the president of the corporation or by a vice-president of the corporation who is in charge of a principal business function of the corporation, or any other person who performs similar policy-making or decision-making functions for the corporation, or who has been authorized to sign such applications and/or correspondence by a resolution adopted by the board of directors of the corporation. Proof of the authority of the signatory shall be provided to the Official, upon his request.
 2. If an application or correspondence is submitted by a limited liability company, it must be signed by a manager or other person who serves the same or similar function as the president of a corporation.
 3. If an application or correspondence is submitted by a partnership, it must be signed by a general partner of the partnership.
 4. If an application or correspondence is submitted by a sole proprietorship, it must be signed by the proprietor.
 5. If an application or correspondence is submitted by a municipality, the State or the federal government or by any municipal, state or federal agency, it must be signed by either the chief executive officer or a principal executive officer of any such government or by either the chief executive officer, a principal executive officer or a senior executive officer having responsibility for the overall operations of a principal geographic unit of any such governmental agency.
- b) Any person signing any application or correspondence required by this ordinance shall make the following certification: "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 I am familiar with, the information in this document and such attachments. 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.

Article 4 EXCLUSION

Section 4.01

No person may conduct any land-disturbing activity without having obtained a Permit from the Official.

Section 4.02

Land-disturbing activities shall include any land change which may result in soil erosion from water or wind and the movement of sediment to the MS4, including, but not limited to, the clearing, dredging, grading, excavating, transporting and filling of land, except that the term shall not include the following:

- a) Any land change on property about which the owner of the property has submitted information to the Authority proving, to the satisfaction of the Authority, that such property does not drain to the MS4. Such information may be submitted to the Official, who shall promptly deliver it to the Authority, and the determination as to whether such property drains to the MS4 shall be made by the Authority.
- b) Agriculture.
- c) Silviculture.
- d) Such minor land-disturbing activities as home gardens, landscaping on individual residential lots (excluding landscaping performed by, or on behalf of, a developer or builder, who builds a house on any such lot), home repairs, home maintenance work, minor additions to houses, the construction, maintenance or repair of accessory structures and other related activities which result in minor soil erosion. Minor land-disturbing activities typically are considered to result in soil disturbance less than 500 sf, but, in all cases, are subject to the Official's discretion.
- e) Minor land-disturbing activities such as individual connections for utility services and sewer services for single or two-family residences, minor grading for driveways, yard areas and sidewalks, excluding any grading done by, or on behalf of, a developer or builder in connection with the construction of a house. Minor land-disturbing activities typically are considered to result in soil disturbance less than 500 sf, but, in all cases, are subject to the Official's discretion.
- f) Minor maintenance, minor repair, and the minor extension of any existing underground public utility lines, except sewer lines; provided, that the utility company which owns such lines has received approval of a general BMP Plan from the Authority for such maintenance, repair, and extension; and provided further, that any utility company making a minor extension in connection with which the land disturbed consists of more than 1,000 linear feet must give the Official written notice of such extension prior to the commencement of such minor extension.
- g) The construction, repair or rebuilding of railroad tracks.
- h) Minor subsurface exploratory excavations under the direction of soils engineers or engineering geologists.
- i) The opening of individual burial sites in property which has been approved for such use by all necessary governmental authorities.
- j) Digging of water wells or environmental monitoring wells.

The activities referred to in items (b) through (i) above 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. This ordinance shall apply to such land-disturbing activities that drain to the MS4 if a storm water pollution problem is shown to be caused by such activity following monitoring procedures and complaints.

Article 5 BMP APPROVAL REQUIREMENTS

Section 5.01 General Requirements.

No land-disturbing activity shall be conducted within the City until a Permit has been issued by the Official allowing such activity pursuant to the provisions of this ordinance. The following are BMP approval requirements:

- (a) Persons conducting land-disturbing activities shall take all reasonable measures referred to, or 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.

No land-disturbing activities subject to this ordinance shall be undertaken

- (b) except in accordance with the following requirements:
 1. The person(s) proposing to conduct any land-disturbing activity or an agent, contractor or other representative of such person must contact the Official at least five (5) business days before commencement of the land-disturbing activity to advise the Official of the commencement of such land-disturbing activity, unless, for good cause shown, the Official permits such person, contractor, agent or other representative to contact him nearer to the date of the commencement of such land-disturbing activity.
 2. Other than land-clearing activities required to install the appropriate BMP in accordance with BMP Plans, any down slope erosion and sediment control measures, on-site stream channel protection and upslope diversion of drainage required by the BMP Plan shall be in place and functional before any clearing or earth- moving operations begin, and shall be constructed and maintained throughout the construction period. Temporary measures may be removed at the beginning of the workday, but shall be replaced at the end of the workday.
 3. The angle for graded slopes and fills shall be no greater than the angle, which can be retained by vegetative cover or other adequate erosion control devices or structures. Any slope or fill which has been graded shall, within fourteen (14) days of the completion of such grading or the completion of any phase of grading, be planted or otherwise provided with ground cover, materials, devices or structures sufficient to restrain erosion. The BMPs shall remain in place in accordance with the BMP Plan until the graded slope or fill is stabilized.
 4. Adequate protective measures shall be provided for the containment of hazardous substances and any other materials which may pollute the MS4, including petroleum products, lubricants and paint.
 5. All control measures shall be checked, and repaired as necessary, monthly in dry periods and within twenty-four (24) hours after any rainfall at the site of 0.75 inch within a twenty-four (24)-hour period. During prolonged rainfalls, daily checking and, if necessary, repairing shall be done. The Permittee shall maintain written records of such checks and repairs, which records shall be subject to the inspection of the Official at any reasonable time.
 6. The BMP Plan shall show the size of disturbed area and a schedule of the projected starting and completion dates of the land- disturbing activity.

7. A site plan, accompanied by a written description of BMPs which are shown on the site plan and a schedule of implementation during land-disturbing activities and construction shall be furnished to the Official prior to the commencement of any land-disturbing activities.
8. A description of, and procedures for, proper storage, handling and disposal of construction materials stored on-site which could contribute to the pollutant loading to the MS4, shall be furnished to the Official prior to the commencement of any land-disturbing activities.

Section 5.02 Design and Performance Standards.

The following are required for all land-disturbing activities except those related to the construction of individual single-family residences.

All applications for a Permit must contain, or be accompanied by, the materials and information necessary to satisfy the requirements of Sections 5.01 and 5.02 and must be accompanied by a soil erosion and sediment control plan ("Control Plan"). The Control Plan shall be prepared by a Qualified Credentialed Professional and shall include the following:

- (a) The Control Plan shall be accompanied by a map or plot of the property upon which land-disturbing activities are to be conducted, prepared by a registered land surveyor, showing the present contour lines of such property, and the present contour lines of at least the nearest twenty-five (25) feet of the properties immediately adjacent to such property and the existing grades and elevations of all streets which abut such property. Such map or plot shall show all existing drainage facilities and all natural drainage on such property and on such adjacent property.
- (b) All proposed contours, the proposed temporary and permanent disposition of surface water and the proposed drainage structures; provided, however, the Control Plans for utility projects, except sewer projects, shall not be required to show the proposed contours.
- (c) The proposed contours in the map or plot shall be depicted in contour intervals of two (2) or fewer feet; provided, however, the Control Plans for utility projects, except sewer projects, shall not be required to show the proposed contours. All maps, plots and plans submitted shall be on a sheet of paper at least twenty-four (24) inches by thirty-six (36) inches and drawn to a scale of not less than one inch equals 100 feet. Contour intervals of more than two (2) feet and maps, plots or plans which are smaller than the required size may be approved by the Official, upon written request and for good cause shown.
- (d) The Control Plan shall contain a description of the existing site conditions, a description of adjacent topographical features, the information necessary to determine the erosion qualities of the soil on the site, potential problem areas of soil and erosion and sedimentation, soil stabilization specifications, storm water management considerations, a projected time schedule for the commencement and completion of the land-disturbing activity, specifications for BMP Plan maintenance during the project and after the completion of the project, clearing and grading limits, and all other information needed to depict accurately the solutions to potential soil erosion and sedimentation problems to the MS4. The Control Plan shall include the series of BMPs and shall be reviewed by, and subject to the approval of,

- the Official prior to the issuance of the Permit.
- (e) Where appropriate, in the opinion of the qualified credentialed professional who prepares the Control Plan, to the maximum extent practicable, the Control Plan shall include measures to reduce erosion and other adverse impact to MS4 drainage which would result from an increase in the volume of water and the rate of runoff of water during the conduct of land-disturbing activities.
 - (f) Whenever the Official determines that a Control Plan does not comply with this ordinance, he shall notify the applicant in writing of the ways in which the Control Plan does not comply with this ordinance.
 - (g) To the maximum extent practicable, sediment in runoff water must be minimized by using appropriate BMPs.
 - (h) Structural controls shall be designed and maintained as required to minimize erosion and pollution to the maximum extent practicable. All surface water flowing toward the construction area shall, to the maximum extent practicable, either be passed through the site in a protected channel or diverted by using berms, channels or sediment traps, as necessary. Erosion and sediment control measures shall be designed, according to the size and slope of the disturbed areas or drainage areas, to minimize erosion and to control sediment, to the maximum extent practicable. Discharges from sediment basins and traps must be conducted in a manner consistent with good engineering practices. Sediment-laden, or otherwise polluted, water discharged to MS4 must be addressed in a manner consistent with good engineering practices and the requirements of this ordinance.
 - (i) Control measures shall be maintained as an effective barrier to sedimentation and erosion in accordance with the provisions of this ordinance.
 - (j) There shall be no distinctly visible floating scum, oil or other matter contained in the storm water discharge. The storm water discharge to an MS4 must not cause an unnatural color (except dyes or other substances discharged to an MS4 for the purpose of environmental studies and which do not have a harmful effect on the bodies of water within the MS4) or odor in the community waters. The storm water discharge to the MS4 must result in no materials in concentrations sufficient to be hazardous or otherwise detrimental to humans, livestock, wildlife, plant life or fish and aquatic life in the community waters.
 - (k) When the land-disturbing activity is finished and stable vegetation or other permanent controls have been established on all remaining exposed soil, the owner of the land where the land- disturbing activity was conducted, or his authorized agent, shall notify the Official of these facts, and request a final inspection. The Official shall then inspect the site within five (5) working days after receipt of the notice, and may require additional measures to stabilize the soil and control erosion and sedimentation. If additional measures are required by the Official, written notice of such additional measures shall be delivered to the owner, and the owner shall continue to be covered by the Permit issued with respect to the land-disturbing activity until a final and complete inspection is made and the Official approves the project as having been satisfactorily completed and delivers to the owner, within ten (10) days of the date of such approval, a certification of completion showing that the requirements of the Permit have been fulfilled. At that time the site and/or the project constructed thereon may come under the operation of other ordinances of the City.

- (l) The Control Plan must be accompanied by a letter of credit, a surety bond or a cash bond, with the City having the right to determine which type of security shall be furnished. A letter of credit, a surety bond or a cash bond (a letter of credit, a surety bond and a cash bond shall be herein collectively referred to as "Security") shall be furnished to the City in accordance with the following provisions:
1. The Official shall require a letter of credit, a surety bond or a cash 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. In lieu of a letter of credit or a surety bond required by the City, the owner may file a cash bond with the City in an amount equal to that which would be required in the letter of credit or the surety bond.
 2. The Security shall contain, or have attached to it as an exhibit, a legal description of the site. The Security shall remain in effect for such reasonable period of time as may be required by the Official.
 3. The Security for clearing operations only shall be in the amount of \$2,000 per acre for each acre, or fraction of an acre, disturbed or affected by such operations.
 4. The Security for earthwork or clearing and earthwork operations shall be in the amount of \$5,000 per acre for each acre, or fraction of an acre, disturbed or affected by such operations.
 5. The Security for earthwork or clearing and earthwork operations for an individual single-family residence may be reduced to \$3,000 with proof of completion of either the Jefferson County Erosion Workshop or the Qualified Credentialed Inspector (QCI) certification.
 6. Security equal to double the amounts required in subsections (3) and (4) herein, shall be required where clearing or earthwork is performed in areas designated as floodways, floodplains or areas susceptible to landslides.
 7. Each letter of credit must be issued by a bank which has its principal office in Jefferson County, Alabama.
 8. Each letter of credit must be issued by a bank which is reasonably satisfactory to the City and each surety bond must be issued by a surety company which is qualified to do business in Alabama and which is otherwise reasonably satisfactory to the City.

Article 6 MONITORING AND INSPECTION

Section 6.01

The Official may periodically monitor the quality of storm water and the concentration of pollutants in storm water discharges from land-disturbing activities permitted to the MS4 pursuant to this ordinance.

Section 6.02 Inspections.

- (a) The Official, bearing proper identification, may enter and inspect all land-disturbing activities for regular periodic inspections, investigations, monitoring, observations, measurements, enforcement, sampling and testing to verify compliance with the provisions of this ordinance and the specific BMP Plans and Control Plans for such land-disturbing activities. The Official shall notify the owner of such property, his Contact Person or his representative on the construction site prior to inspection, and the inspections shall be conducted at reasonable times. The owner or operator of a construction site with respect to which an NPDES permit has been issued shall provide the Official with the information required in Section 3.01(c) prior to the commencement of the work on the construction site. The Official shall inspect the construction site to confirm the implementation and the maintenance of BMP Plans, otherwise, such site shall be inspected when the Official believes, as a result of complaints or monitoring activity, that land-disturbing activities on the site are causing a substantial pollutant loading which threatens the MS4.
- (b) Upon the refusal by any property owner to allow the Official to enter, or to continue an inspection on, a site on which land-disturbing activities or construction work is being done, the Official shall terminate the inspection or confine the inspection to areas to which no objection is raised. If an agent of the Official was making, or attempting to make, such inspection, the agent shall promptly report to the Official the refusal and the reasons for the refusal, if the reasons are known by the agent. The Official may seek appropriate legal remedies to enable him to make or complete such Inspection, including seeking appropriate legal remedies from any court having jurisdiction over the matter. If the court grants a remedy to the Official, the property owner must reimburse the City all of the costs and expenses incurred by the City in obtaining such remedy, including court costs and reasonable attorneys' fees.
- (c) If the Official has reasonable cause to believe that discharges from the land-disturbing activities to the MS4 may cause an imminent threat to human health or the environment, an inspection of the site may take place at any time and without notice to the owner of the property or a representative on site. The Official shall present proper credentials upon request of the owner or his representative.
- (d) At any time during the conduct of an inspection, or at such other times as the Official may request information from an owner or his representative, the owner or representative may identify areas of its business, material or processes which contain a trade secret and an inspection of which might reveal such trade secret. If the Official has no clear and convincing reason to question such assertion of the owner or his representative, the inspection report shall note that trade secret

information has been omitted. To the extent practicable, the Official shall protect all information which is designated as a trade secret by the owner or his representative.

Article 7
ENFORCEMENT AND ABATEMENT

Section 7.01 NPDES Permits for Storm Water Discharge Associated with Construction Activities.

- a. No enforcement action shall be taken by the City for a violation of the terms of this ordinance if any of the following has occurred:
 1. ADEM has issued a notice of violation with respect to the same alleged violation and is proceeding with an enforcement action with respect to such alleged violation;
ADEM has issued an administrative order with respect to the same
 2. alleged violation and is proceeding with an enforcement action with respect to such violation; or
 3. ADEM has commenced, and is proceeding with, an enforcement action, or has completed any other type of administrative or civil action, with respect to such alleged violation.
- b. Any determination or resolution made by ADEM with respect to an alleged violation shall be final, and the alleged violation shall not be made the subject of any additional enforcement action by the City; provided, however, that an enforcement action may be pursued by the City for continued or continuing substantial violations, subject to the provisions of Section 7.03(b) and pursuant to the following:
 1. ADEM will provide the Official with access to the ADEM NPDES permits issued with respect to each property within its jurisdiction, including inspections and notification of any enforcement actions taken by ADEM.
 2. The Official will notify ADEM and the permit holder, in writing, when the Official demonstrates that an NPDES permit holder is causing a substantial pollutant loading to the MS4.
 3. The Official may rely on ADEM to regulate, and to take enforcement actions against Permittees until such time as a Permittee is in continuing substantial violation of its NPDES permit and ADEM has failed to respond in a timely manner in accordance with Code of Alabama 1975, § 11-89C-1 et seq. If there is a continuing substantial violation of an ADEM NPDES permit and ADEM fails to respond as stated above, the Permittee shall be subject to this ordinance for that violation.

Section 7.02 Immediate Threats to Public Health or 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 Official may take all appropriate measures to remove or alleviate such threat.

Section 7.03 Notification; Enforcement Remedies.

- a. Verbal Warning: Whenever the Official finds that any person is in violation of any provision of this ordinance, or any order issued hereunder, the Official or his agent may serve upon such person a verbal warning of violation. This level of warning is intended for minor violations that would not cause significant harm to the environment.
- b. Notification of Violation: Whenever the Official finds that any person is in violation

of any provision of this ordinance, or any order issued hereunder, the Official or his agent may serve upon such person written notice of the violation. Within ten (10) calendar days of the date of such notice, an explanation of the violation and a plan for the satisfactory correction and future prevention thereof, including specific required actions, shall be submitted to the Official. Submission of such plan shall in no way relieve such person in violation of this ordinance of liability for any violations occurring before or after receipt of the notice of violation.

- c. Compliance Order: When the Official finds that any person has violated, or continues to violate, this ordinance, or has not completed remedial measures described in a previously issued Notice of Violation by the date set forth for such completion in the Notice of Violation, he may issue a compliance order to the violator, directing that, within a specified time period, adequate structures and devices be installed, or procedures implemented, and properly operated, or other action be taken, to remedy such violation. Compliance orders may also contain such other requirements as may be reasonably necessary and appropriate to address such violation, including the construction of appropriate structures, installation of devices and self-monitoring and management practices.
- d. Stop Work Order: When the Official finds that any person has violated, or continues to violate, this ordinance or any order issued under this ordinance; the Official may issue a Stop Work Order to such person to cease and desist all operations on the jobsite in violation immediately. The Stop Work Order shall remain in effect until the applicant or other responsible person has taken the remedial measures set forth in the Notice of Violation or Compliance Order issued. Work associated with BMP installation or maintenance may be allowed under Stop Work Order, if specified in the Order. A Stop Work Order can be issued in conjunction with other enforcement actions.
- e. Violation of a Compliance Order or Repeated Unresolved Notices of Violation: The penalty for violation of a Compliance Order or for repeated unresolved Notices of Violation shall be a fine in the amount of \$200 for a single-family residential site and \$400 for all other sites. Said fine shall be paid to the Building Safety Department within 5 working days of issuance. Payment of said fine does not relieve the applicant of obligations to comply with all other provisions of the Ordinance.
- f. Revocation of Permit and Forfeiture of Surety: When the Official finds that any person continues to violate provisions of this Ordinance, even after having been assessed a fine, the Official may officially revoke the Permit. Revocation of the Permit will also result in forfeiture of the associated surety. Said surety will be used to restore the site in such a way to eliminate hazardous conditions, erosion and/or drainage problems.

Section 7.04 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; 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 of not less than \$100.00 and not more

than \$500.00 and/or up to 180 days in jail.

Section 7.05 Judicial Proceedings and Relief.

- a. The Official may initiate proceedings in any court of competent jurisdiction against any person who has, or who, the Official has reason to believe, is about to:
 1. violate any provision of this ordinance;
 2. violate any provision of a Permit;
 3. fail or refuse to comply with any lawful order issued by the Official.
- b. The Official, with the consent of the City Council, may also initiate civil proceedings in any court of competent jurisdiction seeking monetary damages for any damages caused to public storm water facilities by any person, and may seek injunctive or other equitable relief to enforce compliance with the provisions of this ordinance or to force compliance with any lawful orders of the Official or the Board.

Article 8
MISCELLANEOUS

Section 8.01 Notices.

Whenever the City is required or permitted to:

- a. give a notice to any party except a Verbal Warning, such notice must be in writing; or
- b. deliver a document to any party; such notice or document may be delivered by personal delivery, certified mail (return receipt requested), registered mail (return receipt requested) or a generally recognized overnight carrier, to the address of such party which is in the records of the City or is otherwise known to the City.

Section 8.02 References.

Whenever an Article or Section is referred to in this ordinance, unless the context clearly indicates the contrary, such reference shall be to an article or section of this ordinance.

Section 8.03 Severability.

The provisions of this ordinance are severable. If any part of this ordinance is determined by a court of law to be invalid, unenforceable or unconstitutional, such determination shall not affect any other part of this ordinance.

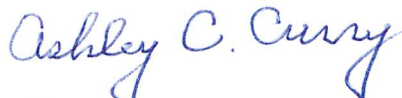
Section 8.04 Captions.

The captions of articles and sections are for the purpose of reference only, and such captions shall not affect the meaning of any provision of this ordinance.

Section 8.05 Effective Date.

This ordinance shall be published as required by law and shall become effective on the 1st day of January, 2021.

DONE, ORDERED, ADOPTED and APPROVED this the 28th day of December, 2020.



Ashley C. Curry
Mayor

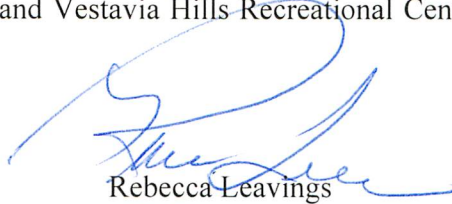
ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca H. Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance Number 2987 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 28th day of December, 2020, as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, and Vestavia Hills New Merkle House and Vestavia Hills Recreational Center this the 9th day of Jan, 2021.


Rebecca Leavings
City Clerk