

ORDINANCE NO. 10-339

AN ORDINANCE TO AMEND TITLE 14, CHAPTER 16, SECTION 14-1635 OF THE CODE OF ORDINANCES RELATING TO STORMWATER MANAGEMENT, EROSION AND SEDIMENTATION CONTROL, PENALTIES ENFORCEMENT; TO ESTABLISH A PENALTY FOR THE VIOLATION THEREOF; AND, TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE.

BE IT ORDAINED by the Board of Mayor and Aldermen as follows:

- SECTION I. That the Town of Mount Carmel Municipal Code, Title 14, *ZONING AND LAND USE CONTROL*, Chapter 16, *STORMWATER MANAGEMENT, EROSION AND SEDIMENTATION CONTROL*, Section 14-1635, *PENALTIES ENFORCEMENT*, is hereby amended to read as follows:

SECTION 14-1635 PENALTIES ENFORCEMENT.

- 1. Remedies Nonexclusive.** The remedies provided for in this Chapter are not exclusive and the Designated Enforcement Officer may take any, all or any combination of these actions against a noncompliant owner. The Designated Enforcement Officer is empowered to take more than one enforcement action against any noncompliant owner that is in violation.
- 2. Adoption of Enforcement Response Plan.** An Enforcement Response Plan, including a schedule of civil penalties which may be assessed for certain specific violations or categories of violations, shall be established by resolution of the board of mayor and aldermen. Any civil penalty assessed to a violator pursuant to this section may be in addition to any other penalty assessed by a State or Federal authority.
- 3. Show Cause Hearing.** An owner that has been issued an assessment or order under this Chapter may submit a written request to appear before the Designated Enforcement Officer and show cause why the proposed enforcement action should not be taken. Notice of hearing shall be served by the Designated Enforcement Officer specifying the time and place for the hearing. The notice of hearing shall be served personally or by certified mail, return receipt requested, at least 10 days prior to the hearing. A show cause

hearing shall not be a bar against or prerequisite for taking any other action against the owner, but shall be a prerequisite for issuing any administrative order or assessment of civil penalties, except as provided by *Sub-section 7, of this Section 14-1635*, relating to EMERGENCY SUSPENSIONS.

4. Appeals Process.

a. Except in emergency suspensions pursuant to *Sub-section 7, of this Section 14-1635*, relating to EMERGENCY SUSPENSIONS, any owner against whom a penalty has been assessed for a violation of this Chapter, a permit denied, revoked, suspended, against whom the Designated Enforcement Officer has issued an order or who is otherwise aggrieved by an act of the Designated Enforcement Officer shall have thirty (30) days after having been served with the assessment or order, or after a permit has been denied, revoked or suspended, or such person has been aggrieved to appeal the action by filing with the Recorder a written petition for appeal setting forth the grounds and reasons for the appeal. The failure to serve the Mount Carmel Planning Commission sitting as the administrative appeals board pursuant to Sec. 14-1633 within thirty (30) days with the written petition for appeal is jurisdictional, and if an appeal is not taken within the thirty (30) days the matter shall be final.

b. Upon receipt of a written petition from an aggrieved owner under this Chapter but not less than 15 days after notice of a matter to be appealed, the Recorder shall give the petitioner 30 days' written notice of the time and place of the hearing, but in no case shall such hearing be held more than 60 days from the receipt of the written petition unless the Designated Enforcement Officer and the petitioner agree to a postponement.

c. An appeal to the Mount Carmel Planning Commission sitting as the administrative appeals board pursuant to Sec. 14-1633 shall be a de novo review.

d. Hearings before the Mount Carmel Planning Commission sitting as the administrative appeals board pursuant to Sec. 14-1633 shall be conducted in accordance with the following:

i. The presence of at least three members of the Mount Carmel Planning Commission sitting as the administrative appeals board pursuant to Sec. 14-1633 shall be necessary to conduct a hearing.

ii. A verbatim record of the proceedings shall be taken, together with the findings of fact and conclusions of law. The transcript so recorded shall be made available to any party upon prepayment of a charge adequate to cover the costs of preparation.

iii. In connection with the hearing, subpoenas shall be issued in response to any reasonable request by any party to the hearing requiring the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in the hearing. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under this section, the chancery court shall have jurisdiction, upon application of the Mount Carmel Planning Commission sitting as the administrative appeals board pursuant to Sec. 14-1633 or the Designated Enforcement Officer, to issue an order requiring such person to appear and testify or produce evidence as the case may require, and any failure to obey such order of the court may be punished as contempt under law.

iv. On the basis of the evidence produced at the hearing, the Mount Carmel Planning Commission sitting as the administrative appeals board pursuant to Sec. 14-1633 shall make findings of fact and conclusions of law and enter such decisions and orders as in its opinion will best further the purposes of this Chapter and shall give written notice of such decisions and orders to the petitioner. The order so issued shall be issued no later than 30 days following the close of the hearing.

v. The decision of the Mount Carmel Planning Commission sitting as the administrative appeals board pursuant to Sec. 14-1633 shall become final and binding on all parties unless appealed as provided in *Sub-section 11, of this Section 14-1635*, relating to JUDICIAL REVIEW.

vi. Any person to whom an emergency order is directed pursuant to *Sub-section 7, of this Section 14-1635*, relating to EMERGENCY SUSPENSIONS, shall comply therewith immediately but on petition to the Mount Carmel Planning Commission sitting as the administrative appeals board pursuant to Sec. 14-1633 shall be afforded a hearing not later than three working days from the receipt of such petition.

e. The following shall not be applicable to emergency suspensions pursuant to *Sub-section 7, of this Section 14-1635*, relating to EMERGENCY SUSPENSIONS:

i. If a written petition of appeal is filed by an owner, the effective date of the matter properly appealed shall be stayed until a decision is announced by the Mount Carmel Planning Commission sitting as the administrative appeals board pursuant to Sec. 14-1633; provided, however, that in no case shall such a stay exceed a period of 90 days, except as provided in *Sub-section 10, of this Section 14-1635*, relating to ADDITIONAL STAY, from the date of receipt of a written petition to the Designated Enforcement Officer to appeal as set out in this section.

ii. If a continuance of a hearing before the Mount Carmel Planning Commission sitting as the administrative appeals board pursuant to Sec. 14-

1633 is requested by an owner, no additional time shall be added to the limitations of subsection i of this subsection.

iii. If the Mount Carmel Planning Commission sitting as the administrative appeals board pursuant to Sec. 14-1633 is not able, for good cause, to hold a hearing within the 60-day limit, the stay shall be extended by the number of days such period is exceeded.

iv. If a continuance is requested by the Designated Enforcement Officer, the time of the stay shall be extended by the same number of days as the continuance.

5. Civil Penalties.

a. The Designated Enforcement Officer may recover reasonable attorney's fees, court costs and other expenses associated with enforcement of this Chapter and the cost of any actual damages incurred by the Town.

b. Civil penalties assessed hereunder are intended to be remedial to protect the public health, safety and welfare of the public by protecting the waters of the state and adjoining properties. When a civil penalty is assessed to disgorge undeserved profits, or reimburse the Town or a private party for fixing damages caused by the noncompliance by the owner, such penalty may be imposed without regard to whether the owner corrects or remedies the violation. Otherwise, when a civil penalty is assessed against an owner found in violation such assessment should be conditioned on providing the owner time to correct or remedy the violation in which event the penalty shall be suspended pending future compliance. If the owner fails or refuses to remedy the violation, the penalty may be imposed per diem until the violation is corrected or remedied. In determining the amount of the penalty to assess, the Designated Enforcement Officer shall consider the factors listed in Enforcement Response Plan and may consider all relevant circumstances, including but not limited to the extent of harm caused by the violation, the magnitude and duration of the violation, the compliance history of the owner and any other factor provided by law.

6. Method of Assessment for Non-compliance. Civil penalties shall be assessed in the following manner:

a. The Designated Enforcement Officer may issue an assessment against any owner responsible for the violation;

b. Any person against whom an assessment has been issued may secure a review of said assessment by filing with the Designated Enforcement Officer a written petition setting forth the grounds and reasons for their objections and asking for a hearing on the matter before the Mount Carmel

Planning Commission sitting as the administrative appeals board pursuant to Sec. 14-1633 . If a petition for review of the assessment is not filed within thirty (30) days after the date the assessment is served, the owner shall be deemed to have consented to the assessment and it shall become final;

c. If any assessment becomes final because of an owner's failure to appeal the municipality's assessment, the Designated Enforcement Officer may apply to the appropriate court for a judgment and seek execution of said judgment, and the court in such proceedings shall treat a failure to appeal such assessment as a confession of judgment in the amount of the assessment. Upon final order, if payment is not made, the Designated Enforcement Officer may issue a cease and desist order.

d. In assessing a civil penalty, the following factors may be considered:

- i. The harm done to the public health or the environment;
- ii. Whether the civil penalty imposed will be substantial economic deterrent to the illegal activity;
- iii. The economic benefit gained by the violator;
- iv. The amount of effort put forth by the violator to remedy this violation;
- v. Any unusual or extraordinary enforcement costs incurred by the municipality;
- vi. The amount of penalty established by ordinance or resolution for specific categories of violations; and
- vii. Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.

e. Damages may also include any expenses incurred in investigating and enforcing the requirements of this Chapter; removing, correcting and terminating any discharge or connection; and also compensation for any actual damages to the property or personnel of the Town caused by the violation, and any reasonable expenses incurred in investigating and enforcing violations of this Chapter.

7. Emergency Suspensions.

a. Under this Chapter, if the Designated Enforcement Officer finds that an emergency exists imperatively requiring immediate action to protect the public health, safety or welfare; the health of animals, fish or aquatic life, or

a public water supply; the Designated Enforcement Officer may, without prior notice, issue an order reciting the existence of such an emergency and requiring that such action be taken as the Designated Enforcement Officer deems necessary to meet the emergency, including suspension of a permit issued under this Chapter.

b. Any owner notified of a suspension shall immediately eliminate the violation. If an owner fails to immediately comply voluntarily with the suspension order, the Designated Enforcement Officer may take such steps as deemed necessary to remedy the endangerment. The Designated Enforcement Officer may allow the owner to recommence when the owner has demonstrated to the satisfaction of the Designated Enforcement Officer that the period of endangerment has passed.

c. An owner that is responsible, in whole or in part, for any discharge or connection presenting imminent danger to the public health, safety or welfare; the health of animals, fish or aquatic life, or a public water supply; shall submit a detailed written statement, describing the causes of the harmful discharge or connection and the measures taken to prevent any future occurrence, to the Designated Enforcement Officer prior to the date of any show cause hearing under *Sub-section 3, of this Section 14-1635*, relating to SHOW CAUSE HEARING.

d. Nothing in this Chapter shall be interpreted as requiring a hearing prior to any emergency suspension under this section.

e. Any owner whose permit or operation is suspended pursuant to this section, on petition to the Mount Carmel Planning Commission sitting as the administrative appeals board pursuant to Sec. 14-1633 , shall be afforded a hearing as soon as possible, but in no case shall such hearing be held later than three (3) working days from the receipt of such a petition by the Designated Enforcement Officer.

8. Financial Assurance.

a. A performance bond which guarantees satisfactory completion of construction work related to stormwater management facilities, channel protection, vegetative buffers and any best management practices shall be required.

b. Performance bonds shall name the Town of Mount Carmel as beneficiary and shall be guaranteed in the form of a surety bond, cashier's check or letter of credit from an approved financial institution or insurance carrier. The surety bond, cashier's check or letter of credit shall be provided in a form and in an amount to be determined by the Designated Enforcement Officer. The actual amount shall be based on submission of plans and

estimated construction, installation or potential maintenance and/or remediation expenses.

c. The Recorder may refuse brokers or financial institutions the right to provide a surety bond, cashier's check or letter of credit based on past performance, ratings of the financial institution or other appropriate sources of reference information.

d. The Designated Enforcement Officer may decline to approve a plan or issue or reissue a permit to any owner who has failed to comply with any section of this Chapter, a permit or order issued under this Chapter unless such owner first files a satisfactory bond, payable to the Recorder or Town, in a sum not to exceed a value determined by the Designated Enforcement Officer to be necessary to achieve consistent compliance.

9. Injunctive Relief. When the Designated Enforcement Officer finds that an owner has violated or continues to violate any section of this Chapter, or a permit or order issued under this Chapter, the Designated Enforcement Officer may petition the appropriate court, through the Town's attorney, for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the permit, order or other requirement imposed by this Chapter on activities of the owner. The Designated Enforcement Officer may also seek such other action as is appropriate for legal and equitable relief, including a requirement for the owner to conduct environmental remediation. A petition for injunctive relief shall not be a bar against or a prerequisite for taking any other action against an owner.

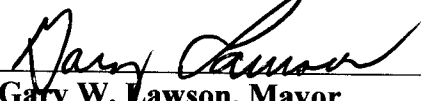
10. Additional Stay. The Mount Carmel Planning Commission sitting as the administrative appeals board pursuant to Sec. 14-1633 may grant an additional continuance and stay beyond that set out in *Sub-section 4, of this Section 14-1635*, relating to APPEALS PROCESS, upon the request of an owner/operator and upon the posting of an appeal bond payable to the Recorder or Town in a sum to be determined by the Designated Enforcement Officer as necessary to protect the interests of the Town.

11. Judicial Review. The alleged violator may appeal a decision of the Mount Carmel Planning Commission sitting as the administrative appeals board pursuant to Sec. 14-1633 pursuant to the provisions of title 27, chapter 8, of the Tennessee Code Annotated.

SECTION II. That the violation of any provision of this ordinance shall be punishable by a penalty pursuant to Tennessee law, and more particularly Part 11 relating to STORMWATER MANAGEMENT of Chapter 221 of Title 68, *Tenn. Code Ann. §68-221-1106(a)*, of not less than fifty dollars (\$50) or more than five thousand dollars (\$5,000) per day for each day of violations. Each day of

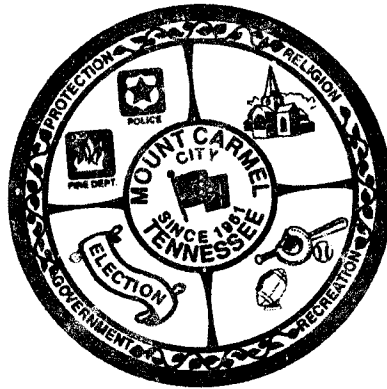
violation may constitute a separate violation. This penalty may be determined by application of the Enforcement Response Plan as defined in *Sub-section 2, of this Section 14-1635*, relating to ADOPTION OF ENFORCEMENT RESPONSE PLAN. and costs for each separate violation.

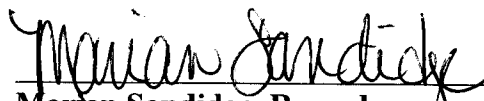
SECTION III. That this ordinance shall take effect from and after its date of passage, as the law directs, the public welfare of the Town of Mount Carmel demanding it.



Gary W. Lawson, Mayor

ATTEST:





Marian Sandidge, Recorder

Passed First Reading

March 23, 2010

Passed Second Reading

April 27, 2010

Published On

April 29, 2010

FIRST READING	AYES	NAYS	OTHER
ALDERMAN WILLIAM BLAKELY			Absent
ALDERMAN RICHARD GABRIEL	✓		
ALDERMAN TRESA MAWK	✓		
ALDERMAN KATHY ROBERTS	✓		
VICE-MAYOR THOMAS WHEELER	✓		
ALDERMAN CARL WOLFE	✓		
MAYOR GARY LAWSON	✓		
TOTALS	6	0	1

PASSED FIRST READING: March 23, 2010

SECOND READING	AYES	NAYS	OTHER
ALDERMAN WILLIAM BLAKELY	✓		
ALDERMAN RICHARD GABRIEL			Absent
ALDERMAN TRESA MAWK	✓		
ALDERMAN KATHY ROBERTS	✓		
VICE-MAYOR THOMAS WHEELER	✓		
ALDERMAN CARL WOLFE	✓		
MAYOR GARY LAWSON	✓		
TOTALS	6	0	1

PASSED SECOND READING: April 27, 2010

PUBLICATION AFTER PASSAGE: DATE: <u>April 29, 2010</u> NEWSPAPER: <i>Kingsport Times-News</i>
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TOWN OF MOUNT CARMEL PLANNING COMMISSION

100 East Main Street, Mount Carmel, Tennessee 37645

R E C O M M E N D A T I O N

MARCH 09, 2010
Date

The Planning Commission, at the March 9, 2010, meeting reviewed Ordinance 10-339. The motion was made by Harry Clamon and seconded by Tresa Mawk to recommend the Ordinance to the Board of Mayor and Alderman with the following changes: The Planning Commission will sit as the Appeals Board and the 15 days changed to 30 days for the written Appeals process in Section I. Section 14-1635 4 A. The vote was unanimous. Motion Passed.

Henry Bailey, /T.C.
Henry Bailey, Chairman

3/10/10
Date



Ad for Public Hearing Town of Mount Carmel

Monday, March 29, 2010 2:42 PM

From: "Marian Sandidge" <mariansandidge@yahoo.com>

To: "Sheryl Edwards" <sedwards@timesnews.net>

March 29, 2010

Sheryl Edwards
Kingsport Times-News
Classified Advertising Department
P.O. Box 479
Kingsport, TN 37662

RE: Advertisement

Dear Sheryl:

Please run the following advertisement in the Legal Section one time:

PUBLIC HEARING

The Mount Carmel Board of Mayor and Aldermen will have public hearings on Tuesday, April 27, 2010, at 7:00 p.m. at Mount Carmel City Hall concerning :

Ordinance No. 10-339. An Ordinance to Amend Title 14, Chapter 16, Section 14-1635 of the Code of Ordinances Relating to Stormwater Management, Erosion and Sedimentation control, Penalties Enforcement; to Establish a Penalty for the Violation Thereof; and, to fix the Effective Date of this Ordinance.

Should you have any questions or if any additional information is needed, please do not hesitate to call on me.

Sincerely,
TOWN OF MOUNT CARMEL
Marian Sandidge, City Recorder

03/30/2010

PUBLIC HEARING

The Mount Carmel Board of Mayor and Aldermen will have public hearings on Tuesday, April 27, 2010, at 7:00 p.m. at Mount Carmel City Hall concerning :

Ordinance No. 10-339. An Ordinance to Amend Title 14, Chapter 18, Section 14-1635 of the Code of Ordinances Relating to Stormwater Management, Erosion and Sedimentation control, Penalties Enforcement; to Establish a Penalty for the Violation Thereof; and to fix the Effective Date of this Ordinance.

PUB1T; 03/30/2010



Ad for Passed Ordinance for Town of Mount Carmel

Wednesday, April 28, 2010 7:38 AM

From: "Marian Sandidge" <mariansandidge@yahoo.com>

To: "Sheryl Edwards" <sedwards@timesnews.net>

April 28, 2010

Kingsport Times-News
ATTN: Sheryl Edwards
Classified Advertising Department
P.O. Box 479
Kingsport, TN 37662

RE: Adopted Ordinance for the Town of Mount Carmel

Dear Sheryl:

Please run the following advertisement in the Legal Section one time:

The Town of Mount Carmel, Tennessee, on April 27, 2010, passed the following ordinance:
Ordinance No. 09-339, An Ordinance to Amend Title 14, Chapter 16, Section 14-1635 of the Code of Ordinances Relating to Stormwater Management, Erosion and Sedimentation Control, Penalties Enforcement; to Establish a Penalty for the Violation Thereof; and, to Fix the Effective Date of this Ordinance.

Should you have any additional questions, please give me a call.

Sincerely,

TOWN OF MOUNT CARMEL

Marian Sandidge, City Recorder