

ARTICLE III. STORMWATER ORDINANCE¹

Sec. 24-131. Title.

This article shall be officially known as "the stormwater ordinance." It is referred to herein as "this article."
(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-132. Authority.

The city council is authorized to adopt this article pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; City of Hendersonville; G.S. 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2004-163; Chapter 160A, §§ 174, 185. [This ordinance article is also authorized by N.C.G.S. § 160D-925, Stormwater control.](#)

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-133. Findings.

It is hereby determined that:

Development and redevelopment alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, soil erosion, stream channel erosion, nonpoint and point source pollution, and sediment transport and deposition, as well as reducing groundwater recharge;

These changes in stormwater runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology that are harmful to public health and safety as well as to the natural environment; and

These effects can be managed and minimized by applying proper design and well-planned controls to manage stormwater runoff from development sites.

Further, the Federal Water Pollution Control Act of 1972 ("Clean Water Act") and federal phase II stormwater rules promulgated under it, as well as rules of the state environmental management commission promulgated in response to federal phase II requirements, compel certain urbanized areas, including this jurisdiction, to adopt minimum stormwater controls such as those included in this article.

Therefore, the city establishes this set of water quality and quantity regulations to meet the requirements of state and federal law regarding control of stormwater runoff and discharge.

(Ord. No. 11-0419, § 2, 4-7-11)

¹Editor's note(s)—Ord. No. 11-0419, §§ 1, 2, adopted Apr. 7, 2011, repealed the former Art. III, §§ 24-131 Editor's note(s)—24-137, and enacted a new Art. III as set out herein. The former Art. III pertained to NPDES phase II stormwater and derived from Ord. No. 07-1157, § 1, 11-8-07; Ord. No. 08-0207, § 2, 2-7-08.

Sec. 24-134. Purpose.

- (a) *General.* The purpose of this article is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-development stormwater runoff and nonpoint and point source pollution associated with new development and redevelopment. It has been determined that proper management of construction-related and post-development stormwater runoff will minimize damage to public and private property and infrastructure; safeguard the public health, safety, and general welfare; and protect water and aquatic resources.
- (b) *Specific.* This article seeks to meet its general purpose through the following specific objectives and means:
 - (1) Establishing decision-making processes for development that protect the integrity of watersheds and preserve the health of water resources;
 - (2) Requiring that new development and redevelopment maintain the pre-development hydrologic response in their post-development state as nearly as practicable for the applicable design storm to reduce flooding, streambank erosion, nonpoint and point source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats;
 - (3) Establishing minimum post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;
 - (4) Establishing design and review criteria for the construction, function, and use of structural stormwater BMPs that may be used to meet the minimum post-development stormwater management standards;
 - (5) Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of greenspace, riparian buffers and other conservation areas to the maximum extent practicable;
 - (6) Establishing provisions for the long-term responsibility for and maintenance of structural and nonstructural stormwater BMPs to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety;
 - (7) Establishing administrative procedures for the submission, review, approval and disapproval of stormwater management plans, for the inspection of approved projects, and to assure appropriate long-term maintenance;
 - (8) Coordinating site design plans that include open space and natural areas with the latest adopted Hendersonville Comprehensive Plan;
 - (9) Controlling illicit discharges into the municipal separate stormwater system;
 - (10) Assigning responsibility and processes for approving the creation and maintenance of adequate drainage and flood damage prevention.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-135. Applicability and jurisdiction.

- (a) *General.* Beginning with and subsequent to its effective date, this article shall be applicable to all development and redevelopment, including, but not limited to, site plan applications, subdivision applications, and grading applications, unless exempt pursuant to subsection (b) of this section.
- (b) *Exemptions.*

-
- (1) Development or redevelopment that cumulatively disturbs less than one acre.
 - (2) Development or redevelopment that disturb less than one acre are not exempt if such activities are part of a larger common plan of development or sale, even though multiple, separate or distinct activities take place at different times on different schedules.
 - (3) Activities that are exempt from permit requirements of Section 404 of the federal Clean Water Act as specified in 40 CFR 232 (primarily, ongoing farming and forestry activities) are exempt from the provisions of this article.
- (c) *No development or redevelopment until compliance and permit.* No development or redevelopment shall occur except in compliance with the provisions of this article or unless exempted. No development or redevelopment for which a permit is required pursuant to this article shall occur except in compliance with the provisions, conditions, and limitations of the permit.
- (d) *Map.* The provisions of this article shall apply within all ~~planning and zoning jurisdictions~~planning and land development regulation jurisdiction of the city, ~~including which includes the City's~~ its extra-territorial jurisdiction. In the event of a dispute, the applicability of this article to a particular area of land or BMP shall be determined by reference to the North Carolina Statutes, the North Carolina Administrative Code, and local zoning and jurisdictional boundary ordinances. This article does not affect the legal requirements to obtain other permits which may be required by the division of water quality, the division of land resources, the local flood hazard prevention ordinance, zoning or building permits or any other state, federal or local government permit that may be required.

The engineering department shall develop and maintain a storm sewer system base map ("the stormwater map") of stormwater drainage system components including outfalls, BMP locations, drainage areas and receiving streams in accordance with the city's NPDES permit. The stormwater map shall be updated to take into account changes in the land area covered by this article and the geographic location of structural BMPs permitted under this article.

(Ord. No. 11-0419, § 2, 4-7-11; Ord. No. 15-1064, § 1, 10-1-15)

Sec. 24-136. Interpretation.

- (a) *Meaning and intent.* All provisions, terms, phrases, and expressions contained in this article shall be construed according to the general and specific purposes set forth in section [24-134] of this article. If a different or more specific meaning is given for a term defined elsewhere in this Code, the meaning and application of the term in this article shall control for purposes of application of this article.
- (b) *Text controls in event of conflict.* In the event of a conflict or inconsistency between the text of this article and any heading, caption, figure, illustration, table, or map, the text shall control.
- (c) *Authority for interpretation.* The stormwater administrator has authority to determine the interpretation of this article. Any person may request an interpretation by submitting a written request to the stormwater administrator, who shall respond in writing within 30 days. The stormwater administrator shall keep on file a record of all written interpretations of this article.
- (d) *References to statutes, regulations, and documents.* Whenever reference is made to a resolution, ordinance, statute, regulation, manual (including the design manual), or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.
- (e) *Computation of time.* The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday

observed by the city, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by the city. References to days are calendar days unless otherwise stated.

- (f) *Delegation of authority.* Any act authorized by this article to be carried out by the stormwater administrator of the city may be carried out by his or her designee.
- (g) *Usage.*
- (1) *Mandatory and discretionary terms.* The words "shall," "must," and "will" are mandatory in nature, establishing an obligation or duty to comply with the particular provision. The words "may" and "should" are permissive in nature.
 - (2) *Conjunctions.* Unless the context clearly indicates the contrary, conjunctions shall be interpreted as follows: The word "and" indicates that all connected items, conditions, provisions and events apply. The word "or" indicates that one or more of the connected items, conditions, provisions or events apply.
 - (3) *Tense, plurals, and gender.* Words used in the present tense include the future tense. Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise. Words used in the masculine gender include the feminine gender, and vice versa.
- (h) *Measurement and computation.* Lot area refers to the amount of horizontal land area contained inside the lot lines of a lot or site.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-137. Terms defined.

When used in this article, the following words and terms shall have the meaning set forth in this section, unless other provisions of this article specifically indicate otherwise.

[Administrative Decision means decisions made in the implementation, administration, or enforcement of this article that involve the determination of facts and the application of objective standards set forth in this article, or other land development regulations as applicable.](#)

[Administrative Hearing means A proceeding to gather facts needed to make an Administrative Decision.](#)

Built-upon area (BUA). That portion of a development or redevelopment project that is covered by impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

Department. The state department of environment and natural resources.

Design manual. The stormwater design manual approved for use in phase II jurisdictions by the state division of water quality for the proper implementation of the requirements of the federal phase II stormwater program. All references herein to the design manual are to the latest published edition or revision.

Development. Any land-disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the soil.

[Development Approval means an administrative or quasi-judicial approval made pursuant to this article that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal.](#)

[Development Regulation](#) means this article and any City ordinance adopted pursuant to the authority of North Carolina General Statutes Chapter 160D, as the same may be amended, and also including any local act and provisions of the City charter that regulate land development.

Disturbed area. All land areas that are stripped, graded, grubbed, filled, or excavated at any time during the site preparation or removing vegetation for, or construction of, a project. "Disturbed area" does not include routine maintenance, but does include re-development and new impervious areas. "Routine maintenance" is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of the facility. Paving impervious gravel surfaces while maintaining the original line and grade, hydraulic capacity and original purpose of the facility is considered routine maintenance. Cutting of trees, without grubbing, stump removal, disturbance or exposure of soil is not considered "disturbed area".

Division. The division of water quality in the department.

[Evidentiary Hearing](#) means a hearing by the BOA or City Council to gather competent, material and substantial evidence in order to make findings for a quasi-judicial decision required by this article. An Evidentiary Hearing is also considered a public hearing. An Evidentiary Hearing is conducted in accordance with the terms of this article and N.C.G.S. Section 160D-406 Quasi-judicial procedure.

Larger common plan of development or sale. Any area where multiple separate and distinct construction or land-disturbing activities will occur under one plan. A plan is any announcement or piece of documentation (including but not limited to a sign, public notice or hearing, sales pitch, advertisement, loan application, drawing, permit application, zoning request, or computer design) or physical demarcation (including but not limited to boundary signs, lot stakes, or surveyor markings) indicating that construction activities may occur on a specific plot.

[Legislative Hearing](#) means a hearing held for the purpose of soliciting public comments on a proposed change in the zoning text or zoning map. Reasonable time limits on speakers may be imposed and responsible decorum maintained. However, unlike quasi-judicial hearings, there is no requirement for oaths, no limits on expression of personal opinions, and no limit on discussing the matter outside the context of the hearing

[N.C.G.S. or G.S.](#) means the North Carolina General Statutes.

One-year, 24-hour storm. The surface runoff resulting from a 24-hour rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.

[Owner](#) means the holder of the title in fee simple. Absent evidence to the contrary, the City will rely on the tax records for Henderson County to determine who is the Owner. As used herein, "Owner" refers to all holders of the title in fee simple of a parcel of real property. The Owner may authorize a person holding a valid option, lease, or contract to purchase to act as his/her agent or representative for the purpose of making applications for development approvals.

Owner of an Interest. ~~The~~ A legal or beneficial ~~owner~~holder of a legal interest in land, including but not limited to an ~~Owner~~, a mortgagee or vendee in possession, receiver, executor, trustee, or long-term or commercial lessee, or any other person or entity holding proprietary rights in the property or having legal power of management and control of the property. "~~Owner~~Owner of an Interest" shall include long-term commercial tenants; management entities, such as those charged with or engaged in the management of properties for profit; and every person or entity having joint ownership of the property. A secured lender not in possession of the property does not constitute an ~~owner~~Owner of an Interest, unless the secured lender is included within the meaning of "~~owner~~Owner of an Interest" under another description in this definition, such as a management entity.

[Planning and Development Regulation Jurisdiction](#) means the City of Hendersonville corporate limits and the extraterritorial jurisdiction of the City of Hendersonville.

Redevelopment. Any land-disturbing activity on previously-developed land.

Structural BMP. A physical device designed to trap, settle out, or filter pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing, or other characteristics; to approximate the pre-development hydrology on a developed site; or to achieve any combination of these goals. Structural BMP includes physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property. "Structural BMP" is synonymous with "structural practice," "stormwater control facility," "stormwater control practice," "stormwater treatment practice," "stormwater management practice," "stormwater control measures," "structural stormwater treatment systems," and similar terms used in this article.

Substantial progress. For the purposes of determining whether sufficient progress has been made on an approved plan, one or more of the following construction activities toward the completion of a site or subdivision plan shall occur: obtaining a grading permit and conducting grading activity on a continuous basis and not discontinued for more than 30 days; or installation and approval of on-site infrastructure; or obtaining a building permit for the construction and approval of a building foundation. "Substantial progress" for purposes of determining whether an approved plan is null and void is not necessarily the same as "substantial expenditures" used for determining vested rights pursuant to applicable law.

(Ord. No. 11-0419, § 2, 4-7-11; Ord. No. 15-1064, § 1, 10-1-15)

Sec. 24-138. Design manual.

- (a) *Reference to design manual.* The stormwater administrator shall use the policy, criteria, and information, including technical specifications and standards, in the design manual as the basis for decisions about stormwater permits and about the design, implementation and performance of structural and non-structural stormwater BMPs.

The design manual includes a list of acceptable stormwater treatment practices, including specific design criteria for each stormwater practice. Stormwater treatment practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the phase II laws.

- (b) *Relationship of design manual to other laws and regulations.* If the specifications or guidelines of the design manual are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the design manual.
- (c) *Changes to standards and specifications.* If the standards, specifications, guidelines, policies, criteria, or other information in the design manual are amended subsequent to the submittal of an application for approval pursuant to this article but prior to approval, the new information shall control and shall be utilized in reviewing the application and in implementing this article with regard to the application.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-139. Relationship to other laws, regulations and private agreements.

- (a) *Conflict of laws.* This article is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this article are in addition to the requirements of any other ordinance, rule, regulation or other provision of law. Where any provision of this article imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare shall control.
- (b) *Private agreements.* This article is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this article are more restrictive or impose higher standards or

requirements than such an easement, covenant, or other private agreement, the requirements of this article shall govern. Nothing in this article shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this article. In no case shall the city be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-140. Severability.

If the provisions of any section, subsection, paragraph, subdivision or clause of this article shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this article.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-141. Effective date and transitional provisions.

- (a) *Effective date.* This article shall take effect on April 7, 2011.
- (b) *Final approvals, complete applications.* All development and redevelopment projects for which complete and full applications were submitted and approved by the city prior to the effective date of this article and which remain valid, unexpired, unrevoked and not otherwise terminated at the time of development or redevelopment shall be exempt from complying with the provisions of this article dealing with the control and/or management of post-construction runoff, but shall be required to comply with all stormwater provisions in effect at time of approval.
- (c) *Violations continue.* Any violation of provisions existing on the effective date of this article shall continue to be a violation under this article and be subject to penalties and enforcement under this article unless the use, development, construction, or other activity complies with the provisions of this article.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-142. Review and decision-making entities.

- (a) *Stormwater administrator.*
 - (1) *Designation.* The city engineer or his or her designee shall serve as the stormwater administrator and administer and enforce this article.
 - (2) *Powers and duties.* The stormwater administrator shall have the following powers and duties under this article:
 - a. To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this article.
 - b. To make determinations and render interpretations of this article.
 - c. To establish application requirements and schedules for submittal and review of applications ~~and~~ [appeals](#), to review and make recommendations to the city council and/or other city departments on applications for development or redevelopment approvals.
 - d. To enforce the provisions of this article in accordance with its enforcement provisions.
 - e. To maintain records, maps, forms and other official materials as relate to the adoption, amendment, enforcement, and administration of this article.

-
- f. To provide expertise and technical assistance upon request.
 - g. To designate appropriate other person(s) who shall carry out the powers and duties of the stormwater administrator.
 - h. To take any other action necessary to administer the provisions of this article.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-143. Review procedures.

- (a) *Permit required; must apply for permit.* A stormwater permit is required for all development and redevelopment unless exempt pursuant to this article. A permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to this section.
- (b) *Effect of permit.* A stormwater permit shall govern the design, installation, and construction of stormwater management and control practices on the site, including structural BMPs and elements of site design for stormwater management other than structural BMPs.

The permit is intended to provide a mechanism for the review, approval, and inspection of the approach to be used for the management and control of stormwater for the development or redevelopment site consistent with the requirements of this article, whether the approach consists of structural BMPs or other techniques such as low-impact or low-density design. The permit does not continue in existence indefinitely after the completion of the project; rather, compliance after project construction is assured by the maintenance provisions of this article.

- (c) *Authority to file applications.* All applications required pursuant to this Code shall be submitted to the stormwater administrator by the ~~land owner~~Owner or the ~~land owner~~Owner's duly authorized agent.
- (d) *Establishment of application requirements, schedule, and fees.*
 - (1) *Application contents and form.* The stormwater administrator shall establish requirements for the content and form of all applications and shall amend and update those requirements from time to time. At a minimum, the stormwater permit application shall describe in detail how post-development stormwater runoff will be controlled and managed, the design of all stormwater facilities and practices, and how the proposed project will meet the requirements of this article.
 - (2) *Submission schedule.* The stormwater administrator shall establish a submission schedule for applications. The schedule shall establish deadlines by which complete applications must be submitted for the purpose of ensuring that there is adequate time to review applications, and that the various stages in the review process are accommodated.
 - (3) *Permit review fees.* The city shall establish permit review fees as well as policies regarding refund of any fees upon withdrawal of an application, and may amend and update the fees and policies from time to time.
 - (4) *Administrative manual.* For applications required under this Code, the stormwater administrator shall compile the application requirements, submission schedule, fee schedule, a copy of this article, and information on how and where to obtain the design manual in an administrative manual, which shall be made available to the public.
- (e) *Submittal of complete application.* Applications shall be submitted to the stormwater administrator pursuant to the application submittal schedule in the form established by the stormwater administrator, along with the appropriate fee established pursuant to this section.

An application shall be considered as timely submitted only when it contains all elements of a complete application pursuant to this article, along with the appropriate fee. If the stormwater administrator finds that an application is incomplete, the applicant shall be notified of the deficient elements and shall be provided with an opportunity to

submit a complete application. However, the submittal of an incomplete application shall not suffice to meet a deadline contained in the submission schedule established above.

- (f) *Review.* The stormwater administrator shall review the application and determine whether the application complies with the standards of this article.
- (1) *Approval.* If the stormwater administrator finds that the application complies with the standards of this article, the stormwater administrator shall approve the application. The stormwater administrator may impose conditions of approval as needed to ensure compliance with this article. The conditions shall be included as part of the approval.
 - (2) *Fails to comply.* If the stormwater administrator finds that the application fails to comply with the standards of this article, the stormwater administrator shall notify the applicant and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application.
 - (3) *Revision and subsequent review.* A complete revised application shall be reviewed by the stormwater administrator after its re-submittal and shall be approved, approved with conditions or disapproved.

If a revised application is not re-submitted within 30 calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee for a new submittal.

One re-submittal of a revised application may be submitted without payment of an additional permit review fee. Any re-submittal after the first re-submittal shall be accompanied by a permit review fee additional fee, as established pursuant to this article.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-144. Applications for approval.

- (a) *Concept plan and consultation meeting.* Before a stormwater management permit application is deemed complete, the stormwater administrator or developer may request a consultation on a concept plan for the post-construction stormwater management system to be utilized in the proposed development project. This consultation meeting should take place at the time of the preliminary plan of subdivision or other early step in the development process. The purpose of this meeting is to discuss the post-construction stormwater management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering is commenced. Local watershed plans, the latest Hendersonville Comprehensive Plan, and other relevant resource protection plans should be consulted in the discussion of the concept plan.

To accomplish this goal, the following information should be included in the concept plan, which should be submitted in advance of the meeting:

- (1) *Existing conditions/proposed site plans.* Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys, boundaries of existing predominant vegetation; proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.
- (2) *Natural resources inventory.* A written or graphic inventory of natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description should include a discussion of soil conditions, forest cover, geologic features, topography, wetlands, and native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc.). Particular attention should be paid to

environmentally sensitive features that provide particular opportunities or constraints for development and stormwater management.

- (3) *Stormwater management system concept plan.* A written or graphic concept plan of the proposed post-development stormwater management system including: preliminary selection and location of proposed structural stormwater controls; low-impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of any proposed stream channel modifications, such as bridge or culvert crossings.
- (b) *Stormwater management permit application.* The stormwater management permit application shall detail how post-development stormwater runoff will be controlled and managed and how the proposed project will meet the requirements of this article. All such plans shall be prepared by a qualified registered North Carolina professional engineer or landscape architect, and the professional shall perform services only in their area of competence, and shall verify that the design of all stormwater management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the design manual, and that the designs and plans ensure compliance with this article.

The submittal shall include all of the information required in the submittal checklist established by the stormwater administrator. Incomplete submittals shall be treated pursuant to subsection 24-143(d) of this article.

- (c) *As-built plans and final approval.* Upon completion of a project, and before a certificate of occupancy shall be granted, the applicant shall certify that the completed project is in accordance with the approved stormwater management plans and designs, and shall submit actual "as built" plans for all stormwater management facilities or practices after final construction is completed.

The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. The designer of the stormwater management measures and plans shall certify, under seal, that the as-built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this article. A final inspection and approval by the stormwater administrator shall occur before the release of any performance securities.

- (d) *Other permits.* No certificate of compliance or occupancy shall be issued by the zoning administrator or their designee without final as-built plans and a final inspection and approval by the stormwater administrator, except where multiple units are served by the stormwater practice or facilities, in which case the zoning administrator or their designee may elect to withhold a percentage of permits or certificates of occupancy until as-built plans are submitted and final inspection and approval has occurred.

(Ord. No. 11-0419, § 2, 4-7-11; Ord. No. 15-1064, § 1, 10-1-15)

Sec. 24-145. Approvals.

- (a) *Effect of approval.* Approval authorizes the applicant to go forward with only the specific plans and activities authorized in the permit. The approval shall not be construed to exempt the applicant from obtaining other applicable approvals from local, state, and federal authorities.
- (b) *Time limit/expiration.* An approved plan shall become null and void if the applicant fails to make substantial progress on the site within one year after the date of approval. The stormwater administrator may grant a single, one-year extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.

In granting an extension, the stormwater administrator may require compliance with standards adopted since the original application was submitted unless there has been substantial reliance on the original permit and the change in standards would infringe the applicant's vested rights.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-146. Appeals.

Right of appeal. Any aggrieved person affected by any [administrative](#) decision, order, requirement, or determination relating to the interpretation or application of this article made by the stormwater administrator may file an appeal to the board of adjustment within 30 calendar days after receipt of said written decision, order, requirement, or determination. [Appeals shall proceed in conformance with N.C.G.S. § 160D-405. The appeal shall be conducted as a quasi-judicial proceeding governed by N.C.G.S. § 160D-160D-406. Appeals from the Zoning Board of Adjustment shall be governed by N.C.G.S. § 160D-1402.](#)

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-147. General standards.

All development and redevelopment to which this article applies shall implement stormwater control measures that comply with each of the following standards:

- (a) Required for all development or redevelopment which disturbs one acre or more of ground area.
- (b) *Stormwater treatment.*
 - (1) All stormwater treatment measures shall treat either:
 - a. The runoff volume from the disturbed area calculated utilizing the one-year, one-hour design storm rainfall depth; or
 - b. The difference in stormwater runoff volume between the pre- and post-development conditions for the one-year, 24-hour storm; whichever is greater.
 - (2) Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.
 - (3) All structural stormwater treatment systems used shall be designed to have a minimum of 85 percent average annual removal for total suspended solids (TSS).
- (c) *Stormwater quantity control.* Discharge stormwater at a rate equal to or less than the pre-development discharge rate for both the two-year, 24-hour storm and the ten-year, 24-hour storm with the ability to pass the 25-year, 24-hour storm.
- (d) General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c), as explained in the design manual.
- (e) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as recorded deed restrictions or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans. Every structural BMP installed pursuant to this section shall be made [acesible](#)~~acesible~~[accessible](#) for adequate maintenance and repair by a maintenance easement. The easement shall be recorded and its term shall specify who may make use of the easement and for what purposes.
- (f) For best management practices that require a separation from the seasonal high water table, provide separation by at least 12 inches of naturally occurring soil above the seasonal high water table.

(Ord. No. 11-0419, § 2, 4-7-11; Ord. No. 15-1064, § 1, 10-1-15)

Sec. 24-148. Standards for stormwater control measures.

- (a) *Evaluation according to contents of design manual.* All stormwater control measures and stormwater treatment practices (also referred to as best management practices, or BMPs) required under this article shall be evaluated by the stormwater administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the design manual. The stormwater administrator shall determine whether proposed BMPs will be adequate to meet the requirements of this article.
- (b) *Determination of adequacy; presumptions and alternatives.* Stormwater treatment practices that are designed, constructed, and maintained in accordance with the criteria and specifications in the design manual will be presumed to meet the minimum water quality and quantity performance standards of this article. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the design manual, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this article. The stormwater administrator may require the applicant to provide the documentation, calculations, and examples necessary for the stormwater administrator to determine whether such an affirmative showing is made.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-149. Dedication of BMPs, facilities and improvements.

Unless otherwise approved by city council, ownership and maintenance responsibility of any existing or future stormwater management facilities shall remain with the ~~owner~~Owner of the property or a legally established property owner's association. Such facilities shall meet all the requirements of this article and include adequate and perpetual access and sufficient area, be easement or otherwise, for inspection and regular maintenance. An Owner of an Interest may assume responsibility together with the Owner. In such case the Owner of an Interest shall be considered a responsible Owner of an Interest.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-150. Variances.

A variance is a means whereby the city may grant relief from the effect of this article in cases of hardship. Variances shall proceed in the same manner, and be governed by the same rules, as a zoning variance under N.C.G.S. § 160D-705. A variance constitutes permission to depart from the literal requirements of ~~{this article}~~. The Owner must consent to all applications for a variance if the Owner is not the applicant. A variance from the dimensional requirements of this article may be granted by the board of adjustment if it finds the following:

- (1) Strict enforcement of the regulations would result in ~~practical difficulties or~~ unnecessary hardships to the applicant for the variance. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (2) The variance is ~~in harmony~~consistent with the ~~general spirit~~, purpose and intent of ~~{this article}~~ and preserves its spirit.
- (3) In the granting of the variance the public safety and welfare have been secured and substantial justice has been done. Such findings shall be based on the following considerations:

-
- a. The fact that the property could be utilized more profitably or conveniently with the variance than without the variance shall not be considered as grounds for granting the variance.
 - b. The hardship ~~relates to the applicant's property~~ results from conditions that are peculiar to the property, such as location, size, or topography, rather than to ~~Hardships resulting from~~ personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
 - c. The hardship results from the application of ~~[this article]~~ this article and ~~from no other cause, including~~ non from the actions of the ~~owner~~ applicant or the Owner of the property, ~~or previous owners.~~ The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship.
 - d. The hardship is peculiar to the property in question rather than a hardship shared by the neighborhood or the general public.

(4) Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.

(5) Consideration of the variance by the board of adjustment shall be conducted as a quasi-judicial proceeding governed by N.G.S.G. § 160D-406. Appeals from the Zoning Board of Adjustment shall be governed by N.C.G.S. § 160D-1402.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-151. Additional standards for special situations.

Trout waters. In addition to the standards for handling stormwater set out in the design manual, development and redevelopment that drains in whole or part to class TR waters shall design and implement the best stormwater practices that do not result in a sustained increase in receiving water temperature, while still meeting the other requirements of this article.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-152. Onsite wastewater.

- (a) *Operation and maintenance requirements.* New and replaced onsite systems for domestic wastewater installed after the effective date of this article must be approved and permitted by the county health department. Both the county septic permit and documentation showing the operation and maintenance for the system are required before a certificate of occupancy may be issued.
- (b) *Standards for operation and maintenance.* Onsite systems for domestic wastewater covered by this article shall be operated and maintained so as to avoid adverse effects on surface water and groundwater, including eutrophication of surface water and microbial or nitrate contamination of groundwater. Septic tank residuals shall be pumped whenever necessary to assure the proper operation of the system to meet these standards, and the septage shall be reused or disposed of in a manner that does not present significant risks to human health, surface water or groundwater.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-153. General standards for maintenance.

- (a) *Function of BMPs as intended.* The ~~owner~~Owner of each structural BMP installed pursuant to this article shall maintain and operate it so as to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the structural BMP was designed.
- (b) *Annual maintenance inspection and report.* The person responsible for maintenance of any structural BMP installed pursuant to this article shall submit to the stormwater administrator an inspection report from one of the following persons performing services only in their area of competence: a person certified by the North Carolina cooperative extension service for stormwater treatment practice inspection and maintenance. The inspection report shall contain all of the following:
- (1) The name and address of the ~~land-owner~~Owner;
 - (2) The recorded book and page number of the lot of each structural BMP;
 - (3) A statement that an inspection was made of all structural BMPs;
 - (4) The date the inspection was made;
 - (5) A statement that all inspected structural BMPs are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this article; and
 - (6) The original signature and seal (if applicable) of the qualified person certified by the North Carolina cooperative extension service for stormwater treatment practice inspection and maintenance.

All inspection reports shall be on forms supplied by the stormwater administrator. An original inspection report shall be provided to the stormwater administrator beginning one year from the date of as-built certification and each year thereafter on or before the date of the as-built certification.

(Ord. No. 11-0419, § 2, 4-7-11; Ord. No. 15-1064, § 1, 10-1-15; Ord. No. 15-1064, § 1, 10-1-15)

Sec. 24-154. Operation and maintenance agreement.

- (a) *In general.* Prior to the conveyance or transfer of any lot or building site to be served by a structural BMP pursuant to this article, and prior to issuance of any permit for development or redevelopment requiring a structural BMP pursuant to this article, the ~~owner~~Owner of the site must execute an operation and maintenance agreement that shall be binding on all subsequent ~~owner~~Owners and Owners of an Interest of the site, portions of the site, and lots or parcels served by the structural BMP. Until the transference of all property, sites, or lots served by the structural BMP, the original ~~owner~~Owner shall have primary responsibility for carrying out the provisions of the maintenance agreement.

The operation and maintenance agreement shall require the ~~owner~~Owner or owners and all responsible Owners of an Interest to maintain, repair and, if necessary, reconstruct the structural BMP, and shall state the terms, conditions, and schedule of maintenance for the structural BMP. In addition, it shall grant to city a right of entry in the event that the stormwater administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the structural BMP; however, in no case shall the right of entry, of itself, confer an obligation on the city to assume responsibility for the structural BMP.

The operation and maintenance agreement must be approved by the stormwater administrator prior to plan approval, and it shall be referenced on the final plat, if required, and shall be recorded with the county register of deeds. A copy of the recorded maintenance agreement shall be given to the stormwater administrator within 14 days following its recordation.

-
- (b) *Special requirement for homeowners' and other associations.* For all structural BMPs required pursuant to this article and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement shall include all of the following provisions:
- (1) Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.
 - (2) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the structural BMPs. If structural BMPs are not performing adequately or as intended or are not properly maintained, the city, in its sole discretion, may remedy the situation, and in such instances the City of Hendersonville shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the structural BMPs, provided that the city shall first consent to the expenditure.
 - (3) Both developer contribution and annual sinking funds shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount equal to 15 percent of the initial construction cost of the structural BMPs. Two-thirds of the total amount of sinking fund budget shall be deposited into the escrow account within the first five years and the full amount shall be deposited within ten years following initial construction of the structural BMPs. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.
 - (4) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the city depending on the design and materials of the stormwater control and management facility.
 - (5) Granting to the city a right of entry to inspect, monitor, maintain, repair, and reconstruct structural BMPs.
 - (6) Allowing the city to recover from the association and its members any and all costs the city expends to maintain or repair the structural BMPs or to correct any operational deficiencies. Failure to pay the city all of its expended costs, after 45 days' written notice, shall constitute a breach of the agreement. In case of a deficiency, the city shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both. Interest, collection costs, and attorney fees shall be added to the recovery.
 - (7) A statement that this agreement shall not obligate the city to maintain or repair any structural BMPs, and the city shall not be liable to any person for the condition or operation of structural BMPs.
 - (8) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the city to enforce any of its ordinances as authorized by law.
 - (9) A provision indemnifying and holding harmless the City of Hendersonville for any costs and injuries arising from or related to the structural BMP, unless the city has agreed in writing to assume the maintenance responsibility for the BMP and has accepted dedication of any and all rights necessary to carry out that maintenance.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-155. Inspection program.

Inspections and inspection programs by the city may be conducted or established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in BMPs; and evaluating the condition of BMPs.

If the ~~owner~~Owner, an Owner of an Interest with authority, or occupant of any property refuses to permit such inspection, the stormwater administrator shall proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2 or its successor. No person shall obstruct, hamper or interfere with the stormwater administrator while carrying out his or her official duties.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-156. Performance security for installation and maintenance.

(a) *May be required.* The City of Hendersonville may, at its discretion, require the submittal of a performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the structural BMPs are

- (1) Installed by the permit holder as required by the approved stormwater management plan; and/or
- (2) Maintained by the ~~owner~~Owner and, if applicable, a responsible Owner of an Interest as required by the operation and maintenance agreement.

This requirement may be instituted in addition to and in conjunction with other performance security or bond requirements the city may require in conjunction with a subdivision or development plan.

(b) *Amount.*

- (1) *Installation.* The amount of an installation performance security shall be the total estimated construction cost of the BMPs approved under the permit, plus 25 percent.
- (2) *Maintenance.* The amount of a maintenance performance security shall be the present value of an annuity of perpetual duration based on a reasonable estimate of the annual cost of inspection, operation and maintenance of the BMPs approved under the permit, at a discount rate that reflects the jurisdiction's cost of borrowing minus a reasonable estimate of long-term inflation.

(c) *Uses of performance security.*

- (1) *Forfeiture provisions.* The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the ~~owner~~Owner or responsible Owner of an Interest in accordance with this article, approvals issued pursuant to this article, or an operation and maintenance agreement established pursuant to this article.
- (2) *Default.* Upon default of the ~~owner~~Owner or responsible Owner of an Interest to construct, maintain, repair and, if necessary, reconstruct any structural BMP in accordance with the applicable permit or operation and maintenance agreement, the stormwater administrator shall obtain and use all or any portion of the security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the ~~owner~~Owner and the responsible Owner of an Interest, if applicable, to comply with the permit or maintenance agreement. In the event of a default triggering the use of installation performance security, the city shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.

-
- (3) *Costs in excess of performance security.* If the city takes action upon such failure by the ~~owner~~[Owner or responsible Owner of an Interest](#), the city may collect from the ~~owner~~[Owner or responsible Owner of an Interest](#) the difference between the amount of the reasonable cost of such action and the amount of the security held, in addition to any other penalties or damages due.
 - (4) *Refund.* Within 60 days of the final approval, the installation performance security shall be refunded to the ~~owner~~[Owner or responsible Owner of an Interest if applicable](#), or terminated, except any amount attributable to the cost (plus 25 percent) of landscaping installation and ongoing maintenance associated with the BMPs covered by the security. Any such landscaping shall be inspected one year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-157. Notice to ~~owner~~[Owners and Owners of an Interest](#).

- (a) *Deed recordation and indications on plat.* The applicable operations and maintenance agreement pertaining to every structural BMP shall be referenced on the final plat, if required, and shall be recorded with the county register of deeds. If no subdivision plat is recorded for the site, then the operations and maintenance agreement shall be recorded with the county Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.
- (b) *Signage.* For homeowner's and other associations, and where appropriate in the determination of the stormwater administrator to assure compliance with this article, structural BMPs shall be posted with a conspicuous sign stating who is responsible for required maintenance and annual inspection. The sign shall be maintained so as to remain visible and legible.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-158. Records of installation and maintenance activities.

The ~~owner~~[Owner and responsible Owner of an Interest, if applicable](#), of each structural BMP shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record and shall submit the same upon reasonable request to the stormwater administrator.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-159. Nuisance.

The ~~owner~~[Owner and responsible Owner of an Interest \(if applicable\)](#) of each stormwater BMP, whether structural or nonstructural BMP, shall maintain it so as not to create or result in a nuisance condition.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-160. General enforcement and violations.

- (a) *Authority to enforce.* The provisions of this article shall be enforced by the stormwater administrator, his or her designee, or any authorized agent of the city. Whenever this section refers to the stormwater administrator, it includes his or her designee as well as any authorized agent of the city.
- (b) *Violation unlawful.* Any failure to comply with applicable requirements, prohibitions, standards, or limitations imposed by this article, or the terms or conditions of any permit, maintenance agreement, or

(Supp. No. 39)

Created: 2021-03-03 11:30:17 [EST]

other development or redevelopment approval or authorization granted pursuant to this article, is unlawful and shall constitute a violation of this article and is subject to the same civil or criminal penalties as other city Code (see section 1-6 of this Code) violations, with each day that a violation continues constituting a separate offense. Each day that a violation continues shall constitute a separate and distinct violation or offense.

- (c) *Responsible persons/entities.* Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, BMP, practice, or condition in violation of this article shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section. Persons subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this article, or fails to take appropriate action, so that a violation of this article results or persists; or an ~~owner~~Owner, Owner of an Interest, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or development of the property on which the violation occurs.

For the purposes of this article, responsible person(s) shall include but not be limited to:

- (1) *Person maintaining condition resulting in or constituting violation.* An architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this article, or fails to take appropriate action, so that a violation of this article results or persists.
- (2) *Responsibility for land or use of land.* The ~~owner~~Owner of the land on which the violation occurs, any Owner of and Interest, any tenant or occupant of the property, any person who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person, who has control over, or responsibility for, the use, development or redevelopment of the property.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-161. Remedies and penalties.

The remedies and penalties provided for violations of this article, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

- (a) *Remedies.*
- (1) *Withholding of certificate of occupancy.* The stormwater administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the ~~owner~~Owner, an Owner of an Interest, or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.
 - (2) *Disapproval of subsequent permits and development approvals.* As long as a violation of this article continues and remains uncorrected, the stormwater administrator or other authorized agent may withhold, and the approving body may disapprove, any request for permit or development approval or authorization provided for by this article or the zoning, and/or subdivision regulations, as appropriate for the land on which the violation occurs.
 - (3) *Injunction, abatements, etc.* The stormwater administrator may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this article. Any person violating this article shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.

-
- (4) *Correction as public health nuisance, costs as lien, etc.* If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by G.S. 160A-193, the stormwater administrator, may cause the violation to be corrected and the costs to be assessed as a lien against the property.
 - (b) *Civil penalties.* Violation of this article may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the stormwater administrator. civil penalties may be assessed up to the full amount of penalty to which the city is subject for violations of its phase II stormwater permit, or if no phase II stormwater permit exists for the jurisdiction, civil penalties may be assessed up to the full amount allowed by law.
 - (c) *Criminal penalties.* Violation of this article may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-162. Enforcement procedures.

[Enforcement of this article shall be governed by N.C.G.S. § 160A-404. To the extent that the provisions of this article conflict with G.S. § 160D-404, G.S. § 160D-404 shall control, unless another North Carolina General Statute supersedes the application of G.S. § 160D-404 to this article in which case such other General Statute shall control.](#)

- (a) *Initiation/complaint.* Whenever a violation of this article occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint shall state fully the alleged violation and the basis thereof, and shall be filed with the stormwater administrator, who shall record the complaint. The complaint shall be investigated promptly by the stormwater administrator.
- (b) *Inspection.* The stormwater administrator shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this article.
- (c) *Notice of violation and order to correct.* When the stormwater administrator finds that any building, structure, or land is in violation of this article, the stormwater administrator shall notify, in writing, the ~~property owner~~Owner or other person violating this article. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. If civil penalties are to be assessed, the notice of violation shall also contain a statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection as a debt.

The stormwater administrator may deliver the notice of violation and correction order personally, by certified or registered mail, return receipt requested, or by any means authorized for the service of documents by Rule 4 of the state Rules of Civil Procedure.

If a violation is not corrected within a reasonable period of time, as provided in the notification, the stormwater administrator may take appropriate action under this article to correct and abate the violation and to ensure compliance with this article.

- (d) *Extension of time.* A person who receives a notice of violation and correction order, or the ~~owner~~Owner of the land on which the violation occurs, may submit to the stormwater administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the stormwater administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation. The stormwater administrator may

grant time extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this article. The stormwater administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.

- (e) *Enforcement after time to correct.* After the time has expired to correct a violation, including any extension(s) if authorized by the stormwater administrator, the stormwater administrator shall determine if the violation is corrected. If the violation is not corrected, the stormwater administrator may act to impose one or more of the remedies and penalties authorized by this article.
- (f) *Emergency enforcement.* If delay in correcting a violation would seriously threaten the effective enforcement of this article or pose an immediate danger to the public health, safety, or welfare, then the stormwater administrator may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The stormwater administrator may seek immediate enforcement, without prior written each day that a violation continues shall constitute a separate and distinct violation or offense notice, through any remedy or penalty authorized by this article.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-163. Illicit discharges and connections.

- (a) *Illicit discharges.* No person shall cause or allow the discharge, emission, disposal, pouring, or pumping directly or indirectly to any stormwater conveyance, the waters of the state, or upon the land in manner and amount that the substance is likely to reach a stormwater conveyance or the waters of the state, any liquid, solid, gas, or other substance, other than stormwater; provided that non-stormwater discharges associated with the following activities are allowed and provided that they do not significantly impact water quality:
 - (1) Water line flushing;
 - (2) Landscape irrigation;
 - (3) Diverted stream flows;
 - (4) Rising ground waters;
 - (5) Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20));
 - (6) Uncontaminated pumped ground water;
 - (7) Discharges from potable water sources;
 - (8) Foundation drains;
 - (9) Air conditioning condensation;
 - (10) Irrigation water;
 - (11) Springs;
 - (12) Water from crawl space pumps;
 - (13) Footing drains;
 - (14) Lawn watering;
 - (15) Individual residential car washing;
 - (16) Flows from riparian habitats and wetlands;

-
- (17) Dechlorinated swimming pool discharges;
 - (18) Street wash water; and
 - (19) Other non-stormwater discharges for which a valid NPDES discharge permit has been approved and issued by the state, and provided that any such discharges to the municipal separate storm sewer system shall be authorized by the city.

Prohibited substances include but are not limited to: oil, anti-freeze, chemicals, animal waste, paints, garbage, and litter.

(b) *Illicit connections.*

- (1) Connections to a stormwater conveyance or stormwater conveyance system that allow the discharge of non-stormwater, other than the exclusions described in subsection (a) above, are unlawful. Prohibited connections include, but are not limited to: floor drains, ~~waste water~~wastewater from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and ~~waste water~~wastewater from septic systems.
- (2) Where such connections exist in violation of this section and said connections were made prior to the adoption of this provision or any other ordinance prohibiting such connections, the ~~property owner~~Owner, an Owner of an Interest, or the person using said connection shall remove the connection within one year following the effective date of this article. However, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat.
- (3) Where it is determined that said connection:
 - a. May result in the discharge of hazardous materials or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat; or
 - b. Was made in violation of any applicable regulation or ordinance, other than this section;

The stormwater administrator shall designate the time within which the connection shall be removed. In setting the time limit for compliance, the stormwater administrator shall take into consideration:

1. The quantity and complexity of the work,
 2. The consequences of delay,
 3. The potential harm to the environment, to the public health, and to public and private property, and
 4. The cost of remedying the damage.
- (c) *Spills.* Spills or leaks of polluting substances released, discharged to, or having the potential to released or discharged to the stormwater conveyance system, shall be contained, controlled, collected, and properly disposed. All affected areas shall be restored to their preexisting condition.

Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were released or discharged, shall immediately notify the city of the release or discharge, as well as making any required notifications under state and federal law. Notification shall not relieve any person of any expenses related to the restoration, loss, damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by state or other law.

-
- (d) *Nuisance.* Illicit discharges and illicit connections which exist within the city extraterritorial jurisdiction are hereby found, deemed, and declared to be dangerous or prejudiced to the public health or public safety and are found, deemed, and declared to be public nuisances. Such public nuisances shall be abated in accordance with the procedures set forth in section 26-39 of this Code.

(Ord. No. 11-0419, § 2, 4-7-11)

Sec. 24-164. Conflicts of Interest for City Staff

- (1) No staff member shall make a final decision on an Administrative Decision if the outcome or that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the City Manager.
- (2) No staff member shall be financially interested in or employed by a business that is financially interested in a development subject to regulation under this article unless the staff member is the Owner of the land or building involved.
- (3) No staff member or other individual or an employee of a company contracting with a local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the City as determined by the City Manager, or if the City Manager as determined by City Council.
- (4) For the purposes of this section, a ‘close familial relationship’ means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

Section 24-165. Notification of Decisions, Approvals and Determinations.

Written notice of all development approvals and determinations shall be given in accordance with the following requirements:

- (1) Administrative Decision, Development Approval and Determinations by Staff. Written notice of Administrative Decisions, development approvals and determinations made by City staff shall be given in accordance with the requirements of N.C.G.S. Section 160D-403(b). Posting of the property by the applicant or Owner(s) (if not the applicant) with notice of the Administrative Decision, development approvals and determinations made by City staff shall not be required, but is recommended in order to provide constructive notice to the public of the Administrative Decision, development approval, or determination made. The person giving the written notice of the decision shall certify in writing that the required notices were given.
- (2) Decisions Regarding Evidentiary Hearings by the Zoning Board of Adjustment. A copy the written decisions, development approvals and determinations made by the Zoning Board of Adjustment following an Evidentiary Hearing shall be given in accordance with the requirements of N.C.G.S. Section 160D-406(j). Posting of the property by the applicant or Owner(s) (if not the applicant) with notice of the decision, development approvals and determinations made by the Zoning Board of Adjustment shall not be required, but is recommended in order to provide constructive notice to the public of the decision, development approval, or determination made. The staff member person delivering the written decision required by N.C.G.S. Section 160D-(j) shall certify in writing that the written decision was delivered as required.

