

**AN ORDINANCE AMENDING THE STORMWATER PERFORMANCE STANDARDS
FOR DEVELOPMENT, DURHAM CITY CODE CHAPTER 70, ARTICLE X,
SECTIONS 70-736 THROUGH 70-749**

WHEREAS the City Council of the City of Durham finds that:

The health, safety and general welfare and convenience of the public will be furthered through:

- 1) Protecting receiving waters impacted by stormwater runoff discharged from development within the City of Durham through maintaining performance standards for total suspended solids, nitrogen, phosphorus, and bacteria for such development;
- 2) Complying with the City of Durham's municipal stormwater National Pollutant Discharge Elimination System permit, issued under the authority of Section 402(p) of the Clean Water Act and implementing regulations at 40 CFR Part 122.26 *et seq.*;
- 3) Complying with the General Statutes of North Carolina, including but not limited to Article 4A 113A-70 *et seq.* and with implementing regulations for such state statutes, including but not limited to the statutes and regulations implementing nutrient management requirements in Neuse, Falls, and Jordan Basins;
- 4) Limiting potential flooding of downstream properties and protecting streams and other waterways from erosion by ensuring that development manages the increases in peak flows that result from changes in land cover;

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Durham that:

SECTION 1. Existing Sections 70-736 through 70-741 are replaced and amended as follows:

“Sec. 70-736. Purpose and definitions.

(a) *Purpose.* The purpose of Article X is to further the health, safety and general welfare and convenience of the public through:

(1) Protecting receiving waters impacted by stormwater runoff discharged from development within the City of Durham through maintaining performance standards for total suspended solids, nitrogen, phosphorus, and bacteria for such development;

(2) Complying with the City of Durham’s municipal stormwater National Pollutant Discharge Elimination System permit, issued under the authority of Section 402(p) of the Clean Water Act and implementing regulations at 40 CFR Part 122.26 *et seq.*;

(3) Complying with the various General Statutes of North Carolina including but not limited to Article 4A, GS 113A-70 *et seq.* and implementing regulations for such state statutes, including but not limited to the statutes and regulations implementing nutrient management requirements in Neuse, Falls, and Jordan basins;

(4) Limiting potential flooding of downstream properties and protecting streams and other waterways from erosion by ensuring that development manages the increases in peak flows that result from changes in land cover;

(b) *Definitions.* Within this Article, the following terms and phrases, regardless of capitalization, shall have the meanings set forth below:

Baseline Date or Applicable Baseline Date means the following dates for the basins indicated:

Jordan Basin	Dec. 31, 2001
Falls Basin	Dec. 31, 2006
Lower Neuse Basin	March 9, 2001

City Stormwater Standards means written standards related to Stormwater adopted by the Department of Public Works. They include but are not limited to the Reference Guide for Development and Reference Guide for Development/Stormwater; other written and adopted specifications for the design, construction, maintenance, and operation of Stormwater Control Measures or Stormwater Conveyances; and all state standards related to stormwater or state approved alternatives to such standards that have been adopted by the City’s Department of Public Works.

Common Plan of Development means staged or coordinated Development pursuant to an approved plan such as a development plan or site plan whether or not by the same owner, or successive improvements over a period of years initiated by the owner(s) of and conducted on a parcel or contiguous parcels of land for the benefit of such parcel(s). Factors to be considered in determining whether a Common Plan of Development exists include but are not limited to:

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ownership; scope, content, and history of approved plans; other information regarding the development such as contracts, advertisements, or marketing materials; equitable factors; and common or joint use of infrastructure such as roads or utilities.

Development means Land Disturbance which increases impervious surface on a property, or alters its location, or results in an increase in runoff from a property or a decrease in infiltration of precipitation into the soil. It does not include agriculture, mining, or forestry activities.

Director means the Director of the Public Works Department of the City of Durham, or such person(s) as designated in writing by the Director to perform all or a portion of the functions set forth in this Article.

Division of Water Quality or DWQ means the Division within the North Carolina Department of the Environment and Natural Resources (NC DENR).

Downtown Area means the Downtown Tier, Compact Neighborhoods, and Suburban Transit Zones as shown on the Durham Comprehensive Land Use Plan most recently approved by the Durham City Council.

Existing Development means Development that, prior to the effective date of this ordinance has either been lawfully constructed, or has established a vested right under North Carolina law to construct a proposed project, or portion thereof. With regard to application of this ordinance, a vested right will be recognized as follows: a) for Development that does not require a state permit, a vested right shall exist for any portion of a Development that has an approved or a completed application for a site plan or subdivision plat covering that portion, or in the event a site plan or subdivision plat is not required, a building permit or a construction drawing for that portion of the Development. An approved development plan does not accord vested rights in the absence of an approved or completed application for the above-described plans or permits. A “completed application” is one that meets all application requirements, including payment of all required fees and submission of all required information, prior to the effective date of this ordinance. A vested right shall expire if the validity of an approved or completed application or approval is not continuously maintained as otherwise required under the Unified Development Ordinance or City Code; b) for Development that requires a state permit, vested rights shall be recognized if the project meets all the requirements of a) above, and additionally has received necessary state permits required for the use or for construction.

Falls Basin means the area that drains to the Falls Reservoir as determined by the Durham Planning Department.

Impervious Surface means a surface that because of its composition and/or its use impedes the natural infiltration of water. It includes but is not limited to buildings, roofs, solid decks, driveways, parking areas, patios, sidewalks, and compacted gravel areas. It does not include areas that are part of permitted stormwater controls or the open surface water such as swimming pools.

Jordan Basin means the area that drains to Jordan Lake as determined by the Durham Planning Department.

Land Disturbance means a change in the natural cover or topography of land that may result in sedimentation, and includes but is not limited to grubbing, stump removal, removal of topsoil, coarse or fine grading, and disturbance to the subgrade.

Limited Residential means development that is single-family detached, duplex, park, or recreational development.

Lower Neuse Basin means the area that drains to the Neuse River but not to the Falls Basin as determined by the Durham Planning Department, which area is generally shown on a map maintained by such department.

Multifamily and Other Development means development not included in Limited Residential, and includes but is not limited to multifamily and townhomes, and office, industrial, institutional (including local government institutional), and commercial development.

New Development means Development that does not qualify as “Existing Development.”

Redevelopment means Development on a site where structures or impervious surface already exists.

Stormwater Control Measure, or SCM, means a device or practice that is designed to trap, settle out, filter, or otherwise reduce pollutants from stormwater runoff, and/or to alter or reduce runoff velocity, amount, timing, or other stormwater characteristics. The term includes all measures formerly known as “best management practices” or “BMPs”. Such measures include but are not limited to stormwater detention facilities, constructed wetlands, vegetative areas, filter strips, buffers, and vegetated swales.

Stormwater Conveyance means a physical feature, including constructed devices, that conveys stormwater. A conveyance may also serve as a Stormwater Control Measure.

Stormwater Pollutant or Pollutant means nutrients (nitrogen and phosphorus), bacteria, total suspended solids, and any other substance that can be transported via stormwater and that is identified in this Article as requiring regulation.

Sec. 70-737 General; prior requirements; conflicts; interpretations.

(a) *Applicability.* This Article contains standards for the control of Stormwater Pollutants and the management of peak flows from stormwater discharges from Development in the City of Durham. All Development, including but not limited to New Development and Redevelopment, shall be subject to the requirements of this Article unless specifically exempted.

(b) *Prior requirements.* Stormwater requirements superseded by the requirements of this Article shall continue to apply to Existing Development approved under such prior requirements,

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in the event that the requirements of this Article do not apply. Existing Development, or portions thereof, that is not required to comply with this Article must continue to manage nutrients, TSS, and peak flow in accordance with the stormwater requirements appearing on approved plans for the development and the requirements in effect when such plans were approved.

(c) *Conflict of Laws.* The requirements in this Article supplement other statutory and regulatory requirements including, but not limited to, requirements for buffers, water protection (watershed) overlays, and controls for sedimentation and erosion that are contained in the Unified Development Ordinance. In the event of conflict between the requirements of this Article and other statutory or ordinance requirements, the stricter of the requirements shall control. Such other requirements also include, but are not limited to, committed elements regarding stormwater that are contained in approved development plan rezonings.

(d) *Approval contingent upon compliance.* No site plan, preliminary or final subdivision plat, construction drawing for a street or for utilities, or utility permit shall be approved until the applicant has submitted information required by the City sufficient to determine compliance with this Article, and review for compliance has been conducted.

(e) *Maps.* The watershed maps for the Falls Basin, the Jordan Basin, and the Lower Neuse Basin maintained by the Durham City County Planning Department, as supplemented by particular drainage information that may be required pursuant to City Stormwater Standards or the Unified Development Ordinance, shall be used for determinations regarding location and drainage of property.

(f) *Applicability of City Stormwater Standards.* Technical standards used in the administration of this Article are considered requirements of this Article. Such standards shall be in writing, and approved and signed by the Director, and shall be maintained in the City's Reference Guide for Development or in other written documents. These standards may be amended from time to time. If such standards conflict with technical standards that have been adopted pursuant to other portions of the City Code, the Director shall be authorized to resolve such conflicts. Any such resolution shall be consistent with the requirements of this Article.

(f) *Final decisions/interpretations.* The Director shall be authorized to render all interpretations of, and final decisions under, this Article. No interpretation shall be binding unless it is in writing and signed by the Director.

(g) *Fees.* The City is authorized to charge fees to recoup all estimated direct and indirect costs of administering this Article, and such fees shall be reviewed and approved on a periodic basis by the Durham City Council.

(h) *Severability.* If any portion of this Article is determined to be invalid by a court of competent jurisdiction, such determination shall not affect or invalidate the remaining portions of this Article.

Sec. 70-738. Peak runoff control requirements.

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(a) *Purpose.* The purpose of this subsection 70-738 is to ensure that the increases in volume, velocity, and peak flow of stormwater discharges from Development are addressed, in order to mitigate the impacts on downstream properties and receiving waters. All Development, including Development that may be exempt from Pollutant reduction requirements set forth in remaining sections of this Article, is subject to the requirements of this section unless exempted in (b) below.

(b) *Applicability; calculation of prior impervious area.* Subsection 70-738 applies to all Development where changes are made to impervious conditions. This includes Development where impervious area is relocated, and Development where impervious area is increased by 200 square feet or more, cumulatively, from pre-development conditions, calculated as follows:

(1) For purposes of applying peak flow requirements for the 2 and 10 year storms, the land cover (including type and location) existing as of April 23, 1997 shall be considered the “pre-development conditions”;

(2) For purposes of applying the peak flow requirement for the 1 year storm, the land cover (including type and location) that existed as of March 9, 2001 for land in the Falls Basin and Lower Neuse Basin, and as of March 17, 2009 for land in the Jordan Basin shall be considered the “pre-development conditions”;

(3) For purposes of calculating the 200 foot threshold, Development that is part of a Common Plan of Development shall be assessed with other portions of such common plan that have not previously complied with peak flow requirements.

(c) *Requirements.*

(1) *Stormwater impact analysis.* All Development shall submit a Stormwater Impact Analysis or approved alternative to such analysis that complies with City Stormwater Standards as part of the application for site plan or subdivision plat approval, or if such is not required, as part of submittals for construction drawings or utility permit approval. Calculations shall be made in conformance with City Stormwater Standards. No subdivision plats, site plans, utility permits, or construction drawings shall be approved in the absence of a determination by the Stormwater Division that required submissions have been made and approved.

(2) *One year storm.* Development that increases the peak runoff rate from the 1-year storm from pre-development conditions shall provide stormwater management facilities in accordance with City Stormwater Standards such that there is no net increase in peak runoff rate.

(3) *Two and ten year storms.* Development that increases the peak runoff rate from either the 2-year or the 10-year storm from predevelopment conditions may be required to provide stormwater management facilities to address the impact, as determined in accordance with City Stormwater Standards.

(4) *Other design storms.* Development that increases the peak runoff from other design storms such as the 100-year storm may be required to install stormwater management facilities to address the impact, as determined in accordance with City Stormwater Standards.

Sec. 70-739. Stormwater Pollutant standards; exemptions.

Subsections 70-739 through 70-741 set forth requirements for Stormwater Pollutants, which include nitrogen, phosphorus, total suspended solids, and bacteria. New Development and Redevelopment shall comply with these standards unless exempted as set forth in this subsection 70-739.

(a) *Exemptions for limited disturbances* New Development and Redevelopment in which Land Disturbance, calculated cumulatively as of the Applicable Baseline Date, is less than the thresholds in Table 1 below is exempt from the standards in subsection 70-740.

TABLE 1 THRESHOLDS FOR APPLICATION OF STORMWATER POLLUTANT REQUIREMENTS

Project Location	Land Disturbance	
	Limited Residential	Multifamily and Other
Jordan Basin	1 acre	0.5 acre
Falls Basin	0.5 acre	12,000 sq. ft.
Lower Neuse Basin	1 acre	0.5 acre

(1) *Common Plan of Development.* Development that is part of a Common Plan of Development shall be included in the calculation. Upon exceedance of the applicable threshold set forth in Table 1, all other portions of the Common Plan are subject to the requirements of this Article;

(2) *Existing Development; maintenance of treatment.* Redevelopment that is exempt under these thresholds must continue and maintain all SCMs in compliance with approved plans and City Standards.

(b) *Other exemptions.* Additionally, New Development and Redevelopment is exempt if:

- A. it qualifies in its entirety as Existing Development; or
- B. it is located in the Downtown Area and does not increase impervious area over the Applicable Baseline Date; or
- C. it is undertaken by a state or federal entity and has been reviewed by the State;
- D. it is a City transportation project in the Jordan basin.

Sec. 70-740. Required reductions for nutrients and TSS; alternatives; calculations

(a) *Nutrient Loading Limits .* Development not exempt under subsection 70-739 above shall construct and implement SCMs so as to limit the post construction loading of nitrogen (N) and phosphorus (P) from the project area to the limits set forth in Table 2 below, or must comply

with an allowed alternative as set forth in (b) through (d) below. A portion of the reduction requirements for nitrogen and phosphorus may be met through off site measures or payments as set forth in 70-741.

TABLE 2 NUTRIENT EXPORT LOAD LIMITS

Project Location	Export Limit lbs/acre/year	
	Nitrogen	Phosphorus
Jordan Basin	2.2	0.82
Falls Basin	2.2	0.33
Lower Neuse Basin	3.6	not required

(b) *Alternative percentage reduction option for Redevelopment that increases impervious area.* As an alternative to meeting the load reductions described in (a) above, Redevelopment not exempt under 70-739 that increases impervious area may reduce the pre-development nutrient load for nitrogen and phosphorus by the percentage shown in Table 3 below. The pre-development nutrient load is calculated as of the Applicable Baseline Date and load reductions already achieved shall be credited. **TABLE 3 PERCENTAGE REDUCTION OPTION FOR REDEVELOPMENT.**

Project Location	Percent Reduction from Pre-Dev Load	
	N	P
Jordan	35%	5%
Falls	40%	77%
Lower Neuse	30%	N/A

(c) *Alternative percentage reduction option for Redevelopment that does not increase impervious area.* Redevelopment that exceeds the land disturbance threshold in 70-739(a) that is outside the Downtown Area and does not increase impervious area shall reduce pre-development nutrient load, calculated as of the Applicable Baseline Date, by 10% if reductions are achieved onsite, and by 15% if reductions cannot be entirely achieved onsite.

(d) *Alternative for low impact development in Falls basin.* Development in the Falls basin will be considered compliant with the nutrient reduction obligations of this Section 740 if it demonstrates that it meets the post development hydrologic criteria set forth in Chapter 2 of the North Carolina Low Impact Development Guidebook dated June of 2009, as it may be amended from time to time.

(e) *TSS Reduction.* Subject Development and Redevelopment must treat runoff from the first 1 inch of rainfall in the project area to remove 85% of Total Suspended Solids in accordance with the criteria set forth in Table 3 below. These requirements are subject to the further modifications of paragraph (f) within this Section.

TABLE 4 TSS REDUCTION REQUIREMENTS

Project Location	Site Impervious Percentage	85% TSS Reduction Required
Jordan Basin	≥ 0	yes
Falls Basin	≥ 24	yes
Lower Neuse Basin	≥ 24	yes

(f) *Supplemental Standards/Modifications for TSS Reduction* The requirements of (e) above are modified and/or supplemented as follows:

(1) *Jordan Basin/No TSS reduction if nutrient treatment not required.* In the Jordan Basin, Development must reduce TSS only if it must reduce nutrient loading limits through SCMs or off site measures. If Development meets nutrient loading limits without such measures, TSS does not have to be reduced. Note: Projects located in water supply overlay may need to provide 85% TSS reduction per the Unified Development Ordinance.

(2) *Falls & Lower Neuse Basin Low Density Projects.* In the Falls and Lower Neuse basins, projects that are less than 24% impervious and not within the parameters in Table 4 must treat TSS from stormwater runoff that is conveyed in non-vegetated conveyances, such as stormwater pipes, excluding road and driveway crossings.

(3) *Overtreatment to address untreatable areas.* Where treatment for TSS is not reasonably practicable, such as when impervious areas include offsite transportation improvements or small noncontiguous areas at the edge of a project, additional reductions of TSS may be required in treatable areas, such as overtreatment in other project areas or treatment of offsite runoff.

(e) *Calculations for Nutrient Loading and TSS Removal.* Pollutant loading calculations shall be made using City Stormwater Standards. All increases in impervious surfaces that result from the approved Development shall be included, including but not limited internal and off site transportation improvements. Approved methodologies for calculating pollutant loading shall be maintained in writing by the Public Works Department, and shall include those methodologies and calculations required to be used by the Division of Water Quality or DWQ-approved alternate methodologies.

(f) *Submittals.* An applicant shall submit pollutant loading calculations for the pre- and post-development conditions as part of its application for approval of a subdivision or site plan, utility permit, or construction drawings for a street or utility.

Sec. 70-741 On-site treatment requirements; offsite purchase and credit options; bacteria control.

(a) *On site nutrient treatment requirements.* Nutrient (but not TSS) reduction requirements may be met, in part, through offsite management measures or the purchase of nutrient credits. Prior to utilizing such options, Development and Redevelopment that are required to reduce nutrients shall provide onsite Stormwater Control Measures that meet the treatment requirements set forth in Table 5 below. In the Jordan and Lower Neuse basins, the requirement is to limit nitrogen to a maximum export load, expressed in pounds, per acre, per year. In the Falls basin, the requirement is to achieve nutrient load reductions onsite that equal or exceed a given percentage of the overall nutrient reduction that must be achieved for the Development. In addition, all TSS removal requirements must be met onsite.

TABLE 5 ONSITE NUTRIENT TREATMENT REQUIREMENTS

Project Location	Minimum Onsite Nutrient Treatment	
	Nitrogen	Phosphorus
Jordan/Lower Neuse Limited Residential	6 lbs/acre/yr max. export load	N/A
Jordan/Lower Neuse Multifamily & Other	10 lbs/acre/yr max. export load	N/A
Falls - General	*50% of required reduction	*50% of required reduction
Falls within Downtown Area	*30% of required reduction	*30% of required reduction
Falls exceeding thresholds but with less than 1 acre land disturbance	*30% of required reduction	*30% of required reduction

*The “required reduction” is the difference between the post development loading in pounds per acre per year multiplied by the site area in acres before treatment minus the loading target, in pounds per acre per year multiplied by the acres. The percentage shown in the chart above is applied to that difference and the resulting number is the amount in pounds/year of nutrient reduction that must be achieved onsite..

(b) *Offset Payments to state approved nutrient banks.* Development and Redevelopment shall have the option of purchasing nutrient credits to partially offset nitrogen and/or phosphorus loads as allowed by State law and regulation, including but not limited to 15A NCAC 02B.0235, 15A NCAC 02B.0282, and 15A NCAC 02B.0240, as they may be amended from time to time. The following additional requirements shall apply:

1. *Location of Private Nutrient Banks* Development in the Falls Basin that purchases credits from nutrient banks to meet nutrient reduction requirements must use nutrient banks located in the portion of the upper Falls portion of the Falls Basin that is north and/or west of Highway 50. Development in the Jordan

Basin that purchases credits from nutrient banks must use nutrient banks located in the Upper New Hope arm of such basin, as defined in state regulations.

2. *Certification of Nutrient Bank Provider.* Offset credits may only be obtained from nutrient banks certified by the State.
3. *Utilization of NC Ecosystem Enhancement Program.* Credits may also be obtained from the NC Ecosystem Enhancement Program if such credits are available, and if applicable state requirements regarding utilization of private nutrient banks are met.
4. *Certification of credits.* Offsite credits used to offset the nutrient reduction obligation in a Development shall be verified by the State and proof of such verification that meets City requirements shall be presented prior to approval of a final plat, or if no plat is required, prior to issuance of the first building permit within the project, or such earlier deadline as may be required by City Stormwater Requirements.

(c) *Combination with noncontiguous donor parcels.* Development and Redevelopment that have met onsite treatment requirements as required in Section 70-741 may include within their proposed Development noncontiguous properties (hereafter “donor parcels”) deemed beneficial to water quality by the Department and made available for nutrient reduction through an agreement recorded prior to October 1, 2011 that perpetually protects the donor parcels from development. Such parcels must meet the requirements detailed in the Public Works Operating Policy on the Review Criteria for Acceptance of Conservation Easements for Non-contiguous Donor Parcels. Use of donor parcels is also subject to the following additional restrictions:

- (1) The donor and receiving parcels must be within the same reservoir basin;
- (2) The donor parcels must be perpetually restricted from development through the recorded legal easement referenced above that can be enforced by the City or County of Durham;
- (3) Areas within the donor parcels that the Department has determined to be undevelopable such as areas within the floodway or within required 50 riparian foot stream buffers may not be used for credit;
- (4) The amount of credit shall be as determined by the Department through a legally binding agreement approved prior to October 1, 2011.
- (5) All purchases or commitments for use of donor parcels shall be made prior to October 1, 2015.

(d) *Bacteria removal; control of other identified pollutants.* All Development which constructs Stormwater Control Measures in order to comply with this Article and which is located in an area that is subject to a state approved Total Maximum Daily Load for bacteria shall be required to have at least one SCM for each stormwater discharge that is rated as medium or high for its ability to remove bacteria from stormwater. Ratings shall be those that appear in the most recent version of the NCDENR Stormwater SCM manual or as determined or approved by the Director. In addition, required SCMs must also treat any other pollutant for which a Total Maximum Daily Load has been identified for the area within which the SCM is located.

Sec. 70-742. Design, construction, and completion of SCMs and stormwater conveyances

(a) *Design.* Stormwater Control Measures and Stormwater Conveyances that are required by this Article shall be designed in accordance with City Stormwater Standards. Dams, as defined by the North Carolina Dam Safety Law, including but not limited to NCGS 143-215.23 *et seq.*, and associated state administrative codes, as they may be amended in the future, are subject to the above-cited state requirements. SCMs that are not required by this Article shall be subject to City Stormwater Standards.

(b) *Approvals for SCMs and stormwater conveyances.* All construction of and nonroutine maintenance work on an SCM constructed to meet stormwater requirements or on a stormwater conveyance that connects to such SCM or connects directly to the City's drainage system or to the waters of the state shall be constructed in accordance with City Standards. Such work, and any other work that may be defined in City Standards, must be submitted to the City for review and approval. City Standards may require that permits be obtained for such work and may exempt certain drainage work from review and approval. In addition, City Standards may establish standard or recommended practices to be followed in lieu of obtaining a permit or approval for certain work.

(c) *Construction plans, fees, maintenance, financial guarantees.* For developments for which Stormwater Control Measures are required, the Developer must ensure compliance with the requirements below prior to i) transfer of any ownership interest or any lot within the development; ii) issuance of a building permit for construction within the development; iii) issuance of a utility permit for the development; and iv) construction drawing approval for any infrastructure within the development:

- (1) Review and approval of the Stormwater Impact Analysis;
- (2) Review and approval of plans and specifications for the SCMs within the development;
- (3) Payment of permit and review fees required by the Department;
- (4) Approval and recordation of an agreement and/or covenants that meet City Standards and that provide, among other things, for the construction and long term maintenance, inspection, repair, and reconstruction of the SCMs in accordance with City Standards. In the case of Limited Residential consisting of residences, a homeowners' association shall be created prior to recordation of such agreement and covenants and shall be a necessary party to such agreement;
- (5) Provision of financial guarantees to ensure the long term maintenance, inspection, repair, and reconstruction of stormwater control measures in accordance with City Code Section 70-751, the Unified Development Ordinance, and City Standards.

(d) *Completion of construction.* Construction of SCMs and stormwater conveyances shall be completed, and final inspection and as-built drawings submitted to the City, in accordance with timelines set forth in City Standards, unless a performance guarantee to ensure completion is approved pursuant to (e) below.

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(e) *Performance Guarantees.* The owner or developer of a project where the requirements of (d) above have not been completed shall provide a performance guarantee of a type set forth in City Standards in an amount deemed sufficient by the Director to ensure completion. The amount provided shall be consistent with City Standards, which shall at a minimum require that all direct and indirect costs of completion and compliance with City requirements be guaranteed. City Standards shall also establish deadlines for completion of stormwater facilities for which guarantees have been provided. The Director shall approve a deadline for completion of stormwater facilities for which performance guarantees have been provided. The Owner and other parties responsible for completion of the facilities shall be responsible for reimbursing the City its costs in constructing and/or completing facilities required by this Article. If a performance guarantee exceeds the City's costs and is not used to complete other infrastructure in the Development, the unexpended amounts shall be applied to the perpetual maintenance of stormwater facilities, consistent with City Code provisions regarding the same.

(f) *Conditional Certificates; Reduction of Guarantees.* The City is authorized to issue conditional certificates of compliance for buildings for which stormwater guarantees have been provided and completion ensured consistent with City Standards. In addition, City Standards may allow for reduction of performance guarantees as approved by the Department as facilities are completed and requirements are met.

(g) *Use of private land; allowance of construction.* Application for and receipt of approval to construct SCMs or stormwater conveyances in a Development constitute agreement to allow the land areas designated for such facilities and reasonable access to such areas to be used by the City for construction of the facilities in the event that the facilities are not constructed as required in this Article. No right to compensation shall exist for such use of land or construction. This provision does not require the City to take any action, acquire any property, or construct any facility.

Sec. 70-743 Inspection, Maintenance, Repair, and Reconstruction.

(a) *Private maintenance.* The construction, inspection, maintenance, repair and reconstruction of stormwater control measures and stormwater conveyances not located in city right of way shall be the responsibility of i) the owner of the property on which such SCMs and conveyances are located; and ii) any person or entity that has legally agreed to perform such functions; and iii) the private properties served by the SCMs or conveyances, as determined by reference to site plans, plats, and construction drawings for SCMs. The SCMs and conveyances shall be maintained, repaired, and reconstructed in compliance with City Standards. Standards for maintenance include but are not limited to the specific operation and maintenance agreement for particular facilities on file with the City Public Works Department and the most recent version of the "Owner's Maintenance Guide for Stormwater SCMs Constructed in the City of Durham."

(b) *Annual private inspection.* An annual inspection report that meets City Standards shall be provided by the persons or entities responsible for such facility, identified in (a) above, for each Stormwater Control Measure. The report shall be submitted on such schedule as approved by the Department. In addition, such persons or entities shall maintain inspection and repair reports regarding the SCMs.

(c) *City right to inspect.* The City shall have the right to inspect stormwater control measures or stormwater conveyances. Inspection may include but is not limited to testing of structures, water, or vegetation as the City determines may be useful to determine the history or performance of the SCM or conveyance.

Sec. 70-744 Remedies for Violation

Noncompliance with this Article is a violation of the City Code and is subject to all civil and criminal penalties allowed, in addition to those specifically set forth below. Remedies are cumulative, and may be exercised separately, together, or in any order.

(a) *Withholding of Permits, Approvals, and Certificates of Occupancy/Compliance.* In the event of violation of this Article, the City may withhold any approval, permit, or certificate of occupancy/compliance for any structure served by an SCM or stormwater conveyance.

(b) *Stop work order.* The City may issue a stop work order to any person in violation of this Article.

(c) *Incorporation of 70-538 et seq.* In addition, all remedies and procedures set forth in Sections 70-538 through 70-542 of the City Code shall apply to violations of Section 70-743.

SECTION 2. This Ordinance shall be effective upon adoption and shall replace the above-cited sections of the City Code.