

DURHAM



1869
CITY OF MEDICINE

CITY OF DURHAM

Department of Public Works

101 City Hall Plaza | Durham, NC 27701

919.560.4326 | F 919.560.4312

www.durhamnc.gov

October 5, 2010

Mr. Brian P. Mulligan
3118 Marywood Drive
Durham, NC 27712

Re: September 20, 2010 Meeting Follow-up and Response to Your (Attached)
September 8, 2010 Letter

Dear Mr. Mulligan:

This letter is in response to your attached September 8, 2010 letter and a follow-up to our September 20, 2010 meeting in the field. As you are aware Stormwater staff had previously investigated this location in December 2009 in response to concerns raised by you. Also, in February 2010 a letter (attached) was sent to the property owners of 3110 and 3118 Marywood Drive and 8 Firethorn Court informing of staff's determination that the drainage concern is a private property matter.

Upon completion of my review with Stormwater staff, I consulted with City legal staff regarding the issues you raised. Both concur with prior staff findings that your concerns involve a private property matter. As such we do not believe that the Publics Work Department has any liability or responsibility for remedying any damages to your site that may have been caused by stormwater runoff from adjacent sites, and we will not take any further action at this time.

The following provides written response to the specific findings you requested in your attached September 8, 2010 letter (your statements are referenced in *quotations, bold and italics.*)

1. ***“Noted violations of any regulations (local, state, or federal) along with planned remedies”***

The City Public Works Department does not see any local violation of current stormwater management regulations involving the drainage system at 8 Firethorn Court. Based on our understanding of state and federal environmental regulations we do not believe any violations to such regulations have occurred regarding the property of 8 Firethorn Court.

The Public Works Department does not enforce or regulate state or federal regulations outside of our local ordinance. You will need to direct questions regarding state environmental regulations to the North Carolina Department of Environmental and Natural Resources (NCDENR) at (919) 715-3060. Questions concerning federal environmental regulations should be directed to the United States Army Corps of Engineers (USACE) at (919) 554-4884.

2. ***“If no violations exist, an explanation, citing specific reasons based on actual federal, state, or local regulations.”***

The local ordinance for Stormwater Management and Pollution Control is contained in

Chapter 70, Article V of the Code of Ordinances for the City of Durham, North Carolina (attached). Regarding the property of 8 Firethorn Court it was determined that there are no illicit discharges (Sections 70-511 and 70-513) or illicit connections (Section 70-512). Further, the private drainage system at 8 Firethorn Court was found to be well maintained (Section 70-531) and allowed the free flow of water (70-532).

Please note that the current Stormwater Performance Standards for Development, Chapter 70, Article X of the Code of Ordinances for the City of Durham, North Carolina, were not in place at the time the Fieldstone subdivision was approved, and therefore are not applicable in this situation.

Please refer to #1 above regarding state and federal regulations.

3. ***“An explanation as to why your department has allowed the design of this particular storm drain, as it appears in the original plans and approved by Public Work, to be altered, causing damage to private property as a result.”***

The drainage system for Firethorn Court was constructed in accordance with the approved construction plan that showed the piped system discharging into a rip rap apron outlet at the location as it currently exists.

4. ***“An explanation of why Ms. William’s felt that modifying a city system by changing the flow and direction of the runoff exiting the original riprap and extending the city system for hundreds of feet was not in violation of any design criteria or storm water regulations”***

The City owned portion of the existing drainage system referenced is contained within the street right-of-way of Firethorn Court, and has not been modified.

The portion of the drainage system through 8 Firethorn Court is a private system, whose ownership and maintenance is the responsibility of the property owner. Based on review of site conditions it seems very unlikely that the flow and direction of the channel through 8 Firethorn Court has changed appreciably over time. The placement of rip rap along the private drainage system at 8 Firethorn Court did not extend the City owned and maintained drainage system; such work was not performed by City forces and the City never accepted ownership or maintenance for this private system. Our understanding is that the rip rap in reference was added as part of the development of the Fieldstone subdivision to aide in the prevention of erosion at 8 Firethorn Court.

Please refer to the findings noted in #1 and #2 above for the City’s response/findings regarding violations.

5. ***“Your findings on how the additional volume and change in design affects the erosion of downstream properties”***

The patio and fire pit improvements at 8 Firethorn should have no appreciable difference in runoff from this site. As noted in #3 and #4 above there is no evidence that there has been a change in design of the private drainage system at 8 Firethorn Court.

6. ***“A description of erosion damage observed on downstream properties”***

Stormwater staff observed no appreciable damage within 3110 and 3118 Marywood Drive in areas located downhill of the private drainage system at 8 Firethorn Court. This area is a naturally wooded area and the only portion that appears to be actively used is the fenced in

portion of 3118 Marywood Drive which appears to be frequented by the dogs on site. The fence in the area of concern appeared in good condition. There were some fallen trees observed within the natural area but it could not be determined the factors that resulted in their downfall.

Also, several locations within the fenced backyard of 3118 Marywood Drive lacked vegetation and showed signs of soils erosion including many locations not in the direct path of runoff from 8 Firethorn Court. The placement of what was reported to staff as a temporary erosion control measure at 3110 Marywood Drive, downstream of the 8 Firethorn Court drainage system, was observed; its stability and effectiveness were concluded to be questionable based on its condition as observed by staff.

7. ***“How your department has officially determined that the additional runoff incorporated into your system does not contain pollutants”***

From review of the site staff did not see any visual signs or detect any odors of an illicit discharge or connection. Sources of water runoff from 8 Firethorn Court include stormwater and groundwater, both of which are permissible discharges into a surface water drainage system.

Thank you for meeting with me and relaying your concerns regarding drainage/erosion at 3110 and 3118 Marywood Drive. I understand that the condition of your drainage system is not to your liking and empathize with your situation. However, as noted above, there are no actions that can be taken at this time by the Publics Work Department to remedy the issues you raised regarding the drainage system on your property. As you have been informed ownership, maintenance and repair of drainage systems located on private property are the responsibility of the property owner.

As you have indicated that you are not interested in the disturbance or removal of any existing healthy trees on your property you may want to consider using native shrub and/or ground cover plantings as a natural approach to address the concerns you have with your property. Fall and spring are optimum times for such plantings. You may also want to consider the removal of dead trees that may be affecting the flow of runoff through your property. You may want to consult with a local garden nursery or retain the services of a licensed professional landscaper to assist you. I do not believe the City can be of further assistance in this matter but should you have any additional questions or concerns please do not hesitate to contact me.

Sincerely,



Paul Wiebke, PE
Assistant Stormwater Manager

c: Karen Sindelar, Senior Deputy City Attorney
Ed Venable, Engineering and Stormwater Manager
Martha Absher, property owner 3110 Marywood Drive
Joe Peldunas and Dori Pocius-Peldunas, property owners 8 Firethorn Court

Blank Page

3118 Marywood Drive
Durham, NC 27712
September 8, 2010

Sent by Certified Mail

City of Durham
Public Works Department, Storm Water Services
101 City Hall Plaza
Durham, NC 27701

Attn: Mr. Paul Wiebke, Acting Director

Dear Mr. Wiebke:

We wish to bring to your attention the matter of severe erosion damage occurring on two downstream properties (3110 & 3118 Marywood Drive) caused by runoff emanating from the city storm water pipe at the bottom of Firethorn Court in the Buckwater Creek Subdivision.

Last December, a member of your department, Nathalie Williams, at my request, visited the site briefly and concluded that there was nothing she could observe that would indicate a cause of concern for the city. At the time she indicated that unless the flow emanating from the drain pipe itself was blocked the city would not get involved. She deemed the situation to be a private matter. Since that time, we have consulted with independent experts in the field, who have considerable expertise in such matters. They all contradict Ms. Williams's findings and they have indicated that her investigation was, at best, inadequate.

Apparently, Ms. Williams also had at least one conversation with the property owners at 8 Firethorn Court (the property that your system traverses). I enclose a copy of a letter we received from this property owner in which she (Mrs. Peldunas) states that they and others have permanently added additional water from unknown sources into this storm water system. In her letter, Mrs. Peldunas quotes Ms. Williams as saying that this is not in violation of any regulations regarding storm drain emanation. Since we had only the word of Mrs. Peldunas regarding these alleged statements, I attempted to contact Ms. Williams, on several occasions, to confirm them but she failed to return any of my calls. When I did catch her in her office she refused to discuss the matter. This type of response to a taxpayer with legitimate questions is neither acceptable nor professional. Ms. Williams works for us, the taxpayers. Both she, and your department, has an obligation to properly address matters raised by a taxpayer in the City and County of Durham, especially when it involves property damage. Further, your department has an obligation to explain itself and verify the legal basis for statements and decisions.

Apparently, Ms. Williams was unaware that the approved design for this storm drain, of which we have a copy; called for a Class I Rip Rap 6'6" in length to disperse the runoff onto a designated storm water easement on lot 114. The runoff was to disperse "naturally" upon exiting this rip rap in order to reduce erosion downstream. This drain pipe and Class I rip rap are, of course, located on the city right of way. However, the storm water system, as it presently exists, and as observed by Ms. Williams, does not meet these design criteria and carries a large volume of water, at high velocity, directly onto several downstream properties that is causing considerable erosion damage on two of them. The storm water runoff is so dynamic that it has created a situation that prohibits us from using and enjoying a section of our property as originally intended. This flow of storm water across our properties is a nuisance and may also constitute a trespass.

We have been informed that adding additional water sources to a previously designed system, without the agencies designated to oversee such matters inspecting and approving such alterations, is very likely a violation of several federal, state, and local regulations. The content of the additional runoff must be deemed to be free of pollutants and potential erosion of downstream land must be analyzed before approval is considered. It is our understanding that careful and exacting calculations of the expected runoff are part of the design criteria. Therefore, it would seem reasonable to assume that adding additional volume could render the system inadequate. We have a copy of the original erosion plan that was approved by the North Carolina Division of Environmental Management and your department back in 1990. It would appear that the current situation in no way conforms to what was originally indicated on this plan and approved by this agency. It would also be reasonable to conclude that additional runoff could pose a pollution hazard to any affected properties, creeks, lakes, or rivers and change the dynamics of erosion caused by the runoff. We have included, for your consideration, several photos of the subject storm water drain and the damage being caused by the runoff emanating from this drain.

We have been told that state and federal agencies normally rely on local agencies to insure that their regulations regarding storm water are enforced. If you feel we have been misinformed about this; please notify us immediately so that we may contact the appropriate state and federal agencies. If not, we expect that your department will endeavor to insure compliance with all pertinent regulations. Once these permanent alterations tied into your system they became a part of your system, therefore, it could be argued that the City of Durham, and your department, do indeed have jurisdiction regarding this matter, and, would therefore share in the responsibility for any damage that is occurring. It could also be argued that, since the city is aware of the problem, but failed to address the problem, negligence, on the part of the City of Durham, specifically your department, may play a role in any additional damage to our properties.

The regulations regarding the handling of storm water, we have learned, are fairly complex and possibly beyond the scope of Ms. Williams's knowledge of the subject. Therefore, in light of the severity of the damage and the negative affect on the value of our property we request that you, the Director of the Storm Water Department, personally intervene and dispatch a qualified team, or individual, to revisit the site, paying special attention to additional systems (6 & 8 Firethorn Ct.) which are tied into the city system on the right of way and thereby alter the original design and intent. We also request that the erosion on downstream properties, caused by the runoff emanating from this storm water drain system, be inspected and its effects noted. You will need access the two most affected properties to achieve this and we will make sure we provide access for any scheduled inspection(s). You can reach me at the number listed below to schedule a time or you can email this information if that is more convenient. My email addresses are also listed below.

I would like to be notified as to the date and time of this inspection and informed as to the particular qualifications and professional ratings of the personnel sent to complete the evaluation. We expect they will be proficient in the requirements and content of all Phase I and Phase II regulations and procedures for the handling of storm water.

At the conclusion of this inspection, and at your earliest convenience, we would like a written statement from your department on your findings including, but not limited to, the following information:

1. Noted violations of any regulations (local, state, or federal) along with planned remedies

2. If no violations exist, an explanation, citing specific reasons based on actual federal, state, or local regulations.
3. An explanation as to why your department has allowed the design of this particular storm drain, as it appears in the original plans and approved by Public Works, to be altered, causing damage to private property as a result.
4. An explanation of why Ms. William's felt that modifying a city system by changing the flow and direction of the runoff exiting the original riprap and extending the city system for hundreds of feet was not in violation of any design criteria or storm water regulations
5. Your findings on how the additional volume and change in design affects the erosion of downstream properties
6. A description of erosion damage observed on downstream properties
7. How your department has officially determined that the additional runoff incorporated into your system does not contain pollutants

We realize that you have many other obligations and we are not going to be unrealistic concerning the amount of time necessary to address these concerns and provide us with a written statement, however; much time has already been wasted due to the inadequacy of the original inspection. We now know, with certainty that the original inspection conducted by Ms Williams failed to consider many factors. Therefore, we request that you assign this matter a high priority so that we can avoid additional damage to our properties. I request that I be kept informed of the progress being made in addressing this situation.

Please advise us as to your thoughts regarding this situation as soon as possible so that we may determine how to proceed.

We look forward to your response and thank you for your time devoted to this matter.

Yours truly,



Brian P Mulligan

3118 Marywood Drive

919-455-4995

Bmulligan2@nc.rr.com

Cc: Martha Absher

According to Ms. Williams's inspection we have not!!!

Ms. Williams (Town Inspector of Storm Drain systems of Durham) was completely satisfied that the original design of the storm drain system and its natural run off have not been altered, changed, or compromised by the occupants of 8 Firethorn Court (meaning us). She was also, satisfied that we **did not** break town ordinances: 70-531, 70-532 or 70-533; due to our construction project. The ordinances we are responsible for on a continual basis are: **70-531 and 70-532**, which clearly states: that we must maintain the drainage system located at 8 Firethorn Court free and clear of any obstructions. Since, we are in **compliance** with all town ordinances **no warnings or fines** were issued by the Town of Durham. This should be a clear indication that we are not responsible for the natural run off flow or, the damage that it causes to your collective properties. This system has been in place for at least 19 years. We have only been in our house for a little over 2.

NATURAL ?

Town Ordinances: 70-531, 70-532 and 70-533 listed below:

70-531: Drainage System Maintenance; Construction Permit. **In compliance**

70-532: Obstructing the Free flow of Water. **In compliance**

70-533: Permit Requirements for Construction; Fees. **In compliance; we were informed that we did not need to obtain a permit for the construction work completed on our property because we were not changing the design of the storm drain system.**

In closing: Joe and I feel that the town's inspection of our property has vindicated us of all responsibility in this matter. We hope that this letter helps to clarify our position as well as the towns' position. You and Ms. Absher are free to hire a contractor of your choice to come in and help you resolve this matter to your liking. Or, you can contact the developer who designed and built the storm drain system to see what they can do to assist you.

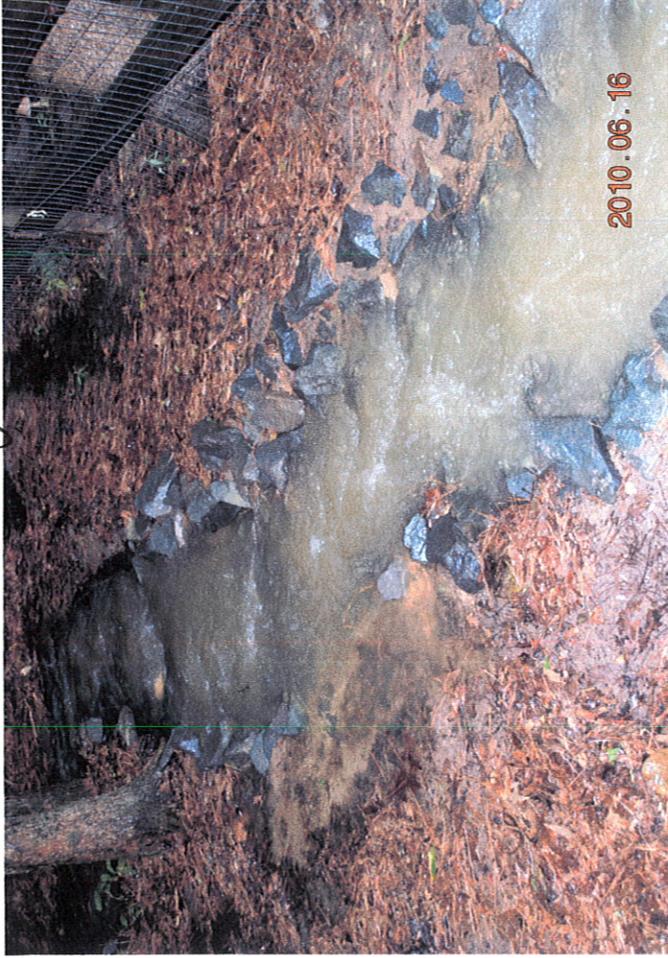
This matter is out of our hands.

Sincerely yours,

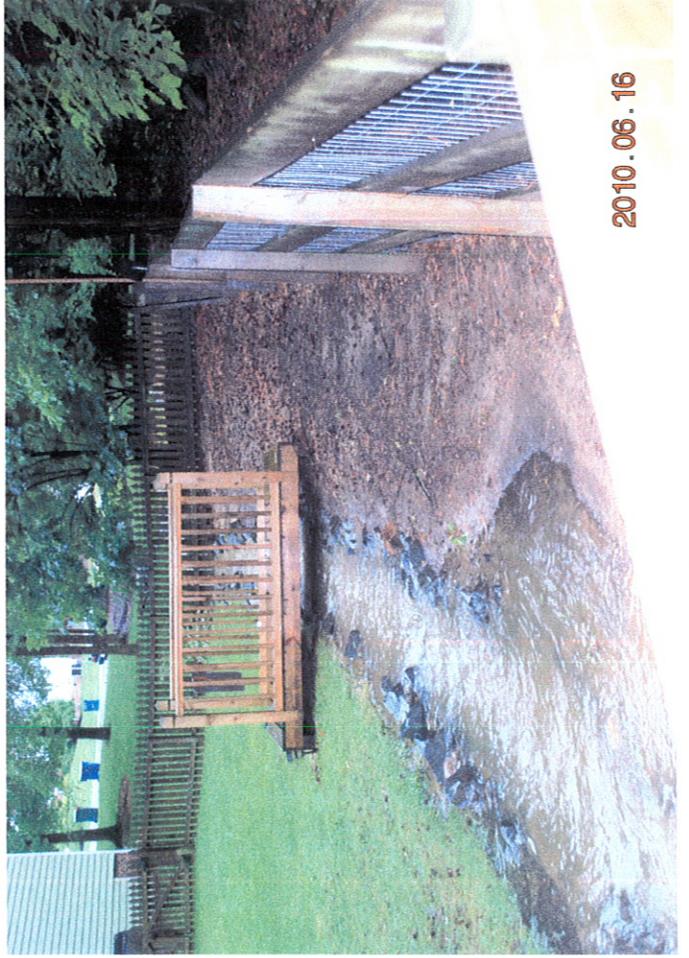


Joe Peldunas and Dori Pocius- Peldunas

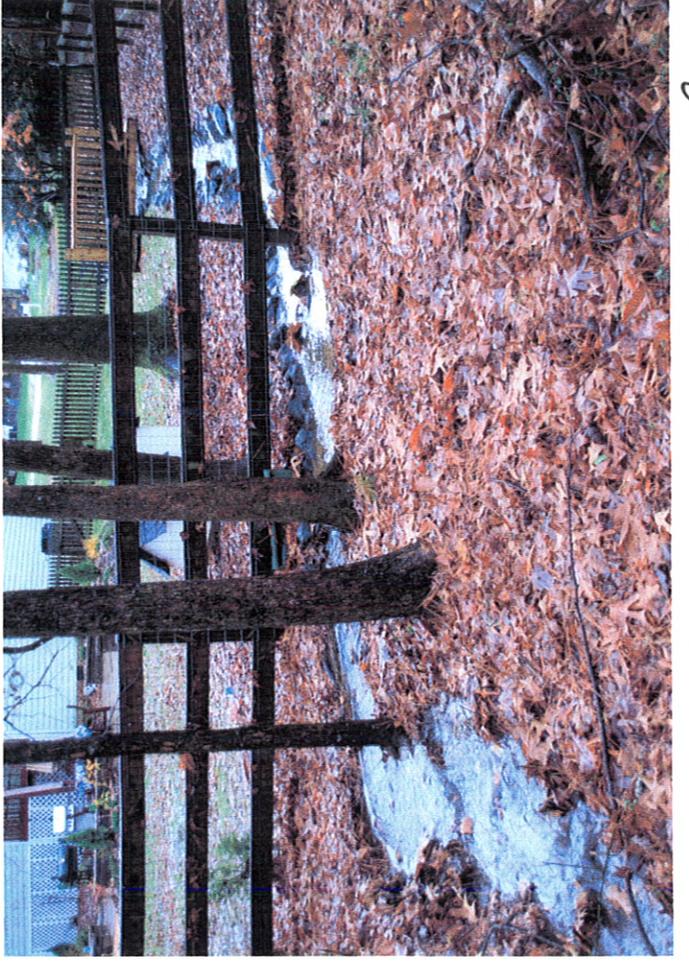
Flow Through 3110 MW to 3118



CITY SYSTEM



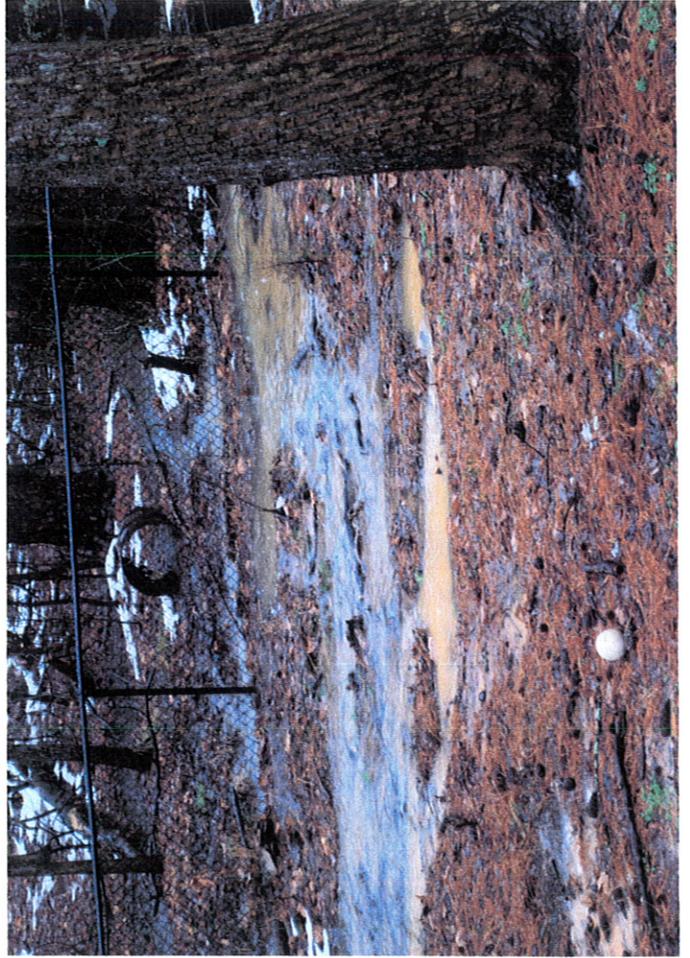
8 Firethorn
CITY SYSTEM cont.



CITY SYSTEM onto 3110 Mangwood



EMMAITE Entering
3100 Marywood



3118 Marywood

DURHAM



1869
CITY OF MEDICINE

CITY OF DURHAM

Department of Public Works
Stormwater Services Division
101 City Hall Plaza | Durham, NC 27701
919.560.4326 | F 919.560.4316

www.durhamnc.gov

February 2, 2010

Ms. Martha Absher
3110 Marywood Drive
Durham, North Carolina 27712

Mr. and Mrs. Brian Mulligan
3118 Marywood Drive
Durham, North Carolina 27712

Mr. and Mrs. Joe Peldunas
8 Firethorn Court
Durham, North Carolina 27712

Attention Property Owners:

This letter is a follow-up to my previous conversations with you regarding the private drainage system that extends from 8 Firethorn Court through 3110 and 3118 Marywood Drive.

Per my site visit conducted on December 16, 2009, I observed that the current drainage system appeared stable and in functioning condition. The drainage pattern flows from higher to lower areas that follow the lay of the land. As such, I could not identify any deficiencies that the Public Works Department would require action to remedy.

As you were informed ownership, maintenance and repair of drainage systems located on private property are the responsibility of the property owner. This includes taking into consideration runoff that flows toward a property from higher adjacent lands. The recent matters raised regarding this drainage system are a private property matter. The City encourages property owners to communicate their concerns to each other and work together on a resolution.

I hope this information is helpful.

Sincerely,

Nathalie Williams
Stormwater Services Division

Blank Page

ARTICLE V. STORMWATER MANAGEMENT AND POLLUTION CONTROL

DIVISION 1. GENERALLY

Sec. 70-492. Purpose.

The purpose of this article is to further the health, safety and general welfare and convenience of the public through:

- (1) Regulating the use, placement, storage, and management of pollutants in order to prevent pollution of stormwater;
- (2) Limiting pollution of stormwater in the public and private drainage system so as to limit pollution of the waters of the state and restore, protect, and maintain better water quality and the benefits that come from better water quality;
- (3) Prohibiting illicit discharges and illicit connections to the public and private drainage system that increase pollution;
- (4) Protecting the conveyance capacity of the drainage system by controlling blockages, and the emission or disposal of substances or effluents, including sediment, that are injurious to the drainage system;
- (5) Complying with the city's 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 122.26;
- (6) Establishing inspection, surveillance, monitoring, and enforcement and penalty procedures to the maximum extent authorized under law to achieve the above-described objectives, and to ensure compliance with this article; and
- (7) Authorizing fees necessary to conduct inspections and monitoring of the stormwater system.

(Ord. No. 13342, § 1(23-140), 11-20-2006)

Sec. 70-493. Definitions.

- (a) The acronyms used herein are:

TABLE INSET:

BMP	Best Management Practice
NPDES	National Pollutant Discharge Elimination System
MS4	Municipal Separate Storm Sewer System
NCDENR	North Carolina Department of Environment and Natural Resources
NOI	Notice of Intent
SWPPP	Stormwater Pollution Prevention Plan
USEPA	United States Environmental Protection Agency

- (b) In this article, the following terms and phrases shall be defined as indicated unless the

surrounding context indicates such definition is clearly erroneous. The definitions shall apply whether the term is used in the singular or in the plural, and whether or not the term is capitalized.

Best management practice (BMP) means government-approved controls, including both nonstructural and structural measures that are designed to reduce the flow of stormwater runoff, or to reduce the amount or concentration of pollutants that enter stormwater and/or the drainage system. Examples of nonstructural BMPs include inspections for leaks and spills, general maintenance and good house keeping practices to prevent pollution, education, and on-site maintenance of a spill cleanup kit. Examples of structural BMPs are facilities such as a roofed shed or elevated storage area to keep precipitation or runoff from reaching raw material storage areas, bioretention cells, and retention and detention ponds.

Clean water act means the Federal Water Pollution Control Act (33 USC 1251 et seq.) and any subsequent amendments thereto.

Director , unless otherwise specified, means the director of the department of public works of the city or any successor department in which stormwater services is located, and includes any individual to whom the director delegates responsibilities under this article.

Discharge means any release, spill, leak, pumping, flow, escape, dumping, deposit, or disposal of any gas, liquid, semi-solid, or solid substance.

Drainage system means the system of natural and constructed conveyances for collecting and transporting stormwater, whether publicly or privately owned. It includes lakes, ponds, rivers, perennial and intermittent streams, connected wetlands, open ditches, catch basins and other inlets, pipes, sewers, drains, culverts, and, in addition, created stormwater management facilities that provide partial treatment by passive means such as wet detention ponds, detention basins, and stormwater wetlands. The MS4 and waters of the state within the city are components included within the drainage system, among other components.

Guidelines means the written guidelines of the stormwater services division, or any successor division responsible for stormwater management, approved by the director.

Hazardous substance means materials or mixtures containing materials which pose a physical, environmental, health or safety hazard by virtue of their ignitable, reactive, corrosive, highly irritating or sensitizing, carcinogenic or toxic properties. Hazardous substances include, but are not limited to, those designated pursuant to 33 USC 1321(b)(2)(A), and those listed or defined in 29 CFR 1910.1200, 40 CFR 116, and 40 CFR 261 subpart B.

Illicit connection means any drain, junction, or conveyance, whether on the surface or subsurface, that can discharge nonstormwater discharges, such as sewage, process wastewater, or wash water, to the MS4 or to watercourses. Illicit connections include, but are not limited to, interior floor drains, whether or not previously allowed under the building code.

Illicit discharge generally means any discharge to the drainage system that is not composed entirely of stormwater, unless specifically allowed as an authorized discharge in section 70-513.

Municipal separate storm sewer system (MS4) means the system of constructed conveyances, including municipal streets, catch basins, curbs, gutters, pipes and ditches owned and operated by the municipality and designed or used for collecting and conveying stormwater, and which is not intended to be used to convey sewage or other wastewaters. In the city, the MS4 generally includes that part of the storm sewer system within street rights-of-way or on other city owned property.

National Pollution Discharge Elimination System (NPDES) permit means a permit that authorizes the discharge of pollutants to waters of the United States issued under the clean water act 33 USC 1242 by the USEPA, or issued by the NCDENR under authority delegated by USEPA.

Nonstormwater discharge means any discharge to or pollution of the drainage system that is not entirely from a form of natural precipitation.

Notice of intent or *NOI* means the notice of intent that is required by the NPDES stormwater multisector general permit issued by USEPA, or the notice of intent required by an NPDES general permit issued by the NCDENR.

Person means any individual, partnership, co-partnership, LLC, firm, company, corporation, unincorporated association, organization, joint stock company, trust, estate, institution, governmental entity or any other entity that owns a property, conducts a business, or controls management or activities.

Pollutant means a substance that alters the chemical, physical, biological, thermal, or radiological integrity of water in a manner that may cause or contribute to the impairment of waters of the state based on the water quality classifications assigned under 15A NCAC 2B.0300. Pollutants include, but are not limited to: paints, varnishes, and solvents; gasoline and other petroleum fuels; oil and other automotive fluids; detergents; food waste, including cooking oil and grease; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, floatables; insecticides, fungicides, herbicides and other pesticides; fertilizers; soot, slag, and ash; hazardous substances and wastes; inadequately treated sewage, animal wastes, fecal coliform, *Escheria coli* and pathogens; dissolved and particulate metals; hot water; wastes and residues that result from constructing a building or structure (including, but not limited to, sediments, slurries, and concrete rinsates); eroded soils, sediments and particulate matter; and noxious or offensive matter of any kind.

Pollution and polluted means containing pollutants.

Repeat violation means a violation occurring on the same property, or a violation by a person that has committed a previous violation, or by an entity in which a previous person who has committed a violation is part owner or in partial control. A violation for the purposes of determining a repeat violation includes, but is not limited to, violations in which the violator has been notified of the violation by any governmental entity, whether or not any action, remedy, or penalty has occurred as the result of such violation.

Responsible means having direct or indirect control over the occurrence of an action, incident, or condition. Responsibility includes the ability to control what occurs on property through ownership of property, or through ownership, control, or management of a business, organization, or other entity whose activities occur on property and cause in part or in whole the action, incident, or condition. Causation may be through deliberate action or through negligence, omission, or inattention.

Stormwater means any surface flow, runoff, and drainage consisting entirely of water from any form of precipitation, and resulting from such precipitation.

Stormwater pollution prevention plan or *SWPPP* means a government-approved plan identifying actual or potential pollutants that could enter the drainage system at a site, and which describes the best management practices that will be employed to reduce pollutant discharges to the drainage system.

Wastewater means any water or other liquid, other than uncontaminated stormwater, discharged from a facility after use. Examples include water used for washing, flushing, cleaning, or in a manufacturing process.

Watercourse means the open channel and open water components of the drainage system and includes lakes, ponds, rivers, perennial and intermittent streams, connected wetlands, open ditches, and stormwater management facilities such as wet detention ponds, detention basins, and stormwater wetlands.

Waters of the state, as defined in G.S. 143-212(6), means any stream, river, brook, swamp, lake, sound, tidal estuary, bay, creek, reservoir, waterway, or other body or accumulation of water, whether surface or underground, public or private, or natural or artificial, that is contained in, flows through, or borders upon any portion of this state, including any portion of the Atlantic Ocean over which the state has jurisdiction.

(Ord. No. 13342, § 1(23-141), 11-20-2006)

Secs. 70-494--70-510. Reserved.

DIVISION 2. PROHIBITIONS AND REQUIREMENTS

Sec. 70-511. Illicit discharges; containment of spills and discharges; plans to prevent discharges.

(a) *Prohibition.* The discharge, emission, disposal, pouring, or pumping, directly or indirectly, to the drainage system of any liquid, solid, gas, or other substance, other than stormwater, is an illicit discharge and is prohibited, except as allowed in section 70-513. This prohibition also includes airborne emissions where such emissions deposit pollutants into the drainage system.

(b) *Containment of discharges and spills; notice.* Persons responsible for property where an illicit discharge or a spill that may enter the drainage system has occurred shall immediately take appropriate and timely action to contain the discharge or spill. Such person shall notify the director within one working day and comply with all other legally required reporting requirements.

(c) *Plans to prevent illicit discharges.*

(1) Where the location or manner of storage of pollutants on property may cause a significant illicit discharge, or where an illicit discharge has previously occurred on property, the director may require that a responsible person for such property:

- a. Develop and maintain BMPs meeting guidelines;
- b. Apply for and follow a local permit; and
- c. Develop, submit for approval, and follow an SWPPP.

(2) In determining whether to impose such additional requirements the director shall consider:

- a. The history of the property;
- b. The likelihood of illicit discharges without additional measures; and
- c. The impact of such discharges.

(3) A permit or plan required under this section is a regulatory requirement and not a penalty.

(Ord. No. 13342, § 1(23-142), 11-20-2006)

Sec. 70-512. Illicit connections.

(a) *Prohibition.* Construction, creation, or maintenance of an illicit connection is prohibited, except that maintenance during a grace period may be allowed as described in subsection (c) of this section.

(b) *Examples of illicit connections.* Examples of illicit connections include, but are not limited to, pipes or ditches that carry process wastewater or wash water to the MS4 or to watercourses, including but not limited to indoor drains whether or not previously allowed under the building code.

(c) *Removal; grace period.* Illicit connections that were legal prior to passage of the ordinance from which this article is derived may continue to exist until June 1, 2007, at which point they must be removed. However, where the connection has the potential to discharge hazardous substances, the connection shall be removed immediately unless an extension is granted. The director may allow an extension of up to three months for removal of such illicit connection upon a showing of substantial hardship and minimal risk to the public from the delay.

(Ord. No. 13342, § 1(23-143), 11-20-2006)

Sec. 70-513. Authorized nonstormwater discharges.

The following discharges are not considered illicit discharges prohibited under this article:

(1) *NPDES authorized.* Discharges specifically authorized from a property by an NPDES individual or general permit, a discharge waiver, or a waste discharge order, provided that the discharger demonstrates full compliance with all requirements of the permit, waiver, or order in accordance with section 70-514.

(2) *Flushing.* Discharges of treated potable water used to flush and clean-up a sewage spill where sewage and flush water are collected and returned to the sanitary sewer system, and discharges from water line flushing that have been dechlorinated.

(3) *Emergency firefighting or spill removal.* Discharges from emergency firefighting activities, or emergency remediation of a spill of a hazardous substances authorized by a federal, state, or local government on-scene coordinator, and other discharges specifically allowed in writing by the director as necessary to protect public health and safety.

(4) *Dye testing.* Dye testing using suitable dyes, if verbal notification is given to the director prior to the test.

(5) *Specific listed activities.* Certain conditionally exempt discharges listed in this subsection, provided they are not found to be significant contributors of pollutants. The director may determine in writing that any such discharge from any property is no longer exempt if there is evidence of significant pollution from such discharge.

- a. Water line flushing;
- b. Landscape irrigation;
- c. Diverted stream flows;
- d. Rising groundwaters;
- e. Groundwater infiltration;
- f. Uncontaminated pumped groundwater;
- g. Discharges from potable water sources;
- h. Foundation drains;
- i. Air conditioning condensate (commercial/residential);
- j. Irrigation waters (does not include reclaimed water as described in 15A NCAC 2H .0200);
- k. Springs;
- l. Water from crawl space pumps;
- m. Footing drains;

- n. Lawn watering;
- o. Residential and charity car washing;
- p. Flows from riparian habitats and wetlands;
- q. Dechlorinated swimming pool discharges;
- r. Street wash water;
- s. Discharges from flushing and cleaning stormwater conveyances with dechlorinated, unmodified water.

(6) *Wetland dredging.* Dredging or filling of wetlands authorized by a state or federal agency pursuant to the clean water act if conducted in accordance with applicable requirements.

(7) *Mitigation.* Mitigation projects approved by a state or federal agency pursuant to the clean water act if conducted in accordance with applicable requirements.

(8) *Piping.* Piping of streams or stabilization of stream banks and shorelines in accordance with requirements of the Durham City-County Unified Development Ordinance and state or federal authorization and requirements pursuant to the clean water act.

(9) *Farming and forestry.* Ongoing farming and forestry activities that are exempt from permit requirements of section 404 of the clean water act, as specified in 40 CFR 302, conducted in accordance with applicable requirements such as the provisions of 15A NCAC 2B .0233 regarding riparian buffers in the Neuse River Basin.

(Ord. No. 13342, § 1(23-144), 11-20-2006)

Sec. 70-514. Demonstration of compliance under NPDES permits, SWPPPs, BMPs, general NPDES permits, or similar authorizations.

(a) *Required documentation, on-site record maintenance.* Properties subject to a plan to control discharges to the drainage system under NPDES permits, SWPPPs, BMPs, or local permits must demonstrate compliance. The following records shall be maintained on site and shall be available for inspection and copying by city representatives upon request.

- (1) A copy of the NPDES permit, state or EPA-issued order, SWPPP, or notice of coverage, as applicable, issued for the premises, activity or operation;
- (2) If applicable, a copy of the NPDES permit application, NOI to comply with a general NPDES permit, application for an sedimentation and erosion control permit, or similar application;
- (3) Any monitoring plan required as a provision of a permit, SWPPP, or BMP;
- (4) All inspection and monitoring data collected for a three-year period, or such shorter period as the property has been required to collect such data.

(b) *Noncompliance.* Failure to demonstrate full compliance with a permit, SWPPP, BMP, or other legal authorization, and failure to obtain a permit required under applicable law, shall, among other things, result in a discharge being considered an illicit discharge under section 70-511.

(Ord. No. 13342, § 1(23-145), 11-20-2006)

Sec. 70-515. Pollution prevention requirements for automotive activities.

(a) *Secondary containment; spill cleanup kits.* Motor oil, antifreeze, other automotive fluids, and other petroleum products that are stored outdoors shall have secondary containment and shall be stored under a covered area. Gas stations, other fuel-dispensing facilities, nonresidential properties on which ten or more gallons of petroleum or automotive products are stored, and tow-truck operators shall maintain a spill clean-up kit of a type and size to meet guidelines.

(b) *Auto towing, maintenance, service, salvage.* Properties that are used for storage of towed vehicles, vehicle maintenance, vehicle service, or salvage of vehicle parts from vehicles shall have:

- (1) One or more spill clean-up kits of a type and size to meet guidelines;
- (2) Secondary containment and a covered storage area for substances covered under subsection (a) of this section;
- (3) Covered bays in which all vehicle service or maintenance shall be conducted, except for emergency road service, glass repair, and electrical service, such as battery replacement; and
- (4) Storage for vehicle parts, both new and used, so that the parts are not exposed to stormwater runoff or precipitation.

(c) *Spills/leaks.* Persons responsible for property where a spill or leak of automotive or petroleum products has occurred shall clean up the spill or leak and report it in accordance with section 70-511(b).

(d) *NPDES permit.* Demonstration under section 70-514 of compliance with a valid NPDES permit that specifically addresses an activity controlled under this section, and imposes different requirements than those stated in this section, shall be deemed compliance with this section.

(Ord. No. 13342, § 1(23-146), 11-20-2006)

Sec. 70-516. Stormwater pollution prevention plans (SWPPPs) for storage of salvaged vehicles.

(a) *Submission of SWPPP.* Storage of ten or more junked, salvaged, or unlicensed vehicles (hereafter "salvage vehicles") outside, such that they are exposed to precipitation, shall require an SWPPP if the facility does not possess an NPDES permit for such activity. The SWPPP shall be developed and submitted to the director in accordance with the schedule below.

- (1) By September 1, 2007, for facilities with 30 or more salvage vehicles; or
- (2) By February 1, 2008, for facilities with more than ten but less than 30 salvage vehicles.

(b) *Content of SWPPP.* The SWPPP shall be in compliance with guidelines and shall prevent the discharge of used motor oil and other petroleum products, antifreeze, solvents, other automotive fluids, brake dust, sediment from land disturbance, and other pollutants. The SWPPP shall include the following and such other information as may be required in guidelines:

- (1) A map showing the general location of the facility, and a separate site map, drawn to scale, showing location of structures, drainage features on the property, salvage autos, and vehicle parts and equipment cleaning areas;
- (2) A description of storage practices, loading and unloading activities, outdoor process areas, activities that generate dust or particulates, and waste disposal practices;

- (3) A list of significant spills or leaks of pollutants that have occurred at the site during the three previous years and any corrective actions taken in response;
 - (4) Methods, in accordance with guidelines, to reduce risk of stormwater pollution, such as secondary containment, and BMPs; and
 - (5) Monitoring schedule and method for documenting compliance with the SWPPP.
- (c) *Alternative SWPPP.* A SWPPP developed pursuant to a valid NPDES general or individual permit for stormwater discharge shall be deemed compliant with this section provided compliance is demonstrated under 70-514.
- (d) *Maintenance of SWPPP.* The SWPPP shall be maintained on site, and shall be readily available for review by the city upon request.

(Ord. No. 13342, § 1(23-147), 11-20-2006)

Sec. 70-517. Pollution prevention requirements for hazardous substances.

Hazardous substances that are stored outdoors shall have secondary containment and shall be stored in a covered area. Where the volume or location of hazardous substances presents a risk of pollution to the drainage system, the director may require a person to submit an SWPPP or application for a local permit for approval, and to follow such SWPPP or permit.

(Ord. No. 13342, § 1(23-148), 11-20-2006)

Sec. 70-518. Spills and releases of pollutants.

- (a) *Containment.* Persons responsible for a spill or other release of pollutants upon the roads, highways, or in the right-of-way shall take appropriate and timely action to contain and clean up the spilled material to prevent it from entering any drainage system. Appropriate action may include contracting with a third party that is licensed by the state to handle and dispose of the spilled material.
- (b) *Report.* A person responsible for a spill that is subject to G.S. 143-215.75 et seq. or other applicable law shall immediately report the spill to the Durham City-County Emergency Management System ("EMS"). The Durham City-County EMS shall report all spills, with details as to location and nature of the spill, within one working day to the director.

(Ord. No. 13342, § 1(23-149), 11-20-2006)

Secs. 70-519--70-524. Reserved.

DIVISION 3. INSPECTIONS

Sec. 70-525. Authority to enter, inspect, and monitor; routine inspection program.

- (a) *Right to inspect.* City representatives, upon presentation of credentials and other documents as may be required by law, may enter public or private properties at all reasonable times to inspect, investigate, or monitor activities and conditions subject to this article. If consent has not been given through a permit or other similar authorization, or a person able to give consent has not consented to entry or inspection, or entry is not otherwise authorized, the director shall obtain an administrative search warrant from a magistrate as provided under G.S.

15-27.2. The director shall show either that the property is subject to a routine inspection program and inspection under such program is due, or that probable cause exists to inspect.

(b) *Inspection activities.* City representatives are authorized to do the following as necessary to determine compliance or noncompliance with this article:

- (1) Observe, inspect, measure, sample, test, and monitor;
- (2) Place devices to remain on site for runoff or discharge sampling, monitoring, flow measuring, or metering;
- (3) Inspect, copy, or examine any records, reports, plans, test results or other information; and
- (4) Photograph or video record property conditions, activities, potential causes of pollution, and potential violations.

(c) *Confidential information.* City representatives shall treat as confidential information the composition of materials and substances documented during an investigation if a claim is timely made and substantiated that such substances are trade secrets.

(d) *Obstruction.* No person shall obstruct, hamper, or interfere with a city representative carrying out official duties. Upon presentation of credentials by city inspectors, necessary arrangements shall be made to allow immediate access onto premises or into an area protected by security measures. Any obstruction to the safe and easy access to property, a facility or enclosure on property, or to monitoring devices shall immediately be removed. Unreasonable delays in providing safe and reasonable access or removing obstructions shall be a violation of this article.

(e) *Routine inspection program.* The director may establish, though guidelines, a routine inspection program for properties, businesses, or other activities in order to gather information regarding stormwater, pollution of the drainage system, and compliance with this article. The inspection cycles for categories of properties, businesses, or activities may differ depending on location, proximity to particular streams or other waters of the state, prior history, type of business or activity conducted on site, size of facility, nature of substances on site, or other parameters related to the objectives of this article.

(Ord. No. 13342, § 1(23-150), 11-20-2006)

Secs. 70-526--70-530. Reserved.

DIVISION 4. DRAINAGE SYSTEM MAINTENANCE; CONSTRUCTION PERMITS

Sec. 70-531. Maintaining drainage systems; permitted alterations.

(a) *Maintaining clear drainage system.* All persons shall keep and maintain the drainage system, both surface and underground, located on their property free from obstructions, trash, and debris.

(b) *Obstructing drainage system.* No person shall deposit, or allow or cause to be deposited, into any part of the drainage system, including, but not limited to, street gutters, catchbasins, ditches, pipes, and streams, any material or substance that will cause or contribute to blockage or reduced discharge of the drainage system, or that will damage the drainage system. This includes, but is not limited to, refuse, rubbish, construction waste, leaves, landscaping debris, garbage, and dirt and sediment.

(c) *Upset.* The prohibition above shall not apply to NPDES-authorized discharges of sediment

that result from an upset as defined in the applicable NPDES permit.

(d) *Permitted activities.* The provisions above do not prohibit the construction, reconstruction or alteration of drainage systems and BMPs that comply with city design standards and sound engineering practices where construction is in accordance with section 70-533, or the applicable sedimentation and erosion control program, and where the work employs adequate sediment and erosion control practices.

(Ord. No. 13342, § 1(23-151), 11-20-2006)

Sec. 70-532. Obstructing the free flow of water.

No person shall construct, install or maintain any stormwater or drainage system in such a manner as to obstruct or impede the free flow of water. This section does not apply to the construction, reconstruction or alteration of drainage systems and BMPs in compliance with city design standards and sound engineering practices and for which a permit or other approval has been secured from the city's stormwater services division.

(Ord. No. 13342, § 1(23-152), 11-20-2006)

Sec. 70-533. Permit requirements for construction; fees.

(a) *Approvals for BMPs, construction connecting to MS4.* All construction of, or nonroutine maintenance work on a BMP, or other drainage feature that is intended to prevent pollutants from entering the drainage system, or a natural or constructed portion of the drainage system that directly connects to the MS4 or to the waters of the state shall require a permit or other approval from the city.

(b) *Guidelines.*

(1) Guidelines may require that:

- a. Permits or approvals be obtained for other work on the drainage system;
- b. Certain work is exempt from permitting or approvals, based on:
 1. The nature of the activity;
 2. The size of the infrastructure;
 3. Other permits that are in place; and
 4. Other criteria relevant to drainage system impacts; and
- c. Mandated practices for work on the drainage system be followed in lieu of obtaining a permit or approval.

(2) Guidelines may also specify the information required to be submitted for a permit or approval, or for a determination that a permit or approval is not required.

(c) *Fees.* The city shall establish appropriate fees to recover the costs of review of applications and issuance of permits and approvals authorized in this division, and for the monitoring of BMPs and other drainage features that discharge directly or indirectly to the MS4. The city may also require security instruments or other financial guarantees, or payment into a fund in lieu of such guarantees, to ensure the continuous upkeep and/or reconstruction of city-required BMPs or other pollution prevention features.

(Ord. No. 13342, § 1(23-153), 11-20-2006)

Secs. 70-534--70-537. Reserved.

DIVISION 5. ADMINISTRATION AND ENFORCEMENT

Sec. 70-538. Administration and enforcement of article and stormwater program.

The director is authorized to administer and enforce the provisions of this article and other regulations of the city concerning the stormwater system unless a contrary intention is expressed in such other regulations. Among other things, the director shall have the authority to issue guidelines to implement this article, and to establish fees, as authorized by the city council, in the adopted budget or otherwise, to implement the stormwater activities authorized in this article and in other sections of this Code. The director is also authorized to remediate any violations, to alter any previously issued remedies, and, except as limited below, to settle any case or controversy arising under this article, including, but not limited to, those subject to administrative remedies. In the event of judicial action that has been filed on behalf of or against the city regarding this article or the city's stormwater program, any settlement shall be approved by the city manager or city council, as applicable, consistent with the city manager's delegated settlement authority.

(Ord. No. 13342, § 1(23-154), 11-20-2006)

Sec. 70-539. Declaration of violation; remedies.

(a) *Violation.* Failure to comply with the provisions of this article or the guidelines, conditions, plans, permits, approvals, or other similar authorizations issued pursuant to this article is a violation of this article, unlawful, and subject to all remedies authorized under law, including, but not limited to, those described in this division.

(b) *Separate offense.* Each day of a violation may be considered a separate violation or offense.

(c) *Persons responsible.* All persons considered under the definitions of this article to be responsible for a violation shall be considered violators. Violators include, but are not limited to, owners of property where a violation occurs; persons in the design or construction field who have created, directed, or assisted in the design or construction of an improvement or feature in violation of the requirements of this article; and persons who have control over the use or maintenance of property or the activities occurring on property where a violation has occurred. Multiple violations may be charged against multiple individuals or entities for an action that violates this article.

(d) *Remedies not limited.* The remedies provided herein, whether civil, criminal, or administrative, are not exclusive; may be exercised singly, simultaneously, or cumulatively; may be combined with any other remedies authorized under the law; and may be exercised in any order.

(e) *Public nuisance.* A violation that results in observable or detectable negative impacts to the drainage system or to the public health or safety is a public nuisance and subject to all remedies for a nuisance available in law and equity.

(Ord. No. 13342, § 1(23-155), 11-20-2006)

Sec. 70-540. Remedies and penalties.

Remedies available for enforcement of this article, and penalties for its violation, include, but are not limited to, those described in the following subsections. Pursuit of certain remedies and penalties requires compliance with the procedures specified in section 70-541.

(1) *Administrative remedies.*

a. *Show cause meeting.* The director may have a meeting with the violator prior to taking any enforcement action under this article. The violator shall receive notice of such meeting consistent with procedures in section 70-541, and shall have an opportunity to be heard.

b. *Consent orders.* The director may enter into consent orders, assurances of voluntary compliance, or other similar agreements with a violator. Such agreements shall include, but not be limited to, specific action to be taken by the violator to correct the violation within the time period established in the order. A consent order may also include a mitigation project undertaken to improve environmental quality of the drainage system in the event that the director and the violator agree on such project as an additional compliance measure to generally remediate the impacts of a violation.

c. *Administrative orders.* The director may direct a violator to comply with this article through an administrative order which sets forth specific actions that must be taken and a timetable for taking them.

d. *Mandatory security for compliance.* The director may require a violator to post a bond or provide other financial security of a type, form, and amount as specified in the discretion of the director, to assure performance of any actions required to bring a property into compliance with this article.

e. *Termination of utility service.* Where it appears that the continuation of water and/or sewer service may contribute to a violation of this article, as, for example, an illicit connection, utility service may be terminated.

f. *Costs added to utility bill.* The costs of any action taken by the city to investigate and remediate a violation of this article may be added to the violator's utility bill, and, if unpaid, may result in termination of utility service as otherwise provided in this Code.

g. *Termination of access.* Any property on which illicit discharges to the MS4 have occurred may have their access to the MS4 terminated if such termination would contribute to the likelihood that the illicit discharge would be reduced or abated.

h. *Withholding of inspections, permits, certificate of occupancy or other approvals.* Building inspections; permits for development or other improvements; requests for plan approval for zoning, subdivision, other development or construction; and certificates of occupancy may be withheld or conditioned upon compliance with this article until a violator with ownership or management of the property for which permits or approvals are sought has fully complied with this article and all actions taken pursuant to this article.

(2) *Civil penalties.*

a. *Assessment of penalty.* The director may assess civil penalties for violations of this article after providing the violator notice and opportunity to respond described in the procedures set forth in section 70-541. Such penalty, if unpaid within 30 days of notice to the violator that payment is due, may be collected through a civil action in the nature of debt as described in subsection (3) of this section. The director shall apply the standards and criteria set forth in subsections (2)b through (2)d of this section in determining the amount of the

penalty.

b. *Penalty amounts for properties used for nonresidential purposes.* A maximum base penalty of up to \$10,000.00 per violation may be assessed for violations occurring on properties used, in whole or in part, for nonresidential purposes or containing nonresidential uses, subject to the following limitations and additions:

1. An additional \$10.00 per gallon may be added to the base amount for an illicit discharge to the drainage system that exceeds 1,000 gallons;
2. An additional 25 percent may be added to the base amount for repeat violations; and
3. First-time violations on property, or by a person, shall be limited to \$2,000.00 per violation unless the property or person is an industrial activity subject to NPDES requirements.

c. *Penalty amounts for properties used for residential purposes.* A maximum base penalty of up to \$500.00 per violation may be assessed for violations occurring on properties used entirely for residential purposes, subject to the following limitations and additions:

1. Penalties for blockages of the drainage system shall be limited to \$100.00 per violation, except for multifamily residential properties, or when the blockage causes off-site impacts.
2. The maximum base penalty may be doubled for repeat violations.

d. *Criteria for assessing penalty.* In determining the amount of the penalty, the director shall consider the following factors in addition to any factors set forth in guidelines:

1. The degree and extent of harm to the environment, the public health, public property, and private property;
2. The duration and gravity of the violation;
3. The effect on ground or surface water quality or on air quality or on flood hazard;
4. The cost of rectifying the damage;
5. The amount of money saved by noncompliance;
6. Knowledge of the requirements by the violator, and/or reasonable opportunity or obligation to obtain such knowledge;
7. Whether the violation was willful;
8. Actions taken by the violator to prevent or remediate the impacts;
9. Whether the violation is a repeat violation; and
10. The costs of enforcement to the city.

(3) *Judicial actions.*

a. *Injunction, abatement.* The director may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and/or an order of abatement or other equitable remedy that requires, among other things, that action be taken on property to correct a violation. A violator who fails to comply may be cited for contempt, and the city may execute the order under G.S. 160A-175(e). A violator may also be subject to remedies available for a nuisance under

G.S. 160A-193 or other law. Costs of prosecution and/or correction and of remediation of the violation may be assessed as a lien on the property upon which the violation has occurred, and collected as unpaid taxes, as provided by law.

b. *Criminal prosecution and penalties.* Violation of this article shall be a misdemeanor and is subject to the maximum fine permitted under state statutes. Each day of the violation shall be a separate offense and may be punished by imposition of the maximum fine.

c. *Collection of civil penalties.* Action may be instituted against the violator to recover any civil penalty that has not been paid within 30 days of the date the violator receives notice of the penalty.

(Ord. No. 13342, § 1(23-156), 11-20-2006)

Sec. 70-541. Procedures for notifying violator and meeting with director.

(a) *Content of notice.*

(1) Except in emergencies, as described hereafter, upon determining that a violation has occurred, the director shall provide to each violator against whom remedial action or penalties may be pursued, written notice that describes:

- a. The location of the property and the nature of the violation;
- b. A general description of the remedies and penalties that may be incurred if the violation is not corrected;
- c. The action needed to correct the violation;
- d. The time period during which corrective actions must occur;
- e. How to provide explanatory or additional information and a contact person with whom the violation can be discussed;
- f. How to request a meeting with the director available for certain violations as described below; and
- g. The deadline for providing information or requesting a meeting.

(2) Only one such notice shall be required to each violator, regardless of the number of remedies or penalties that are pursued or the timing of their institution.

(b) *Service.* The notice shall be placed in an envelope bearing the name of the violator and, in addition, any names of individuals upon whom service is intended. Delivery shall be by one or more of the following methods, as appropriate:

- (1) Certified or registered mail, return receipt requested;
- (2) Hand delivery to the individual, if the violator is an individual;
- (3) Hand delivery to an adult at the business or institutional address of the violator if the violator is an entity;
- (4) Any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure; or
- (5) First class mail addressed to the violator, if notice of the violation is also posted at the violator's residence or place of business, as may be appropriate.

(c) *Delay in imposing certain remedies/penalties.* Except in emergencies, as described hereafter, utility service shall not be terminated under section 70-540(1)e., civil penalties shall

not be assessed, and judicial action shall not be initiated prior to the expiration of the time period allowed for the violator to correct the violation. The director may extend the times allowed in the written notice for correction of the violation. The extension must be in writing.

(d) *Meeting.* If the violator makes a timely request for a meeting with the director, during the time period set forth in the notice provided under subsection (a) of this section, such meeting shall be scheduled at a time determined in the discretion of the director prior to terminating utility service under section 70-540(1)e., imposing a civil penalty, or initiating judicial action. The violator shall have the opportunity to present any information relevant to the violation or proposed remedy or penalty at the meeting, in writing or orally.

(e) *Additional written notice of termination of utility service or imposition of civil penalties.*

(1) Except in emergencies as described hereafter, when the director determines to terminate utility service under section 70-540(1)e., or assess a civil penalty, additional written notice of such proposed action shall be given to the violator. The notice shall contain:

- a. Copy of the notice initially given under subsection (a) of this section; and
- b. The director's written determination regarding the termination of utility service and/or civil penalties to be assessed and the reasons for such action.

(2) Service on the violator shall be as provided in subsection (a) of this section.

(3) A right to appeal prior to termination of utility services may be available as further provided in the utility payment provisions of this chapter.

(Ord. No. 13342, § 1(23-157), 11-20-2006)

Sec. 70-542. Emergencies.

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, or to the waters of the state, then the director may order the immediate cessation of the violation without utilizing the procedures described in section 70-541. Any person ordered to cease such violation or to remedy such violation shall do so immediately. The director may seek immediate enforcement through any remedy or penalty authorized in this article or other applicable law.

(Ord. No. 13342, § 1(23-158), 11-20-2006)

Secs. 70-543--70-551. Reserved.

Blank Page