

SUPPLEMENTAL AGREEMENT FOR STORMWATER IMPROVEMENT
PROJECT BETWEEN DAVID SCOTT HOWELL AND THE CITY OF DURHAM

This supplemental agreement (the "Supplemental Agreement") is made, dated and entered into as of the 15th day of August, 2008, by the City of Durham ("City") and DAVID SCOTT HOWELL ("Owner"), the sole owner of the fee interest of the Property described in the general warranty deed instrument from grantor, Peter Mudie, to grantee, David Scott Howell, on file at Deed Book 2682, Page 647 with the Durham County Register of Deeds (the "Property") and further described in the Plat entitled "Property Surveyed for Peter Mudie" on file at Plat Book 144, Page 8, also with the Durham County Register of Deeds (the "Plat"). The City and the Owner may be referred to hereinafter as the "Parties."

The City and Owner agree as follows:

1.0. Background and Initial Agreement. As a result of certain stormwater drainage system problems existing on the Property of the Owner, the Parties negotiated a prior agreement to resolve the drainage system problems by planning, designing and installing a replacement stormwater line through portions of the Property. The aforementioned prior agreement is entitled, "Owner's Request for City Assistance for Stormwater Project Described herein and Consent to Conditions of the Project," (hereinafter, the "Initial Agreement") and executed on August 16, 2006 and attached hereto as Exhibit A. The Initial Agreement is herein incorporated by reference and the Parties hereby reaffirm the terms of the Initial Agreement except to the extent this Supplemental Agreement modifies or amends the Initial Agreement.

2.0 Project Description. The Owner agrees to the design, construction and phased installation of a replacement storm drainage box culvert around the current buildings located on the Property (the "Project") as described herein and generally depicted in the drawing entitled "University Drive Culvert Realignment," attached hereto as "Exhibit B." The Owner acknowledges that this description is preliminary and may change to meet the needs of the final design and City of Durham design requirements. The replacement box culvert shall route stormwater as follows:

- a. Intercept stormwater at approximately the same location as the existing culvert west of the one story masonry building at the edge of the property boundary.
- b. Continue south through the parking area west of the of the one story masonry building.
- c. Continue east through the parking area south of the building.
- d. Continue north through the parking area east of the building.
- e. Continue east across University Boulevard to approximately the same discharge location as the existing culvert.

2.1 Project Coordination – The Parties agree to cooperate with each other as necessary to effectuate the completion of the Project. The City agrees to make best efforts at communicating to the Owner the planning and status of Project related activities as necessary so that the Parties can make best efforts at

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minimizing impact to the operations of the business of the Owner and his tenants. Nonetheless, the Owner acknowledges and accepts that the Project may result in disruptions to tenants and may affect the Owner's business.

2.2.1 The City of Durham agrees to hold a minimum of two (2) meetings with the Owner and its tenants. The purpose of the meetings is to coordinate construction phasing in an attempt to minimize disruptions to the Owner, its tenants, and the citizens of the City of Durham.

2.2.2 An initial meeting shall be held prior to issuing an Invitation to Bid. The purpose of this meeting shall be to coordinate construction phasing language for inclusion in the project Bidding Documents.

2.2.3 A second meeting shall be held prior to commencing construction. The purpose of this meeting shall be to allow the Owner, the City of Durham, the Owner, and its tenants to discuss the eminent construction.

2.2.4 Additional meetings may be held as needed to coordinate construction phasing.

2.2 Anticipated Construction Schedule and Phasing – Although the City has preliminarily devised a general construction phasing and schedule, the Owner acknowledges and accepts that such phasing and schedule may be subject to change depending upon final design requirements, unanticipated circumstances and determinations of the Owner regarding means and methods of construction. Currently, the Project is planned to be phased as follows:

2.2.1 It is anticipated that the replacement storm drainage box culvert shall be constructed in three (3) phases (see "Exhibit B"). The intent of phasing construction is to limit disruptions to the Owner, its tenants, and the citizens of the City of Durham.

2.2.2 Phase One (1) shall include the demolition, installation of the replacement culvert, and repair of paving within the parking area west and south of the one story masonry building within the area identified as "Phase 1" on Exhibit B.

2.2.3 Phase Two (2) shall include the demolition, installation of the replacement culvert, and repair of the paving within the parking area south and east of the building within the area identified as "Phase 2" on Exhibit B.

2.2.4 Phase Three (3) shall include the demolition, installation of the replacement culvert, and repair of paving within the right-of-way of

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University Drive and in the northwestern portion of the temporary construction easement (described below) within the areas identified as "Phase 3" on Exhibit B.

2.2.5 Each phase is anticipated to have a construction duration of approximately one (1) month. Existing site conditions may affect the actual time of construction. The temporary construction easement shall be in effect in all areas for the duration of the project until final certification by the City.

2.2.6 University Drive shall be closed for a period of time during Phase Three (3) construction. Traffic shall be routed around the construction area by means of a detour plan approved by the City of Durham and the North Carolina Department of Transportation.

3.0 Cost Sharing between Owner and City. The Parties have agreed to a cost sharing arrangement for the Project. The City has agreed to bear a majority of the cost, with the Owner being responsible for payment of \$15,000.00 to the City to be paid in eight (8) equal annual installments with a simple annual interest rate of 9% applied to the outstanding principal, until paid. The Owner share of the Project cost shall be a special assessment and operate as a lien on the property as provided in Session Law 1998-52, codified as Section 35 of Article 3, Chapter IV of the Charter of the City of Durham. These Charter provisions shall apply when any installment, with accrued interest, is not paid when due. Failure to pay as the subject special assessment for the stormwater drainage improvement shall be considered sufficient cause for the City of Durham's Department of Public Works Stormwater Services Billing Unit to seek full payment of remaining balance immediately by all means at their disposal.

The first installment shall be paid within 30-days of last signature of execution of this Supplemental Agreement between the City and the Owner for construction of the project. Interest shall begin to accrue on the remaining principal starting on the date the last signature of execution of this Supplemental Agreement between the City and the Owner (the "Anniversary Date"). Subsequent installments, with accrued interest, shall be due and payable on the same Anniversary Date in each successive year thereafter until the Owner share of the Project and interest thereon is paid in full.

Installment payments (which includes accrued interest) shall be as follows:

PAYMENT	AMOUNT	DUE DATE
1 st Payment:	\$1,875.00	w/in 30 days of the Anniversary Date
2 nd Payment:	\$3,056.25	1 st Year Anniversary Date
3 rd Payment:	\$2,887.50	2 nd Year Anniversary Date
4 th Payment:	\$2,718.75	3 rd Year Anniversary Date
5 th Payment:	\$2,550.00	4 th Year Anniversary Date
6 th Payment:	\$2,381.25	5 th Year Anniversary Date

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7 th Payment:	\$2,212.50	6 th Year Anniversary Date
8 th and Final Payment:	\$2,043.75	7 th Year Anniversary Date

4.0 Temporary Easement. Subsequent to the execution of this Supplemental Agreement, but prior to the invitation to bid the Project work, the Owner shall dedicate, for recording in the Durham County Register of Deeds, a temporary construction easement as described in “Exhibit C.” The temporary construction easement shall be in effect until completion of the Project as certified by the City of Durham. The Owner acknowledges and accepts that the precise surveyed limits of the temporary construction easement may change slightly (before execution and recordation of the temporary construction easement) to meet the needs of the final design and City of Durham design requirements.

5.0 Dedication of Public Stormwater Drainage Easement. Per the Initial Agreement, the Owner agrees to dedicate to the City for \$1.00 a permanent public stormwater drainage easement over the improvements described herein and make such easement subject to the “Revised Declaration of Rights and Privileges of the City of Durham Management Facility Easements,” as recorded with the Durham County Register of Deeds at Deed Book 2298 and Page 208. The Owner shall be subject to both easement and ordinance requirements regarding the rights, restrictions and obligations pertaining to the stormwater drainage.

5.1 Maintenance of Drainage System – Some of the Owner responsibilities regarding the stormwater drainage system shall include, but not be limited to, the following:

- a. The Owner shall keep and maintain the replacement storm drainage box culvert, and all existing storm drainage, both surface and underground, located on its property free from obstructions, trash, and debris.
- b. The Owner shall not construct, install, or maintain any stormwater or drainage system in such a manner as to obstruct or impede the free flow of water through or across its property.
- c. The Owner is bound by the requirements of “Article V. Stormwater Management and Pollution Control” of Chapter 23 of Durham City Code (see “Exhibit D”).

5.2 Recording of Permanent Easement – Owner shall convey and record the permanent stormwater drainage easement upon completion of the Project and presentation by the City of the as-built drainage area adequate for easement recordation. The drainage easement shall be recorded in the Durham County Register of Deeds and shall be a binding covenant on the current Owner and all future owners of the Property.

6.0 Attachments. The following attachments are made a part of this Supplemental Agreement:

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Exhibit A, entitled "Initial Agreement";
Exhibit B, entitled "University Drive Culvert Realignment";
Exhibit C, entitled "Temporary Construction Easement"; and
Exhibit D, entitled "Article V. Stormwater Management"

In case of conflict between an attachment and the text of this Supplemental Agreement excluding the attachment, the text of this Supplemental Agreement shall control.

7.0 Notice. (a) All notices and other communications required or permitted by this Supplemental Agreement shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the City:
Dana P. Hornkohl
City of Durham
101 City Hall Plaza
Durham, NC 27701
The fax number is (919) 560-4316.

To the Owner:
David Scott Howell
2514 University Drive
Durham, NC 27707
The fax number is (919) 403-8487.

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this Supplemental Agreement shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

8.0 Release and Indemnification. The Owner acknowledges and accepts the intrusive nature of the agreed to construction work necessary to realign the subject stormwater drainage system on and near the Owner's Property. The Owner further understands the nature of the work to be conducted by the City, its elected officials, employees, contractors and agents, and that there is some risk that property damage will occur as a result of the Project related work, even if such work is performed in conformance with acceptable engineering and construction practices.

8.1 Release -- The Owner shall waive, release, or discharge any claims, causes of actions or demands against the City, its elected officials, employees,

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contractors and agents, for any damage to the Property (including all buildings and structures located on the Property) or loses from interruption or interference with business operations arising out of the Project work activities of the City, its elected officials, employees, contractors and agents, pursuant to this Supplemental Agreement not caused by any negligent act or willful misconduct of the City, its elected officials, employees, contractors and agents.

8.2 Indemnification -- To the maximum extent allowed by law, the Owner shall defend, indemnify, and save harmless City, its elected officials, employees, contractors and agents from and against all claims, causes of action or demands that arise in any manner from, in connection with, or out of this Supplemental Agreement as a result of acts or omissions of the City, its elected officials, employees, contractors and agents for whose acts any of them may be liable.

9.0 Miscellaneous.

9.1 Choice of Law and Forum. This Supplemental Agreement shall be deemed made in Durham County, North Carolina. This Supplemental Agreement shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this Supplemental Agreement shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

9.2 Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this Supplemental Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

9.3 Performance of Government Functions. Nothing contained in this Supplemental Agreement shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

9.4 Severability. If any provision of this Supplemental Agreement shall be unenforceable, the remainder of this Supplemental Agreement shall be enforceable to the extent permitted by law.

9.5 Modifications. Entire Agreement. A modification of this Supplemental Agreement is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City Manager or a deputy or assistant City Manager signs it for the City. This Supplemental Agreement contains the entire agreement between the Parties pertaining to the subject matter of this Supplemental Agreement. With respect to that subject matter, there are no

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promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this Supplemental Agreement.

9.6 City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this Supplemental Agreement or the Owner's services under this Supplemental Agreement, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.

IN WITNESS WHEREOF, the City and the Owner have caused this Supplemental Agreement to be executed under seal themselves or by their respective duly authorized agents or officers.

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

David J. Hemm 7/24/08
City's finance officer Date

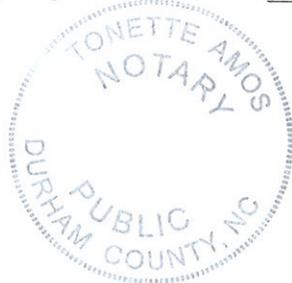
ATTEST:
Linda E. Bratcher
By: Deputy City Clerk Clerk

Manager
CITY OF DURHAM
NORTH CAROLINA
Sam Pineda City
8/15/08

NORTH CAROLINA
OF DURHAM
COUNTY of Durham

ACKNOWLEDGMENT BY CITY

I, a Notary Public in and for the aforesaid County and State certify that Linda E. Bratcher personally appeared before me this day, and acknowledged that he or she is the Deputy City Clerk of the City of Durham, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing contract or agreement was signed in its corporate name by its _____ City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City Clerk. This the 15th day of August, 2008



Tonette Amos
Notary Public

My Commission Expires 7-17-2012.

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My commission expires:

OWNER



DAVID SCOTT HOWELL

State of North Carolina

OWNER ACKNOWLEDGMENT

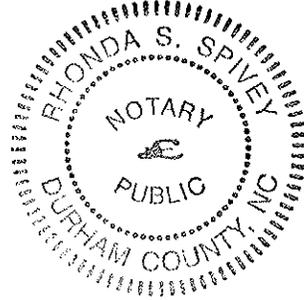
County of Durham

I, a notary public in and for the aforesaid county and state, certify that DAVID SCOTT HOWELL personally appeared before me this day and acknowledged the execution of the foregoing contract or agreement with the City of Durham. This the 24th day of July, 20 08.

My commission expires:
November 9, 2008



Notary Public



OWNER'S REQUEST FOR CITY ASSISTANCE FOR STORMWATER PROJECT
DESCRIBED HEREIN AND CONSENT TO CONDITIONS OF THE PROJECT

The undersigned property owner (Owner) hereby states and confirms that Owner is the sole owner of the fee interest of the Property ("the Property") described in the Plat entitled "Property Surveyed for Peter Mundle" on file at Plat Book 144, Page 8, Durham County Register of Deeds ("the Plat"). Owner further acknowledges that the storm water facility ("the old line") constructed by Owner's predecessors in interest and shown on the Plat is the Owner's sole legal responsibility, as confirmed in Note K on the Plat. Owner is experiencing a storm water problem associated with the old line and because of this problem Owner requests the City's assistance in construction of a new line through the construction project identified below as "the Project". In exchange for such assistance Owner agrees to the numbered terms and conditions also described below.

"The Project" consists of designing and building a replacement stormwater line for the deficient line on the Owner's property. The Design Phase of the Project will consist of surveying and site assessments to analyze existing drainage conditions and identification of two feasible alternatives for the construction of a new storm water line (the "new line") around the existing buildings shown on the Plat. The most cost-efficient and feasible alternative that avoids routing the new line underneath Owner's buildings will be determined and construction plans will be developed. After the design is finalized, the Owner will have the opportunity to approve the Project to be constructed and a time frame for that project. The Owner will grant a temporary construction easement to the City, and will pay \$15,000 to the City, and the City will contract out the construction. When completed, the new line will function to carry all storm water flow currently entering the Property from outside the property that was previously handled by the old line. The Project shall not include any remedial work to the old line or to the structure(s) on top of the old line, which Owner acknowledges to be Owner's sole responsibility. The new line, when completed will be Owner's sole responsibility, although City will have an easement to access and maintain the new line, and the Owner will sign additional documents and plats to that effect.

Initiation date: July 14, 2006

Projected Expiration date: December 31, 2007

1. Owner grants permission and right-of-entry to the City of Durham (City) and its contractors and agents to enter onto the Property to complete the design work for the Project and to use any equipment needed for such design work. Owner also understands that he will have the opportunity to approve the specific Project that is to be constructed, and agrees that, if he approves such project, he will grant, in writing, an irrevocable temporary construction easement at no charge to allow construction of the Project.

2. Owner may specify in writing during the time period in which the City is completing the Project whether trees identified by the City as possibly affected by the Project shall be removed as part of the Project. If removal is declined, any effects of the Project on the trees in the future shall be Owner's responsibility.

3. The City shall restore grassed areas that are disturbed and pavement that is broken by the City's work on the Project to their approximate former condition.

(OVER)

4. The Owner shall be given the opportunity to approve or disapprove the specific location and time frame for the Project. Upon approval, the Owner shall pay to the City \$15,000 as the Owner's share of the costs of the Project. Such payment shall be made to the City before the City contracts for the construction of the new line.

5. Owner understands that his assent to the design of the Project does not obligate him to agree to construction of the Project, nor does it obligate the City to construct the project. Owner releases the City from liability for any loss of business or other effects on the Owner's use and enjoyment of the Property resulting from the Project. Owner also releases the City from any liability associated with past, current, or future effects of the location or functioning of the old line, which Owner acknowledges to be Owner's responsibility. Owner acknowledges that there is no warranty associated with the Project, and that the City does not guarantee that the Project will keep the Property free of flooding, water or erosion.

6. At the conclusion of the Project, Owner agrees that it will consent to the filing and recordation of a new plat prepared by the City for the purpose of showing the location of the new line and provide any executions necessary for the same. The plat will include establishment of a public storm water drainage easement. Ownership of, and responsibility for improvement and maintenance of storm water facilities in this easement will remain with the property owner. Additionally, the easement and access points to the easement will be subject to the terms and restrictions stated in the "Revised Declaration of Rights and Privileges of the City of Durham in Storm Water Management Facility Easements" recorded in Real Estate Book 2298, Page 208. This easement and the Revised Declaration do not create the obligation to provide public maintenance. No building, structures, fills, embankments or obstructions permitted within the easement except according to those terms.

7. Owner understands that it has the right to bring any problems associated with the Project to the attention of the City, and that the City has agreed that it will in good faith work to resolve such problems.

AGREE TO ABOVE CONDITIONS

PROJECT REFUSED

[Signature]
INITIALS

INITIALS

_____(SEAL)
Property Owner's Signature

[Signature] (SEAL)
Property Owner's Signature

_____(SEAL)
Property Owner's Name

SCOT HOWSON (SEAL)
Property Owner's Name

Property Street Address

2514 UNIVERSITY DR
Property Street Address

Date

8/16/06
Date

ARTICLE V. STORMWATER MANAGEMENT AND POLLUTION CONTROL*

***Editor's note:** Ord. No. 13342, § 1, adopted Nov. 20, 2006, repealed former Art. V. §§ 23-140--23-150, in it entirety and enacted new provisions as herein set out. Former Art. V pertained to similar subject matter and derived from Ord. No. 6270, § 1, 5-6-85; Ord. No. 10599, § 1, 9-18-95; Ord. No. 10600, 9-18-95.

DIVISION 1. PURPOSE AND DEFINITIONS**Sec. 23-140. Purpose.**

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

- (a) regulating the use, placement, storage, and management of pollutants in order to prevent pollution of stormwater;
- (b) 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;
- (c) Prohibiting illicit discharges and illicit connections to the public and private drainage system that increase pollution;
- (d) 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.
- (e) Complying with the City of Durham'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 Part 122.26;
- (f) 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
- (g) Authorizing fees necessary to conduct inspections and monitoring of the stormwater system.

(Ord. No. 13342, § 1, 11-20-06)

Sec. 23-141. Definitions.

- (a) The acronyms used herein are:

TABLE INSET:

BMP	Best management practice
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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	Storm Water 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 storm water 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.

City means City of Durham.

Clean Water Act means the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq.) and any subsequent amendments thereto.

Director, unless otherwise specified, means the director of the department of public works of the City of Durham or any successor department in which stormwater services is located, and includes any individual(s) 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 storm water, 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 storm water wetlands. The MS4 and waters of the state within the City of Durham 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 Part 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 23-144.

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 storm water, and which is not intended to be used to convey sewage or other wastewaters. In the City of Durham, 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 U.S.C. 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 storm water multi-sector 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 storm water wetlands.

Waters of the state, as defined in NCGS 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, 11-20-06)

DIVISION 2. PROHIBITIONS AND REQUIREMENTS

Sec. 23-142. 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 23-144. This prohibition also includes airborne emissions where such emissions deposit pollutants into the drainage system.

(b) *Containment of discharges and spills; notice.* Person(s) 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 (1) working day and comply with all other legally required reporting requirements.

(c) *Plans to prevent illicit discharges.* 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 (1) develop and maintain BMPs meeting guidelines; (2) apply for and follow a local permit; (3) develop, submit for approval, and follow an SWPPP. In determining whether to impose such additional requirements the director shall consider the history of the property, the likelihood of illicit discharges without additional measures, and the impact of such discharges. A permit or plan required under this section is a regulatory requirement and not a penalty.

(Ord. No. 13342, § 1, 11-20-06)

Sec. 23-143. 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 (c) below.

(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 this ordinance 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, 11-20-06)

Sec. 23-144. Authorized nonstormwater discharges.

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

(a) *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 23-145.

(b) *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.

(c) *Emergency fire fighting or spill removal.* Discharges from emergency fire fighting 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.

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

(e) *Specific listed activities.* Certain conditionally exempt discharges listed below, 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.

TABLE INSET:

•	Water line flushing;
•	Landscape irrigation;
•	Diverted stream flows;
•	Rising groundwaters;
•	Groundwater infiltration;
•	Uncontaminated pumped groundwater;
•	Discharges from potable water sources;
•	Foundation drains;
•	Air conditioning condensate (commercial/residential);

•	Irrigation waters (does not include reclaimed water as described in 15A NCAC 2H .0200);
•	Springs;
•	Water from crawl space pumps;
•	Footing drains;
•	Lawn watering;
•	Residential and charity car washing;
•	Flows from riparian habitats and wetlands;
•	Dechlorinated swimming pool discharges;
•	Street wash water;
•	Discharges from flushing and cleaning stormwater conveyances with dechlorinated, unmodified water.

(f) *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.

(g) *Mitigation.* Mitigation projects approved by a state or federal agency pursuant to the Clean Water Act if conducted in accordance with applicable requirements.

(h) *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.

(i) *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, 11-20-06)

Sec. 23-145. 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 23-

142.

(Ord. No. 13342, § 1, 11-20-06)

Sec. 23-146. 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 (10) 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 which 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 (a) above;
- (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;
- (4) Storage for vehicle parts, both new and used, so that the parts are not exposed to stormwater runoff or precipitation.

(c) *Spills/leaks.* Person(s) 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 23-142(b) above.

(d) *NPDES permit.* Demonstration under section 23-145 of compliance with a valid NPDES permit that specifically addresses an activity controlled under this section, and imposes different requirements than those stated above, shall be deemed compliance with this section.

(Ord. No. 13342, § 1, 11-20-06)

Sec. 23-147. Storm water pollution prevention plans (SWPPPS) for storage of salvaged vehicles.

(a) *Submission of SWPPP.* Storage of ten (10) 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 thirty (30) or more salvage vehicles;
- (2) By February 1, 2008 for facilities with more than ten (10) but less than thirty (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 (3) 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.
- (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 compliance with this Section provided compliance is demonstrated under 23-145.

(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, 11-20-06)

Sec. 23-148. 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, 11-20-06)

Sec. 23-149. 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 NCGS 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 (1) working day to the director.

(Ord. No. 13342, § 1, 11-20-06)

DIVISION 3. INSPECTIONS

Sec. 23-150. 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 NCGS 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;
- (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, 11-20-06)

DIVISION 4. DRAINAGE SYSTEM MAINTENANCE; CONSTRUCTION PERMITS

Sec. 23-151. 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, catch basins, 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 23-153 below, or the applicable sedimentation and erosion control program, and where the work employs adequate sediment and erosion control practices.

(Ord. No. 13342, § 1, 11-20-06)

Sec. 23-152. 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, 11-20-06)

Sec. 23-153. 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.* Guidelines may require that permits or approvals be obtained for other work on the drainage system; that certain work is exempt from permitting or approvals, based on the nature of the activity, the size of the infrastructure, other permits that are in place, and other criteria relevant to drainage system impacts; and that mandated practices for work on the drainage system be followed in lieu of obtaining a permit or approval. 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, 11-20-06)

DIVISION 5. ADMINISTRATION AND ENFORCEMENT

Sec. 23-154. 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 the City 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, 11-20-06)

Sec. 23-155. 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, 11-20-06)

Sec. 23-156. Remedies and penalties.

Remedies available for enforcement of this article, and penalties for its violation, include but are not limited to those described below. Pursuit of certain remedies and penalties requires compliance with the procedures specified hereafter in section 23-157.

(a) *Administrative remedies.*

(1) *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 23-157, and shall have an opportunity to be heard.

(2) *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.

(3) *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.

(4) *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.

(5) *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.

(6) *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 City Code.

(7) *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.

(8) *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.

(b) *Civil penalties*

(1) *Assessment of penalty.* The director may assess civil penalties for violations of this article after providing the violator(s) notice and opportunity to respond described in the procedures set forth in section 23-157. Such penalty, if unpaid within thirty (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 part (c) below. The director shall apply the standards and criteria set forth in (2) through (4) below in determining the amount of the penalty.

(2) *Penalty amounts for properties used for nonresidential purposes.* A maximum base penalty of up to ten thousand dollars (\$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:

a. An additional ten dollars (\$10.00) per gallon may be added to the base amount for an illicit discharge to the drainage system that exceeds one thousand (1,000) gallons; and

b. An additional twenty-five (25) percent may be added to the base amount for repeat violations; and

c. First-time violations on property, or by a person, shall be limited to two thousand dollars (\$2,000.00) per violation unless the property or person is an industrial activity subject to NPDES requirements.

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

a. Penalties for blockages of the drainage system shall be limited to \$100 per violation, except for multifamily residential properties, or when the blockage causes off-site impacts.

b. The maximum base penalty may be doubled for repeat violations.

(4) *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:

a. The degree and extent of harm to the environment, the public health, public property, and private property;

b. The duration and gravity of the violation;

c. The effect on ground or surface water quality or on air quality or on flood hazard;

d. The cost of rectifying the damage;

e. The amount of money saved by noncompliance;

f. Knowledge of the requirements by the violator, and/or reasonable opportunity or obligation to obtain such knowledge;

g. Whether the violation was willful;

h. Actions taken by the violator to prevent or remediate the impacts;

i. Whether the violation is a repeat violation;

j. The costs of enforcement to the city.

(c) *Judicial actions.*

(1) *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 GS 160A-175(e). A violator may also be subject to remedies available for a nuisance under GS 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.

(2) *Criminal prosecution and penalties.* Violation of this Article shall be a misdemeanor and is subject to the maximum fine permitted under statute. Each day of the violation shall be a separate offense and may be punished by imposition of the maximum fine.

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

(Ord. No. 13342, § 1, 11-20-06)

Sec. 23-157. Procedures for notifying violator(s) and meeting with director.

(a) *Content of notice.* 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:

- (1) The location of the property and the nature of the violation;
- (2) A general description of the remedies and penalties that may be incurred if the violation is not corrected;
- (3) The action(s) needed to correct the violation;
- (4) The time period during which corrective actions must occur;
- (5) How to provide explanatory or additional information and a contact person with whom the violation can be discussed;
- (6) How to request a meeting with the director available for certain violations as described below; an
- (7) The deadline(s) for providing information or requesting a meeting. Only one (1) 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: certified or registered mail, return receipt requested; hand delivery to the individual, if the violator is an individual; hand delivery to an adult at the business or institutional address of the violator if the violator is an entity; any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure; or 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 subsection 23-156(a)(5), 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 (a) above, such meeting shall be scheduled at a time determined in the discretion of the director prior to terminating utility service under subsection. 23-156(a)(5), 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 orally.

(e) *Additional written notice of termination of utility service or imposition of civil penalties.* Except in emergencies as described hereafter, when the Director determines to terminate utility service under subsection 23-156(a)(5), or assess a civil penalty, additional written notice of such proposed action shall be given to the violator. The notice shall contain: a) a copy of the notice initially given under (a) above; 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. service on the violator shall be as provided in (a) above. A right to appeal prior to termination of utility services may be available as further provided in the utility payment provisions of Chapter 23 of the City Code.

(Ord. No. 13342, § 1, 11-20-06)

Sec. 23-158. 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 above. 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, 11-20-06)

Secs. 23-159--23-162. Reserved.