

**AN ORDINANCE AMENDING THE STORMWATER PERFORMANCE STANDARDS
FOR DEVELOPMENT, DURHAM CITY CODE CHAPTER 70, ARTICLE X,
SECTIONS 70-736 THROUGH 70-744**

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

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

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

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

SECTION 1. Existing Sections 70-736 through 70-744 are amended as follows:

Sec. 70-736. Purpose and definitions.

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

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

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

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

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

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

Baseline Date or Applicable Baseline Date means the following dates when stormwater requirements were adopted for the basins indicated:

Jordan Basin	March 17, 2009
Falls Basin	July 6, 2012
Lower Neuse Basin	March 9, 2001

City Stormwater Standards means written standards related to Stormwater adopted by the Public Works Department or City Council. They include but are not limited to: the Reference Guide for Development and content published for the public’s viewing and inspection; other written and adopted specifications for the design, construction, maintenance, and operation of Stormwater Control Measures or Stormwater Conveyances; and all state standards related to stormwater or state approved alternatives to such standards that have been adopted by the City’s Public Works Department or City Council. The City shall submit to NC DEQ for approval all technical standards that require approval.

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

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

Department means the Public Works Department of the City of Durham.

Development means any land-disturbing activity that increases the amount of Impervious Surface area or that otherwise decreases the infiltration of precipitation into the subsoil. When additional development occurs at a site that has existing development, the Impervious Surface area of the existing development shall not be included in the density calculations for additional stormwater control requirements, and stormwater control requirements cannot be applied retroactively to existing development. It does not include agriculture or forestry activities.

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

Department of Environmental Quality or DEQ means the North Carolina Department of Environmental Quality (NC DEQ).

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

Existing Development means Development that, prior to the effective date of this ordinance has either been lawfully constructed, or has established a vested right under North Carolina law to construct a proposed project, or portion thereof. With regard to application of this ordinance, a vested right will be recognized as follows:

a) for Development that does not require a state permit, a vested right shall exist for any portion of a Development that has an approved or a completed application for a site plan or subdivision plat covering that portion, or in the event a site plan or subdivision plat is not required, a building permit or a construction drawing for that portion of the Development. An approved development plan does not accord vested rights in the absence of an approved or completed application for the above-described plans or permits. A “completed application” is one that meets all application requirements, including payment of all required fees and submission of all required information, prior to the effective date of this ordinance. A vested right shall expire if the validity of an approved or completed application or approval is not continuously maintained as otherwise required under the Unified Development Ordinance or City Code;

b) for Development that requires a state permit, vested rights shall be recognized if the project meets all the requirements of a) above, and additionally has received necessary state permits required for the use or for construction.

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

Impervious Surface means a surface that because of its composition and/or its use impedes the natural infiltration of water. It includes but is not limited to buildings, roofs, solid decks, driveways, parking areas, patios, sidewalks, and compacted gravel areas. It does not include areas that are part of permitted stormwater controls; the open surface water such as swimming pools; a surface of 57 stone, as designated by the American Society for Testing and Materials, laid at least four inches thick over a geotextile fabric; a trail as defined in G.S. 113A-85 that is either unpaved or paved as long as the pavement is porous with a hydraulic conductivity greater than 0.001 centimeters per second (1.41 inches per hour); or landscaping material, including, but not limited to, gravel, mulch, sand, and vegetation, placed on areas that receive pedestrian or bicycle traffic or on portions of driveways and parking areas that will not be compacted by the weight of a vehicle, such as the area between sections of pavement that support the weight of a vehicle. The owner or developer of a property may opt out of any of the exemptions from "impervious surface" set out in this definition.

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

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

Limited Residential means single family and duplex residential and recreational development.

Lower Neuse Basin means the area that drains to the Neuse River but not to the Falls Basin as determined by the Durham City-County Planning Department.

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

New Development means ~~Development that does not qualify as "Existing Development."~~
Pervious means surface that does not qualify as "Impervious Surface."

Redevelopment means any land-disturbing activity that does not result in a net increase in Impervious Surface area and that provides greater or equal stormwater control to that of the previous development.

Regional SCM means a Stormwater Control Measure, as defined below, utilized for treatment of stormwater runoff from more than one project and/or properties through an adopted local or state regulated stormwater program. These must meet or exceed minimum design and construction standards. Individual properties approved to utilize a Regional SCM to either eliminate or reduce the use of on-site SCMs shall have a legal, binding agreement with the owner of the Regional SCM.

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

SCM Maintenance Certifier means a North Carolina licensed professional engineer or North Carolina registered landscape architect that has demonstrated to the Department’s satisfaction that they meet or exceed minimum knowledge and experience criteria for maintenance and inspection of Stormwater Control Measures as detailed in City Stormwater Standards. This individual is conditionally approved by the Department by formal issuance of a certificate. This individual is authorized to conduct annual maintenance inspections of Stormwater Control Measures, prepare findings, and submit annual maintenance inspection reports in accordance with City Stormwater Standards.

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

Stormwater Facilities means Stormwater Control Measures and Stormwater Conveyances.

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

Sec. 70-737. General; prior requirements; additional standards; interpretations.

(a) *Applicability*. This Article provides requirements for the control of stormwater discharges containing stormwater pollutants and the management of stormwater peak flows from developments within the City of Durham. All Development shall be subject to the requirements of this Article unless specifically exempted.

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

(c) *Prior Requirements, Violations Continue*. Prior stormwater requirements that have been superseded by the requirements of this Article shall continue to apply to Existing Development approved and/or constructed under such prior requirements, in the event that the requirements of this Article do not apply. Existing Development, or portions thereof, that is not required to comply with this Article must continue to manage Stormwater Pollutants and peak flow in accordance with the stormwater requirements appearing on approved plans for the development and the requirements in effect when such plans were approved. Violations of superseded stormwater requirements shall continue as violations and be subject to enforcement under this

Article unless this Article explicitly allows the Development or action that constitutes the violation.

(d) *City Stormwater Standards.* The Public Works Department is authorized to promulgate technical standards for use in the administration of this Article, which standards may be amended from time to time. Technical standards may include but are not limited to requirements for design, construction, performance, financial security, review, and professional certification of stormwater facilities. City Stormwater Standards are considered requirements of this Article. They shall be in writing, approved and signed by the Director, and shall be maintained in the City's Reference Guide for Development or in other written documents. If such standards conflict with technical standards that have been adopted pursuant to other portions of the City Code, the Director shall be authorized to resolve such conflicts. Any such resolution shall be consistent with the requirements of this Article. The City shall submit to NC DEQ for approval all technical standards that require approval.

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

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

(g) *Requirements Supplementary; Conflict.* The requirements in this Article implement and in some cases supplement other statutory and regulatory requirements including, but not limited to, requirements for buffers, water protection (watershed) overlays, and controls for sedimentation and erosion that are contained in the Durham City-County Unified Development Ordinance. In the event of a conflict between the requirements of this Article and statutory or regulatory requirements, the statutory or regulatory requirements shall control.

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

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

Sec. 70-738. Peak runoff control requirements.

(a) *Purpose.* The purpose of this Section 70-738 is to ensure that the increases in volume, velocity, and peak flow of stormwater discharges from Development are addressed, in order to mitigate the impacts on downstream properties and receiving waters. All Development, including Development that may be exempt from pollutant reduction requirements set forth in

remaining sections of this Article, is subject to the requirements of this section unless exempted in (b) below.

(b) *Applicability; Calculation of Prior Impervious Surface Area.* This Subsection 70-738 applies to the following Development, assessed in comparison to pre-development prior Impervious Surface conditions as defined in (1) and (2) below:

- ~~(i)~~ relocation of existing Impervious Surface area on a Multifamily and Other lot;
- ~~(ii)~~ increase in Impervious Surface area on any lot subject to limitations on Impervious Surface area in an approved plat or plan for reasons such as watershed protection or stormwater control measure requirements;
- ~~(iii)~~ increase of more than 500 square feet in Impervious Surface area on a Multifamily and Other lot;
- ~~(iv)~~ increase of more than 2000 square feet of Impervious Surface area on a single family or duplex residential lot included on a preliminary or final plat submitted for review, or on any lot utilized for recreation. For purposes of calculating these thresholds, subject Development that is part of a Common Plan of Development shall be assessed with other portions of such common plan that have not previously complied with peak flow requirements.

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

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

(c) *Requirements.*

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

(2) *One-year storm.* Development that ~~increases the peak runoff rate requires one or more of the following must prevent any increases in the peak runoff rate~~ from the 1-year storm from pre-development conditions ~~shall provide stormwater management facilities~~ in accordance with City Stormwater Standards:

- ~~2-year, 10-year, or other design storm detention in accordance with this section;~~
- ~~Stormwater pollutant removal in accordance with Section 70-740;~~
- ~~Stormwater control in accordance with Section 8.7 Watershed Protection Overlay Standards of the Unified Development Ordinance. -such that there is no~~

~~net increase in peak runoff rate. This requirement shall be applicable in the Jordan basin only when one acre or more of land has been cumulatively disturbed and the previously pervious portion of the property as of March 17, 2009 will be developed to exceed 24% Impervious Surface area.~~

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

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

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

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

(a) *Exemptions for Limited Disturbances.* Development in which Land Disturbance, calculated cumulatively as of the Applicable Baseline Date, is less than the thresholds in Table 1 below is exempt from the standards in subsections 70-740 and 70-741, subject to paragraphs (1) and (2) below.

TABLE 1 THRESHOLDS FOR APPLICATION OF STORMWATER POLLUTANT REQUIREMENTS

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

* Exempt if 5% or less Impervious Surface. For the purpose of calculating the percentage of Impervious Surface area for single family residential and duplex lots, Existing Development prior to May 1, 2023 shall be excluded.

(1) *Common Plan of Development.* Development that is part of a Common Plan of Development shall be included in the calculation. If the applicable threshold set forth in Table 1 is exceeded, all other portions of the Common Plan are subject to the requirements of this Article unless exempted by the following: i) the lot(s) within the Common Plan was lawfully constructed after the baseline date in accordance with the applicable requirements in effect at the time, ii) the lot(s) had a different applicant at the time of development, and iii) the lot(s) has a different owner(s), parent, subsidiary, or other affiliate than does the project area.

(2) *Redevelopment and Existing Development; maintenance of treatment.* Redevelopment and Existing Development that are exempt under these thresholds must continue to maintain and reconstruct all SCMs in compliance with approved plans, prior ordinance requirements, and City Stormwater Standards.

(b) *Other Exemptions.* Additionally, Development is exempt if:

(1) It qualifies in its entirety as Existing Development; or

(2) It does not increase Impervious Surface area over the Applicable Baseline Date; or

(3) It is undertaken on land controlled by a state or federal entity ~~in the Falls or Jordan Basin~~ and development approval is granted under the jurisdiction of NCDEQ; or

(4) It is undertaken by an entity, other than the City of Durham, covered by its own individual National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) permit.

(5) It is a single family or duplex residential lot of record existing prior to the baseline dates in the Jordan or Falls Basin or it is a single family or duplex residential lot legally recorded by deed or exempt plat in the Jordan or Falls Basin.

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

(a) *Nutrient Loading Rate Limits.* Development not exempt under subsection 70-739 shall construct and implement SCMs so as to limit the post construction loading rate of nitrogen and phosphorus from the project area to the limits set forth in Table 2 below, or shall comply with allowed alternative (b) below. A portion of the reduction requirements for nitrogen and phosphorus may be met through off-site measures or payments as set forth in 70-741.

TABLE 2 NUTRIENT EXPORT LOADING RATE LIMITS

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

(b) *Alternative for Low Impact Development.* Development will be considered compliant with the nutrient reduction obligations of this Section 70-740 if:

(1) In the Falls Basin it demonstrates that it meets the post development hydrologic criteria set forth in Chapter 2 of the North Carolina Low Impact Development Guidebook dated June of 2009, as it may be amended from time to time; or

(2) In any basin it demonstrates compliance with pre-development runoff volume matching criteria using NC DEQ’s Storm-EZ spreadsheet.

(c) *TSS Reduction.* TSS reduction is applicable to Development as further described in this subsection (c) when the following conditions are met:

- An increase in Impervious Surface area occurs as compared to what existed as of March 17, 2009; and
- The increase in Impervious Surface area assessed in comparison to ~~p~~Pervious area existing as of March 17, 2009 exceeds 24%.

All increased Impervious Surfaces, as reasonably practical, must drain to an allowed SCM that is designed to provide a minimum of 85% TSS removal or designated as a Primary SCM in the North Carolina Stormwater Control Measure Credit Document and is sized to capture runoff from the first 1 inch of rainfall from all surfaces that drain to the SCM. These requirements are expanded, and/or modified as follows:

(1) *Piped areas in low density projects.* Projects that are exempt from TSS reduction requirements through paragraph (c) above or through Section 8.7 Watershed Protection Overlay Standards must treat TSS in stormwater runoff that results from increases in ~~do not require construction of SCMs because their~~ Impervious Surface and percentage is less than that described in the paragraph above must treat TSS from stormwater runoff that is conveyed in non-vegetated conveyances, such as stormwater pipes, ~~but excluding~~ (road and driveway culvert crossings excluded).

(2) *Overtreatment to address untreatable areas.* Where treatment for TSS is not reasonably practicable as determined by the Department, such as when Impervious Surface areas include off-site transportation improvements or small noncontiguous areas at the edge of a project, additional reductions of TSS may be required in treatable areas, such as overtreatment in other project areas ~~or treatment of off-site run-on.~~

(d) *Calculations for Nutrient Loading and TSS Removal.* Pollutant loading calculations shall be made using City Stormwater Standards. All increases in Impervious Surfaces shall be included, including but not limited to internal and off-site transportation improvements in City maintained right-of-way. Approved methodologies for calculating pollutant loading will be maintained in writing by the Public Works Department, and will include those methodologies and calculations required by NC DEQ or alternative methodologies approved by the Public Works Department and NC DEQ.

(e) *Submittals.* An applicant shall submit pollutant loading calculations for the pre- and post-development conditions in accordance with City Stormwater Standards as part of its application and as part of the stormwater impact analysis for approval of a subdivision or site plan, utility permit, or construction drawings for a street or utility.

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

(a) *On-site Nutrient Treatment Requirements.* Nitrogen and phosphorus reduction requirements may be met, in part, through off-site management measures or the purchase of nutrient credits. At a minimum, however, in the Falls Basin a percentage of the required nitrogen and phosphorus reductions must be achieved through on-site treatment in the amount shown in Table 3 below. In addition to meeting the percentage reductions below, in the Lower Neuse Basin, nitrogen export load from the site must be reduced through runoff treatment when TSS reduction requirements are applicable ~~not exceed 6 lbs. per acre per year for Limited Residential, and 10 lbs. per acre per year for Multifamily and Other.~~ (Note: off-site credit purchases do not meet TSS removal requirements, which must be met on-site.)

TABLE 3 ON-SITE NUTRIENT TREATMENT REQUIREMENTS

Project Location	Minimum On-site Nutrient Treatment	
	Nitrogen	Phosphorus

Falls - General	*50% of required reduction	*50% of required reduction
Falls Downtown Area	*30% of required reduction	*30% of required reduction
Falls exceeding thresholds but with less than 1 acre land disturbance	*30% of required reduction	*30% of required reduction
Lower Neuse	No Percentage reductions apply, but <u>on-site** runoff treatment required when TSS reduction requirements are applicable the 6/10 nitrogen export limit described in paragraph (a) above must be met</u>	not required

*The “required reduction” is the difference between the post-development loading rate in pounds ~~per acre~~ per year before treatment minus the loading rate target in pounds ~~per acre~~ per year. The percentage shown in the chart above is applied to the difference and the resulting number is the amount in pounds ~~per /acre/~~ year that the nutrient loading rate must be reduced on-site.

**Regional SCMs can be utilized to meet on-site runoff treatment in the Lower Neuse Basin. Development undertaken by the City solely as a public road expansion or public sidewalk project may meet the nutrient export loading rate entirely through the use of permanent nutrient offset credit pursuant to sub-section (b) below.

(b) *Offset Payments to State Approved Nutrient Mitigation Banks.* Development shall have the option of purchasing nutrient credits from state-approved nutrient banks to partially offset nitrogen and/or phosphorus loads as allowed by State law and regulation, including but not limited to 15A NCAC 02B.~~0235.0711~~, ~~15A NCAC 02B.0282~~, and 15A NCAC 02B.~~0240.0703~~, as they may be amended from time to time. The number of pounds for which credits are purchased shall be increased by 5% if the nutrient bank is not located in the City of Durham. The following additional requirements shall apply:

(1) *Location of nutrient banks.* Development in the Falls Basin must use nutrient banks located in the upper Falls portion of the Falls Basin – the portion that is north and/or west of Highway 50.

(2) *Certification of Nutrient Bank Provider.* Offset credits may only be obtained from nutrient banks certified by the state.

(3) *Utilization of NC DEQ Division of Mitigation Services (formerly known as Ecosystem Enhancement Program).* Credits may also be obtained from the NC Division of

Mitigation Services if such credits are available, and if applicable state requirements regarding utilization of private nutrient banks are first met.

(4) *Certification of credits.* Credits purchased pursuant to this subsection (b) shall be verified by the State and proof of such verification that meets City requirements shall be presented prior to approval of a final plat, or if no plat is required, prior to issuance of the first building permit within the project, or such earlier deadline as may be required by City Stormwater Standards.

(c) *Bacteria Removal; Control of Other Identified Stormwater Pollutants.* All Development which constructs SCMs in order to comply with [Section 70-740 of](#) this Article and which is located in an area that is subject to a state-approved Total Maximum Daily Load for bacteria shall be required to have, [for each stormwater discharge](#), at least one primary SCM ~~for each stormwater discharge~~ that is rated as medium, good, high, or excellent for its ability to remove bacteria from stormwater. Ratings shall be those that appear in the utilized version of the NC DEQ Stormwater design manual and/or North Carolina Stormwater Control Measure Credit Document as specified in the Reference Guide for Development or as determined or approved by the Director. In addition, SCMs required to be constructed under this Article must also treat any other pollutant for which a Total Maximum Daily Load has been identified for the area within which the SCM is located.

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

The owner(s) and/or the developer(s) of any Development for which SCMs and/or Stormwater Conveyances have been approved, and persons or entities that have contracted to perform all or a part of an owner's or developer's obligations, shall be responsible for complying with the requirements set forth below.

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

(b) *Approvals for Stormwater Facilities.* Stormwater Facilities required by this Article or any other requirement of City Code or by the Unified Development Ordinance shall be constructed in accordance with City Stormwater Standards. Plans for Stormwater Facilities shall be submitted to the Department for review and approval on such timetable as required in City Stormwater Standards. City Stormwater Standards may require that permits be obtained for such work.

(c) *Construction Plans, Fees, Financial Guarantees.* For a Development in which construction of one or more Stormwater Control Measures is required, the owner(s) and/or developer(s) must ensure compliance with (1) through (5) below prior to one of the following: i) recordation of final plat for development involving individual ownership of lots or units within the development; ii) issuance of a utility permit for development which is not exclusively for residential home/condominium ownership; iii) issuance of a building permit for construction within a development which is not exclusively for residential home/condominium ownership and does not require a utility permit; or iv) construction drawing approval for any infrastructure within the development which will not require a building or utility permit.

(1) Review and approval of the stormwater impact analysis;

(2) Review and approval of plans and specifications for the SCMs and Stormwater Conveyances within the development;

(3) Payment of permit and review fees required by the Department;

(4) In the case of development involving individual ownership of lots or units within the development, creation of an owners' association prior to recordation of covenants that both comply with City Stormwater Standards and provide, among other things, for the long term maintenance, inspection, repair, and reconstruction of the SCMs in accordance with City Standards;

(5) Provision of financial guarantees to ensure the long-term maintenance, inspection, repair, and reconstruction of stormwater control measures in accordance with City Code Section 70-751, the Unified Development Ordinance, and City Stormwater Standards.

(d) *Completion of Construction.* Construction of SCMs and stormwater conveyances shall be completed prior to final plat approval, if a final plat approval is required for the development. For a building, structure, or use not deemed single family or duplex residential development, construction of SCMs and stormwater conveyances shall be completed prior to issuance of a certificate of occupancy unless a performance guarantee to ensure completion is approved pursuant to (e) below.

(e) *Performance Guarantees.* The owner or developer of a Development in which the requirements of (d) above have not been completed shall provide a performance guarantee of a type as set forth in City Stormwater Standards. The amount provided shall be as set forth in City Stormwater Standards, or as determined by the Director, which shall at a minimum require that all direct and indirect costs of completion and compliance with City requirements be guaranteed. City Stormwater Standards shall also include deadlines for completion of facilities for which performance guarantees have been provided. Deadlines may be modified by the Director to better ensure the protection of the City and the public, or to address special circumstances.

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

(g) *Obligation to Complete Facilities; City Use of Land.* The owner of property for which a stormwater facility has been approved as part of a Development, and any parties that have obligated themselves to construct such facilities under approved plans, permits, or previously approved agreements, are legally obligated to construct the facilities approved, or to pay for the construction of such facilities, if any land disturbing activity has occurred in the Development. An owner that applies for and receives approval to construct a stormwater facility in a Development agrees that the City and its agents are authorized to enter upon the property and to construct the stormwater facilities if the owner fails to do so. This provision does not: i) require the City to take any action, acquire any property, or construct any facility; or ii) create any right or entitlement for any persons or entities other than the City; or iii) limit the City's ability to require other persons or entities not identified in this subsection (g) to construct stormwater facilities that have not been constructed; or iv) limit the City's ability to utilize any other authority it may have under law to recoup the cost of construction of stormwater facilities, including but not limited to authority to assess properties served by such facilities.

(h) *Rights Under Contracts.* The City is entitled to enforce any third party rights for the benefit of the public or itself that may be expressly or implicitly created in contracts for the design and construction of SCMs or Stormwater Conveyances. Contractors that have not performed in accordance with such contracts may be considered responsible parties under this Article.

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

(a) *Private Maintenance Responsibility.* The inspection, maintenance, repair and reconstruction of Stormwater Control Measures and Stormwater Conveyances shall be the responsibility of: i) the owner(s) of the property on which such SCMs and conveyances are located, ii) any person(s) or entity that is legally responsible pursuant to applicable agreements and/or covenants, and iii) the owner(s) of properties served by the SCMs or conveyances, as determined by reference to site plans, plats, and construction drawings for the SCMs.

(b) *Level of Maintenance.* Every SCM and Stormwater Conveyance shall be maintained, repaired, and reconstructed so as to continue its functionality to the level for which it was designed for the control and/or conveyance of stormwater and for the treatment of Stormwater Pollutants. Maintenance, repair, and reconstruction shall be performed in compliance with City Stormwater Standards. Standards for maintenance include but are not limited to the most recently approved version of the operation and maintenance manual specifically prepared for each facility, a recorded stormwater facility agreement, and the most recent version of the "Owner's Maintenance Guide for Stormwater SCMs Constructed in the City of Durham."

(c) *Annual Private Inspection.* An annual inspection shall be conducted by an SCM Maintenance Certifier and a report that meets City Stormwater Standards shall be submitted to the Director for each Stormwater Control Measure by the persons or entities responsible for such facility, identified in (a) above. The report shall be submitted on such schedule as assigned by the Department. In addition, such persons or entities shall maintain inspection and repair reports regarding the SCMs as required by City Stormwater Standards.

(d) *City Right to Inspect.* The City may inspect Stormwater Control Measures and Stormwater Conveyances located on private property. Inspection may include but is not limited to testing of structures, water, or vegetation as the City determines may be useful to determine the history or performance of the SCM or conveyance.

Sec. 70-744. Remedies for Violation.

The following are considered a violation of this Article: noncompliance with any requirement of this Article or prior stormwater ordinances; noncompliance with City Stormwater Standards implementing this Article; and noncompliance with any approval, permit, or similar authorization granted pursuant to this Article. A violation of this Article is a violation of the City Code and is subject to all civil and criminal penalties allowed under law, in addition to those specifically set forth below. Persons and entities identified in Sec. 70-742 and 70-743(a) as responsible for compliance with this Article shall be responsible for any violation. Remedies are cumulative, and may be exercised separately, together, or in any order.

(a) *Withholding of Permits, Approvals, and Certificates of Occupancy/Compliance.* In the event of violation of this Article, the City may withhold any approval or permit for any development activity occurring on the property or in the development where the violation exists, including but not limited to withholding any permit or certificate of occupancy/compliance for

any structure served by an actual or proposed SCM or stormwater conveyance that is in violation.

(b) *Stop Work Order.* The City may issue a stop work order to any person or entity performing work on property and/or in a development where there is a violation of this Article.

(c) *Injunction; Nuisance; Costs as Lien.* The City may institute an action in a court of competent jurisdiction for an injunction, order of abatement, or any other equitable remedy not prohibited by law to remediate a violation of this Article. The City may also maintain an action under GS 160A-193 to remedy a condition prejudicial to the public health and safety. Costs of correction sustained by the City may be assessed as a lien against property, as allowed by law.

(d) *Incorporation of 70-538 et seq.* In addition, all remedies and procedures set forth in Sections 70-538 through 70-542 of the City Code shall apply to violations of this Article whether or not such violations are also violations of City Code Section 70, Article V.

SECTION 2. This Ordinance shall be effective on ~~the date of adoption~~ May 1, 2023 and shall amend the above-cited sections of the City Code.