

**A TECHNICAL CORRECTIONS ORDINANCE AMENDING CHAPTER 75, OF THE
CODE OF THE CITY OF WINSTON-SALEM ENTITLED “STORMWATER
MANAGEMENT”**

BE IT ORDAINED, by the Mayor and Winston-Salem City Council as follows:

Section 1. Chapter 75 Stormwater Management, Article I-Illicit Stormwater Discharges and Connections, is hereby amended as follows:

“Article 1-Illicit Stormwater Discharges and Connections.

Sec. 75-6. Illicit discharge and connection prohibitions.

(a) *Illicit discharges.*

- (1) It shall be unlawful for any person to allow, directly or indirectly, anything other than stormwater, whether solid, liquid or vegetative, to be discharged, deposited or placed in such location that it may reach or be blown or scattered into the MS4, except for the following:
 - a. Water line flushing.
 - b. Landscape irrigation.
 - c. Rising ground waters.
 - d. Diverted stream flows.
 - e. Pumped ground water.
 - f. Ground water infiltration to storm sewers.
 - g. Discharges from potable water sources.
 - h. Irrigation water.
 - i. Foundation drains.
 - j. Springs.
 - k. Water from crawl space pumps and basement sump pumps.
 - l. Footing drains.
 - m. Noncommercial car washing.
 - n. Flows from habitats and wetlands.
 - o. Street wash waters.
 - p. Discharges from ~~fire fighting~~ firefighting activities.
 - q. Discharges from swimming pools if free and total chlorine is less than one ppm.
 - r. Discharges associated with emergency removal and treatment activities for hazardous materials if authorized by the federal, state or local government on-scene coordinator.
 - s. Maintenance activities of the storm drainage system requiring flushing or cleaning with potable water.
 - t. Illicit discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the user and administered under the authority of the EPA, or DWQ, provided that the user is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations. Discharges specified in writing by the stormwater manager as being necessary to protect public health and

safety or discharges that have been filtered through an approved pretreatment system that consistently demonstrate no discharge of pollutants.

- u. Dye testing, but only if the user has notified the stormwater manager at least 24 hours prior to the time of the test.
- (2) If any of the above illicit discharge exceptions are found to be polluted and may therefore negatively impact the quality of the waters of the state, the polluted illicit discharge exception shall be deemed unlawful and shall not be allowed into the MS4. These conditions shall be determined by the stormwater manager or designee. These polluted illicit discharges, though listed as an exception above, shall be regulated as an illicit connection or discharge.
- (b) *Illicit connections.* The construction, use, maintenance or continued existence of illicit connections is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

Sec. 75-8. Right of entry/access to facilities.

- (a) The stormwater manager shall be permitted to enter and inspect ~~any facilities~~ facility within the municipal limits of the city as often as may be necessary to determine compliance with this ordinance- and the city's NPDES permit.
- (b) Users shall allow the stormwater manager immediate access to all parts of the facility for the purposes of inspection, sampling and examining all discharges into the MS4 and for copying records that must be kept under the conditions of an NPDES permit or to enforce compliance with any additional duties mandated by this ordinance, state or federal law.
- (c) The stormwater manager shall have the right to install or to require the user to install on any facility such devices as are necessary in the opinion of the stormwater manager, to monitor and/or sample the facility's discharges into the MS4.
- (d) The user shall maintain the facility's sampling and monitoring equipment in a safe and proper operating condition at the user's expense. All devices used to measure the flow and quality of discharges to the MS4 shall be calibrated to ensure their accuracy.
- (e) Upon the stormwater manager's request, a user shall immediately remove any temporary or permanent obstruction to the safe and easy access to a facility. The obstruction shall not be replaced. The user shall bear the costs of clearing the access. If a user has security measures in force which require proper identification and clearance before entry into its premises, the user shall make the necessary arrangements to allow access to the stormwater manager.
- (f) If the stormwater manager has been refused access to any part of a facility and if the stormwater manager is able to demonstrate probable cause to believe that the portion of the facility to which access has been refused contains a discharge into the MS4 and that there is a need to inspect and/or sample the discharge as part of a routine sampling and inspection program or probable cause to believe that there is a condition, object, activity or circumstance which legally justifies such a search or inspection of that property, then the stormwater manager may seek issuance of an administrative search warrant pursuant to N.C.G.S. § 15-27.2.”

Section 2. Chapter 75 Stormwater Management, Article IV-Post construction Stormwater is hereby amended as follows:

“Article IV-Post construction Stormwater

Sec. 75-107. Definitions.

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

Building inspector. The director, or his designee, of the Forsyth County/Winston-Salem Building Inspection Department established and authorized pursuant to G.S. Ch. 160A, Part 5, Building Inspection of Article 19, Development.

Built-upon area (BUA). That portion of a development or redevelopment project that is covered by impervious or partially impervious surface, including, but not limited to, buildings; pavement and gravel areas, such as roads, parking lots, and paths; and recreation facilities, such as tennis courts. The BUA does not include: 1) a wooden slatted deck, 2) the water area of a swimming pool, 3) a surface of number 57 stone, as designated by the American Society for Testing and Materials, laid at least four inches thick over a geotextile fabric, 4) 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 5) pervious or partially pervious paving material, to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

City. The City of Winston-Salem, a North Carolina Municipal Corporation located in Forsyth County.

City manager. The manager of the city as appointed by the city council.

Department. The State of North Carolina Department of Environment and Natural Resources.

Design manual. The stormwater design manual prepared and disseminated by the department for the proper implementation of the requirements of the federal phase II stormwater program.

Development. Any land disturbing activity for construction of one or more buildings, structures or parking lots which adds to or changes the amount of impervious or partially pervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil, other than rebuilding activity that does not qualify as redevelopment.

Disturbed area. Any land area which had been cleared, grubbed, graded, disturbed or otherwise altered for the purposes of development or redevelopment.

Division. The North Carolina Division of Water Quality, a division of the department.

High-density project. Any project that exceeds the low-density project threshold, as defined below, for dwelling units per acre or BUA.

Larger common plan of development, redevelopment or sale. Any area where multiple separate and distinct construction or land disturbing activities will occur under one plan. A plan is any announcement or document, including, but not limited to, a site plan, marketing plan, sign, public notice or hearing, sales presentation or promotion, advertisement, loan application, drawing, permit application, zoning request, or computer design, or any physical demarcation, including, but not limited to, boundary signs, lot stakes, or surveyor markings, indicating that construction activities may occur on one or more tracts of land.

Lot area. Lot area refers to the amount of horizontal land area contained inside the lot lines of a lot or site.

Low-density project. A project that has no more than two dwelling units per acre or 24 percent BUA for all residential and nonresidential development or Redevelopment.

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

Owner. The legal or beneficial owner of property on which a development or redevelopment is to occur or any other person or entity holding proprietary or possessory rights in the property or having legal power of management and control of the property. Any such person or entity must have the power to grant an easement and lien over said property; or must have the ability to secure from the property owner said easement and lien, which must then be conveyed to the city, in conjunction with the operation and maintenance agreement referenced in subsection 75-402. Unless shown otherwise, the person or entity making application for a stormwater management permit for the property or the person or entity who is contractually responsible to operate and maintain a stormwater management system on the property shall be deemed to be an "owner" for enforcement purposes.

Post construction. The condition of a development or redevelopment once the land disturbing activity is complete as it relates to the management and control of stormwater runoff quantity and quality.

Redevelopment. Any land disturbing activity at an already existing development, other than activity that results in no net increase in BUA, that provides equal or greater stormwater control than the previous development.

Stormwater appeals board. The appeals board established by the city council in chapter 2, article III, division 12 of the city's Code of Ordinances, pursuant to G.S. 160A-146, and whose purpose is to hear and decide appeals from and review any order, requirement, decision, or determination made by the stormwater director.

Stormwater management system. Stormwater management practices such as structural BMPs, ~~non-structural~~ non-structural BMPs, structures, appurtenances and any form of conveyance, such as grass channels, swales, underground piping, open ditches and storm drains, that exist outside of the public right-of-way, whether the right-of-way is maintained by the city or the State of North Carolina, as these management practices are designed and proposed to be utilized in a proposed development or redevelopment to comply with the stormwater quality and quantity standards set out in this ordinance.

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

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

Sec. 75-201. Review and decision-making entities.

(a) *Stormwater director.*

- (1) *Designation.* The stormwater director shall be designated by the city manager to administer and enforce this ordinance.
- (2) *Powers and duties.* In addition to the powers and duties that may be conferred by other provisions of the city's Code of Ordinances and other laws, the stormwater director shall have the following powers and duties under this ordinance:
 - a. To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to the standards ~~set out~~ set out in this ordinance;
 - b. To make determinations and render interpretations of this ordinance;
 - c. To establish application requirements and schedules for submittal, to review applications and appeals, and to review and make recommendations to the stormwater appeals board on applications for development or redevelopment approvals;
 - d. To enforce the provisions of this ordinance in accordance with its enforcement provisions;
 - e. To maintain records, maps, and official materials as related to the adoption, amendment, enforcement, interpretation, and/or administration of this ordinance;
 - f. To provide expertise and technical assistance to the city's council and stormwater appeals board, if such a stormwater appeals board is established. The city's stormwater appeals board shall function as the stormwater appeals board;
 - g. To designate appropriate other person(s) who shall carry out the powers and duties of the stormwater director; and
 - h. To take any other action necessary to administer the provisions of this ordinance.

Sec. 75-203. Applications for approval.

- (a) *Concept plan and consultation meeting.* Before a stormwater management permit application is deemed complete, the stormwater director or owner may request a

consultation on a concept plan for the stormwater management system. This consultation meeting should take place prior to submitting the preliminary plan of subdivision, special use rezoning or other early step in the development or redevelopment process. The purpose of this meeting is to discuss generally the stormwater management system necessary for the proposed development or redevelopment, as well as to discuss and assess constraints, opportunities, and potential approaches to stormwater management system before formal site design engineering is commenced. The meeting is not intended to provide a total review of the final development plan. Local watershed plans, and other relevant resource protection plans may be consulted in the discussion of the concept plan. To accomplish this goal, the following information should be included in the concept plan, which should be submitted to the stormwater director at least five business days in advance of the consultation meeting:

- (1) *Existing conditions/proposed site plans.* Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; perennial and intermittent streams; existing and proposed drainage conveyances; existing stormwater management systems; mapping of predominant soils from soil surveys (when available); boundaries of existing predominant vegetation and proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.
 - (2) *Natural resources inventory.* A written and/or graphic inventory of the natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description should include a discussion of soil conditions, forest cover, geologic features, topography, wetlands, and native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc.). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development or redevelopment.
 - (3) *Stormwater management system concept plan.* A written or graphic concept plan of the proposed stormwater management system including the location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of proposed stream channel modifications, such as bridge or culvert crossings.
- (b) *Assessment of impact.* Each concept plan shall include an assessment of post construction stormwater impacts upon downstream and upstream properties. The assessment of stormwater quality and quantity impacts shall be based on the standards contained within this ordinance, at a minimum.
- (1) *Assessment and control of stormwater quality impacts.* All stormwater management systems proposed to be include in any development or redevelopment, not otherwise exempt or excluded, shall assess and satisfy the applicable stormwater quality management requirements as indicated in section 75-302 of this ordinance, at a minimum.
 - (2) *Assessment and control of stormwater quantity impacts.* All stormwater management systems proposed to be include in any development or redevelopment, not otherwise exempt or excluded, shall assess and satisfy the applicable stormwater quantity

management requirements as indicated in section 75-303 of this ordinance, at a minimum. An appropriately qualified professional for the owner must prepare the assessment of stormwater quantity impacts for review by the stormwater director. The assessment of upstream impacts must be provided, at a minimum, for property or properties located immediately upstream and/or adjacent to the proposed development or redevelopment. The stormwater director shall require that the impact assessment be extended for properties further upstream if site-specific conditions may cause an unreasonable impact on those properties further upstream. The assessment of downstream impacts shall be made by evaluating a site's contribution to stormwater runoff to a "suitable downstream point" considering the following guidelines:

- a. A point downstream where the proposed site development or redevelopment represents less than ten percent of the total watershed area draining to that point (ten percent guideline).
- b. A point downstream where drainage from the development or redevelopment site enters a Federal Emergency Management Agency (FEMA) established floodway.
- c. A point where the stormwater director knows of no existing stormwater problems that the proposed development or redevelopment is likely to exacerbate.
- d. A point where there are no public road crossings or other public infrastructure that may be adversely impacted by an increase in runoff from the proposed development or redevelopment.

This determination shall not alter any requirements related to stormwater quality management. These guidelines are intended to avoid unreasonable impacts wherever they might occur.

- (c) *Stormwater management permit application.* The stormwater management permit application shall detail how development or redevelopment stormwater runoff will be controlled and managed and how the proposed project will meet the requirements of this ordinance. All such plans shall be prepared by a qualified registered North Carolina professional engineer, surveyor or landscape architect, and the engineer, surveyor or landscape architect shall perform services only in their area of competence, and shall verify: 1) that the design of the stormwater management system meets the submittal requirements for complete applications; 2) that the designs and plans are sufficient to comply with applicable standards and policies found in the design manual; and 3) that the proposed stormwater management system ensures compliance with this ordinance. The submittal shall include all of the information required in the submittal checklist established by the stormwater director.
- (d) *As-built plans and final approval.* Upon completion of a project and before a certificate of compliance, as defined in G.S. 160A-423, shall be granted by the building inspector, the owner shall, except as provided for in subsection (e) of this section, certify that the completed project is in accordance with the approved stormwater management system, and shall submit actual as-built plans for the entire stormwater management system once construction is completed. The as-built plans shall show the final design specifications for the entire stormwater management system, including the field location, size, depth, and planted vegetation of all structural BMPs and other measures, controls, conveyances and devices, as installed. The designer of the stormwater management system shall certify, under seal, that the as-built stormwater management system is in compliance with the

approved stormwater management system and with the requirements of this ordinance. A final inspection and approval by the stormwater director shall occur ~~before the release of any performance securities.~~ upon receipt of adequate as-built records. ~~The final inspection shall occur within a reasonable time frame in order to expedite release of performance securities.~~

- (e) *Other permits.* No certificate of compliance shall be issued by the building inspector working in consultation with the stormwater director without final, as-built plans and a final inspection and approval by the stormwater director, except where multiple units are served by the stormwater management system, in which case the building inspector may elect to withhold a percentage of certificates of compliance until as-built plans are submitted and approved by the stormwater director.

Sec. 75-205. Appeals.

- (a) *Right of appeal.* Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this ordinance and made by the stormwater director may file an appeal to the stormwater appeals board within 30 days of the stormwater director's decision, order, requirement, or determination.
- (b) *Filing of appeal and procedures.*
 - (1) Appeals shall be taken within the specified time period by filing with the stormwater director a notice of appeal and the grounds for the appeal. The stormwater director shall transmit the appeal, the grounds for the appeal ~~therefor~~ and all documents related to the appeal (the record on appeal) to the stormwater appeals board.
 - (2) An appeal stays all proceedings in furtherance of the action appealed from, unless the stormwater director certifies to the stormwater appeals board, after notice of appeal has been filed with him, that because of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of this ordinance. In that case proceedings shall not be stayed except by a restraining order, which may be granted by the stormwater appeals board or by a court of record on application, on notice to the stormwater director and on due cause shown.
 - (3) The stormwater appeals board shall fix a reasonable time for the hearing of the appeal, give due notice thereof to the parties, and decide it within a reasonable time. The stormwater appeals board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that in its opinion complies with this ordinance. To this end the stormwater appeals board shall have all the powers of the stormwater director.
 - (4) The concurring vote of four-fifths of the members of the stormwater appeals board shall be necessary to reverse any order, requirement, decision, or determination of the stormwater director or to decide in favor of the applicant any matter upon which it is required to pass under this ordinance, or to grant a variance from the provisions of the ordinance. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be

considered "members of the board" for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.

- (5) A member of the stormwater appeals board shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.
- (6) Witnesses shall testify under oath or affirmation to be administered by the court reporter, notary, or another duly authorized official.
- (c) *Review by city council.* Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this ordinance and made by the stormwater appeals board may file an appeal to the city council within 30 calendar days of the stormwater appeals board's decision, order, requirement, or determination. Appeals shall be taken within the specified time period by filing a notice of appeal and specifying the grounds for appeal on forms provided by the City of Winston-Salem. The assistant city manager/public works shall then, forthwith, transmit to the city council all the appropriate documents explaining the decision that is being appealed and shall serve as the city council's technical advisor. The hearing conducted by the city council shall be conducted in the nature of a quasi-judicial proceeding with all findings of fact supported by competent, material evidence.
- (d) *Review by superior court.* Every decision of the city council shall be subject to review by the Forsyth County General Court of Justice, Superior Court Division by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the city council is filed in such office as this ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the assistant city manager/public works at the time of its hearing of the case, whichever is later. The decision of the city council may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

Sec. 75-402. Operation and maintenance agreement.

- (a) *In general.* Prior to the conveyance or transfer of any portion of a development or redevelopment, to be served by a stormwater management system, pursuant to this division, and prior to the issuance of any permit for a development or redevelopment, requiring a stormwater management system, pursuant to this division, the owner must execute an operation and maintenance agreement that shall be binding on all subsequent owners of the whole or any portion of the development or redevelopment served by the stormwater management system. Until the transfer of all property, sites, or lots served by the stormwater management system, or the transfer of legal and managerial responsibility, therefor, the original owner shall have primary responsibility for carrying out the provisions of the operation and maintenance agreement. The operation and maintenance agreement

shall require the owner to construct, maintain, repair, and, if necessary, reconstruct, the stormwater management system, and shall state the terms, conditions, and schedule of maintenance for the stormwater management system. In addition, it shall grant to the city a perpetual easement across those portions of the property necessary for completion of construction, inspection, monitoring, maintenance, repair, or reconstruction of the stormwater management system. The operation and maintenance agreement shall also provide that, in the event the owner defaults on any of its obligations, hereunder, and it becomes necessary for the city to complete construction on, maintain, repair, or reconstruct, the stormwater management system, the city may recover any and all costs it, thereby, incurs. The operation and maintenance agreement shall, furthermore, grant to the city a lien on the property subject to the stormwater management permit, including the property upon which the stormwater management system is constructed, to secure the payment of the costs of construction, reconstruction, maintenance, and repair. ~~The operation and maintenance agreement shall similarly grant the city a lien on the property subject to the stormwater management permit, including the property upon which the stormwater management system is constructed, to secure the repayment of any loans taken under section 75-404, below. However, in no case shall the easement or the liens confer an obligation on the city to assume responsibility for the stormwater management system.~~ The operation and maintenance agreement shall, furthermore, contain a statement informing all future transferees of the property that the property is subject to restrictive covenants/agreements which require the construction, reconstruction, maintenance, and repair of the stormwater management system, ~~and the repayment of any loans taken under section 75-404,~~ which covenants and agreements shall run with the land. Finally, the operation and maintenance agreement shall contain a provision whereby the owner releases, and agrees to indemnify, defend, and hold harmless, the city, its officials, officers, agents, and employees, from any and all claims, actions, suits, liabilities, losses, costs, expenses, reasonable attorneys' fees, and costs of litigation, of any nature, whatsoever, including claims for special and consequential damages, arising out of, or in any way related to, the stormwater management system and/or the city's entry onto the property and use of the easement, thereupon. The operation and maintenance agreement must be approved by the stormwater director prior to plan approval, shall be referenced on the final plat, and shall be recorded with the county register of deeds upon final plat approval. ~~A copy of the recorded~~ The original filed stamped maintenance agreement shall be given to the stormwater director within 14 days following its recordation.

- (b) *Special requirement for homeowners' and other associations.* For all stormwater management systems required pursuant to this division and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement shall include the following provisions:
- (1) Acknowledge that the association shall continuously operate and maintain the entire stormwater management system ~~even though the association is required to escrow funds based on the cost to construct, maintain, operate, repair and inspect only the structural BMP;~~
 - (2) ~~Establish an escrow account, which shall be used to maintain, operate, repair, inspect or reconstruct the stormwater management system~~

- ~~(3) Prior to plat recordation or issuance of construction permits, whichever shall first occur, require the owner to pay into the escrow account, at a minimum, an amount equal to 15 percent of the initial construction cost of the structural BMPs;~~
- ~~(4) Require the homeowners' association to contribute into the escrow account, at a minimum, an amount satisfactory to support the operation, maintenance and annual inspection of the structural BMPs such that:~~
- ~~a. Two thirds of the total amount required to fund the escrow account shall be deposited into the escrow account within the first five years and the full amount shall be deposited within ten years following initial construction of the structural BMPs;~~
 - ~~b. The association shall allocate a portion of the association's annual assessments to the escrow account; and~~
 - ~~c. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to originally fund the escrow account.~~
- (2) Require the owner of the stormwater control management system to establish, collect, and retain funds for maintenance, repair, replacement, and reconstruction costs for the owner's stormwater management system, which shall not exceed ten percent (10%) of the stormwater management system's original cost of construction and shall be retained by the owner of the system.
- (3) Allow the owner of the stormwater control management system a term of 5 years, beginning when the stormwater control management system is accepted by the city per city regulations, for the funds to be collected and retained by the owner of the stormwater control management system. Funds collected must be held in a segregated account and used solely for the purposes of maintaining, repairing, replacing and reconstructing the owners' stormwater control management system.
- ~~(4)(5) Grant to the city an easement to construct, inspect, monitor, maintain, repair, and reconstruct the stormwater management system;~~
- ~~(5)(6) Allow the city to recover from the association and its members, any and all costs the city expends to maintain or repair the stormwater management, system, pursuant to division 5 subsection 75-1(5), enforcement and violations, below;~~
- ~~(6)(7) A statement that this agreement shall not obligate the city to maintain or repair any stormwater management system, and the city shall not be liable to any person for the condition or operation of the stormwater management system;~~
- ~~(7)(8) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the city to enforce any of its ordinances as authorized by law; and~~
- ~~(8)(9) A provision releasing, indemnifying, and holding harmless the city, its officials, officers, agents, and employees for any claims, actions, suits, liabilities, losses, costs, expenses, reasonable attorneys' fees, and costs of litigation, including special and consequential damages, arising from or related to the stormwater management system and/or the city's entry onto the property and use of the easement thereupon, unless the city has agreed in writing to assume the maintenance responsibility for the stormwater~~

management system and has accepted dedication of any and all rights necessary to carry out that maintenance.

(c) Stormwater management funds collected prior to August 16, 2023. Prior funds held in escrow are accessible to the owner of the stormwater management system to cover necessary maintenance, repair, replacement, or reconstruction costs for the owner's stormwater management system. In the event maintenance, repair, replacement or reconstruction of a project is needed, such funds shall be exhausted before the city may assess costs of necessary work on individual homeowners within the community, or any applicable owner's association.

(d) Disclosure Statement. For all stormwater management systems (residential and commercial) required pursuant to this division that require an operation and maintenance agreement, the owner shall also contemporaneously with the execution of the operation and maintenance agreement, sign and execute a disclosure statement provided by the city acknowledging the provisions of Sec. 75-402(b)(2) and (3) and 75-402(c). Said disclosure statement will be filed with the operation and maintenance agreement with the Forsyth County Register of Deeds.

Sec. 75-404. Stormwater control measure ("SCM") replacement fund.

~~(a) Creation and management of a stormwater control measure ("SCM") replacement fund.~~

~~(1) The stormwater control measure ("SCM") replacement fund ("the fund") shall be created and maintained by the city to receive payments made pursuant to subsection 75-404(b), below, by any owner of a commercial development or redevelopment (as such terms are defined in section 75-107 of this article). The term "commercial development" and "commercial redevelopment", as used in this section 75-404, shall not include developments and redevelopments constructed by any city department or by State of North Carolina ("state") and Forsyth County ("county") agencies, such as the state public university system and the Forsyth County Board of Education. State and county agencies shall, instead, be subject to the funding requirements outlined in subsection 75-404(i), hereof, provided that if any state or county agency elects to pay into the fund, then it shall be subject to all the remaining provisions of this section 75-404. City departments shall, instead, be subject to the funding requirements outlined in subsection 75-404(j).~~

~~(2) The city may pool all payments made to the fund, but shall keep the payments separate from, and shall not commingle the payments with, other stormwater funds and non-stormwater funds.~~

~~(3) Monies in the fund may be invested in the manner allowed in G.S. 159-30 for the investment of other public monies. All income/interest derived, therefrom, shall be returned to the fund. Monies in the fund shall only be used to defray the cost of capital expenses associated with the design, construction, reconstruction, and repair of structural best management practices ("BMPs"), as such term and its abbreviation are defined in section 75-107 of this article.~~

~~(b) Payments to the stormwater structural BMP replacement fund. The city shall require payment to the fund prior to the issuance of a stormwater management permit for a commercial development or redevelopment, in order to ensure that the BMP is installed/constructed by the owner, as required by the approved stormwater management~~

plan, and maintained, as required by the operation and maintenance agreement. Payment required, hereunder, shall equal four percent of the construction cost of the BMP. The payment may be calculated in accordance with guidelines issued by the stormwater director, which may include the use of a sealed engineer's estimate of construction costs or a construction bid tab. The payment may also be calculated in accordance with an alternate method approved by city council.

~~(c) Loans from fund Eligibility for, use of, and terms of repayment.~~

~~(1) Any owner of a BMP, for which money has already been paid into the fund, and who has executed an operation and maintenance agreement with the city, per section 75-402, and to whom the city has approved the issuance or transfer of a stormwater management permit, may apply for a loan from the fund, provided that:~~

- ~~a. The BMP has failed;~~
- ~~b. The owner does not have the financial resources to repair the BMP; and~~
- ~~c. The owner is not currently delinquent in the repayment of any monies previously borrowed from the city.~~

~~(2) The city shall determine, in its reasonable discretion, whether the owner meets the standards set forth above.~~

~~(3) The owner shall repay any loan from the fund in accordance with the city's policy for the payment of assessments, at an interest rate not to exceed the maximum authorized by G.S. 160A-233.~~

~~(4) As security for the repayment of the loan, the owner shall grant to the city a contractual lien, via the operation and maintenance agreement, on all of the property subject to the stormwater management permit. This lien shall be imposed only if the owner defaults on its repayment obligation. Said lien shall be in addition to the lien required by subsection 75-402(a) of this article, to guarantee the costs of construction, reconstruction, maintenance, and repair of the BMP.~~

~~(d) Agreements to repay loans from the fund. Agreements to repay loans from the fund shall be recorded establishing the obligation of all future transferees of the property under the stormwater management permit to repay any loans from the fund. These agreements shall run with the land, protect the city, and provide that the city has the right to enforce the agreements. Failure to comply with the agreements shall be deemed a violation of this article.~~

~~(e) Plats. The final plat for any commercial development or commercial redevelopment subject to a stormwater management permit and developed under the stormwater quality management provisions of this article shall contain a legend referencing the agreement to repay any loans from the fund.~~

~~(f) Disclosure statement. The continuous ongoing obligation of all subsequent property owners of commercial developments or commercial redevelopments to repay any loans from the fund shall be disclosed in all deeds of conveyance. Deeds for the property or any part, thereof, subsequently presented for recording to the office of the register of deeds, shall contain a full disclosure regarding the obligation to repay any potential loans from the fund, together with the agreements and any liens pertaining to the repayment of said loans.~~

- (g) ~~City use of fund monies for BMP repairs.~~ The city may use monies in the fund to design, construct, reconstruct, and repair BMPs located on property which is subject to foreclosure or bankruptcy proceedings or on which the owner has been unwilling to make repairs.
- (h) ~~Substitution of payment into the fund for performance security.~~ Any owner who submitted to the city a bond, letter of credit, cash escrow, or other performance security, under the previous version of this section 75-404, which performance security is still in effect, may elect to pay into the fund, in lieu of maintaining the performance security. After the city receives payment into the fund, as per the requirements in section 75-404(b), above, the city will release, cancel, and/or extinguish the performance security which the payment into the fund is meant to replace.
- (i) ~~State and county agency earmarks and interlocal agreements.~~ Any state or county agency may, in lieu of paying into the fund, earmark funds equal to four (4) percent of the cost of construction, to secure the installation and maintenance of a BMP, in accordance with the approved stormwater management plan and the operation and maintenance agreement pertaining thereto. The sum to be earmarked shall be calculated in accordance with guidelines issued by the stormwater director or by city council, and may include use of a sealed engineer's estimate or construction bid tab. The city shall require, and the state or county agency shall provide, evidence that the funds have been earmarked, prior to the issuance of a stormwater management permit. Such evidence shall include: 1) copies of any capital projects bonds that state or county voters have approved, appropriating money for the construction of the state or county development or redevelopment, and its attendant BMPs, 2) a letter from the state or county agency's finance director, indicating the sum of money/bond proceeds set aside for the installation and maintenance of the BMP, 3) a copy of a resolution by the state or county agency's governing board, authorizing the sequestration or earmarking of funds for the installation and maintenance of the BMP and the execution of an interlocal agreement guaranteeing the sequestration, and 4) a properly pre-audited and executed interlocal agreement, per the requirement in the previous subsection. Every fiscal year following the initial submission of a state or county agency's governing board's resolution, the state or county agency shall provide the city proof, within 30 calendar days of the board's approval of the current fiscal year's budget, that the requisite sum has, once again, been encumbered for maintenance, repair, and replacement of the BMP.
- (j) ~~City earmarks.~~ A city department, in lieu of paying into the fund, shall earmark funds sufficient to provide for the annual operation, maintenance, inspection, and repair of the SCM, in accordance with the approved stormwater management plan and the operation and maintenance agreement pertaining thereto. For wet ponds, stormwater wetlands, sand filters, bio-retention devices in clay soils, and bio-retention devices in sandy soils, the sum to be earmarked shall be calculated in accordance with "Table 6. Summary of Construction Cost Curves, Annual Maintenance Cost Curves and Surface Area for five Stormwater BMPs in North Carolina...", in a document entitled "The Economics of Structural Stormwater BMPs in North Carolina", authored by Ada Wossink and Bill Hunt and published in 2003, a copy of which is kept on file in the city's stormwater department. For all other manner of SCM, the sum to be earmarked shall be calculated in accordance with a sealed engineer's estimate or construction bid tab, received at the time of the city department's application for a stormwater management permit, and indicating the annual cost of operation, maintenance,

~~inspection, and repair of the SCM. The city department shall provide evidence to the city's stormwater department that funds have been earmarked in the city department's annual operating budget for operation, maintenance, inspection, and repair of the SCM. Every ensuing fiscal year following the initial earmark, the city department shall provide the city's stormwater department proof, within 30 calendar days of the city council's approval of the current fiscal year's budget, that the requisite sum has, once again, been encumbered for operation, maintenance, inspection, and repair of the SCM.~~

- (a) The stormwater control measure replacement fund ("the fund") collected prior to August 16, 2023. All funds previously collected and held by the city for development and redevelopment are accessible to the owner of the stormwater management system to cover necessary maintenance, repair, replacement, or reconstruction costs for the owner's stormwater management system. In the event maintenance, repair, replacement, or reconstruction of a project is needed, such funds shall be exhausted before the city may assess costs of necessary work on individual homeowners, property owner associations and/or commercial property owners.
- (b) The loan program previously associated with the fund for development and redevelopment will no longer be available. Money placed in the fund by development and redevelopment owners and held by the city are accessible as outlined in section 75-404(a)."

Section 3. This ordinance shall become effective upon adoption after a public hearing.