

ORDINANCE NO. 24-\_\_\_\_\_

AN ORDINANCE TO REPEAL AND REPLACE PART II, TITLE 9, CHAPTER 9 OF THE  
CODE OF ORDINANCES, CITY OF GREENVILLE

WHEREAS, the City Council of the City Greenville desires to revise Part II, Title 9, Chapter 9 of the Code of Ordinances, City of Greenville to conform to applicable North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; North Carolina General Statutes Chapter 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Chapter 143-215.6A; Chapter 153A-454; and Chapter 160A, Chapter 160D, §§ 174, 185, 459 which authorizes the City to adopt ordinances regulating stormwater runoff for the purpose of protecting the surface waters of the State;

WHEREAS, Part II, Title 9, Chapter 9 of the Code of Ordinances, City of Greenville has not been substantially revised since 2013 with the majority of the Chapter not having been revised since the original adoption in 2004;

WHEREAS, the repeal and replacement of the entirety of Part II, Title 9, Chapter 9 of the Code of Ordinances, City of Greenville is necessary to adequately ensure uniform compliance with applicable law and program updates;

WHEREAS, the City of Greenville is designated by 15A NCAC 02B .0711 to implement the Neuse Nutrient Strategy Stormwater Rules and 15A NCAC 02B .0731 to implement the Tar-Pamlico Nutrient Strategy Stormwater Rules; and

WHEREAS, the implementation of the Neuse and Tar-Pamlico Nutrient Strategy Rules satisfies the requirement to regulate post-construction site runoff under the City of Greenville National Pollutant Discharge Elimination System (NDPES) Phase II Municipal Separate Storm Sewer System (MS4) Permit NCS000437;

THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA, DOES  
HEREBY ORDAIN:

SECTION 1. That Part II, Title 9, Chapter 9 of the Code of Ordinances, City of Greenville, is hereby repealed and replaced as amended to now read as follows:

## CHAPTER 9: STORMWATER MANAGEMENT AND CONTROL

### Section

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### SEC. 9-9-1 TITLE.

This chapter shall be known and may be cited as the City of Greenville’s “Stormwater Management and Control Ordinance” or this chapter.

### SEC. 9-9-2 AUTHORITY.

The City of Greenville is authorized to adopt this ordinance pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; North Carolina General Statutes Chapter 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Chapter 143-215.6A; Chapter 153A-454; and Chapter 160A, §§ 174, 185, and , Chapter 160D, including § 925.

### SEC. 9-9-3 PURPOSES.

(A) This chapter is adopted for the purposes of:

- (1) Protecting the public health, safety and welfare by controlling the discharge of pollutants into the stormwater drainage system and waters of the state;
- (2) Promoting the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by regulations designed to control the rate of release of stormwater runoff of certain developments where the rate of runoff has been significantly increased;
- (3) Promoting activities directed toward the maintenance and improvement of surface and ground water quality;
- (4) To protect the riparian buffer along intermittent and perennial streams;
- (5) Limiting the nitrogen and phosphorus load from development;
- (6) Satisfying the requirements imposed upon the City of Greenville under the Tar-Pamlico Stormwater Rule (15A NCAC 2B .0731), the Neuse Stormwater Rule (15A NCAC 02B .0711), and the National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) discharge permit issued by the North Carolina Department of Environmental Quality (NCDEQ); and
- (7) Establishing administration and enforcement procedures through which these purposes can be fulfilled.

(B) The provisions of this chapter are supplemental to regulations administered by federal and state governments.

## SEC. 9-9-4 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless other provisions of this ordinance specifically indicate otherwise.

*Built-upon area (BUA).* Has the same meaning as in N.C.G.S. 143-214.7.(b2).

*City.* The City of Greenville, North Carolina.

*City Engineer.* The City Engineer of the City of Greenville, North Carolina

*Common plan of development.* Has the same meaning as in 15A NCAC 02H .1002(8).

*Detention facility.* A facility, constructed for the purpose of detaining stormwater runoff from a developed site to control the peak discharge rates. A detention facility does not provide water quality treatment the way a Stormwater Control Measure (SCM) does.

*Development.* Has the same meaning as in N.C.G.S. 143-214.7(a1)(1).

*Development approval.* Has the same meaning as N.C.G.S. 160D-102(13)

*Ditch.* An open channel constructed to transfer stormwater from one area to another. This does not include any open channel that is classified as a perennial or intermittent stream or a swale.

*Drainage easement.* A written, recorded easement granted for the installation and maintenance of the stormwater drainage system and/or along a natural stream or watercourse for preserving the channel and providing access for maintenance and operation.

*Drainage requirements.*

- (1) Minimum drainage standards as established by this chapter;
- (2) Regulations promulgated by the Public Works Department or Engineering Department of the city;
- (3) Obligations and requirements relating to drainage established under the Subdivision Control Ordinance of the city, as set forth in Title 9, Chapter 5;
- (4) Requirements stated under the Zoning Ordinance of the city as set forth in Title 9, Chapter 4, including floodway zoning requirements; and
- (5) Conditions relating to drainage attached to a grant of variance by the Board of Adjustment of the city.

*Dispersed flow.* Has the same meaning as in 15A NCAC 02H .1002(13).

*Existing built-upon area.* The built-upon area or net equivalent amount of built-upon area resulting from existing development.

*Existing development.* Has the same meaning as in 15A NCAC 02H .1002(17).

*Exposure of prohibited substances.* Any unlawful disposal, placement, emptying, dumping, spillage, leakage, pumping, pouring, emission or other discharge of any substance other than stormwater, unless associated with permitted activity as identified in section 9-9-16(A), upon the land in such proximity to the stormwater drainage system, such that the substance is likely to reach the stormwater drainage system.

*Extraterritorial jurisdiction.* The area beyond the city limits within which the planning, zoning and building regulations of the city apply in accordance with state law. The area is delineated on the official zoning map for the city.

*Illicit connection.* Any unlawful connection that allows the discharge of prohibited non-stormwater to the stormwater drainage system in violation of this chapter.

*Illicit discharge.* Any unlawful disposal, placement, emptying, dumping, spillage, leakage, pumping, pouring, emission or other discharge of any substance other than stormwater, unless associated with permitted activity as identified in section 9-9-16(A), into the stormwater drainage system.

*Jurisdictional stream.* A stream that has been determined to be either perennial or intermittent by the North Carolina Department of Environmental Quality (NCDEQ) or the United States Army Corps of Engineers (USACE).

*Land-disturbing activity.* Any use of the land by any person in residential, industrial, educational, institutional or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.

*Like-new condition.* Used to describe a compliant Stormwater Control Measure at the warranty inspection. The SCM shall have no visible erosion or accumulation of sediment, proper established vegetation per the design, and be functioning as designed.

*Manual of Standard Details and Design (MSDD).* The most current published version of the City's Manual of Standard Details and Design approved by the City Engineer.

*Major variance.* Any variance of this ordinance that is not a "minor variance" as that term is defined in this section. For any provisions in this ordinance that are more stringent than the minimum applicable Neuse (15A NCAC 02B .0711) or Tar-Pamlico (15A NCAC 02B 0.731) rules, a variance to this ordinance is not considered a major variance as long as the result of the variance is not less stringent than the minimum requirements of those rules.

*Minimum Design Criteria (MDC).* The requirements stated in 15A NCAC 02H .1050 through .1062.

*Minor variance.* A variance from the minimum applicable Neuse or Tar-Pamlico Stormwater rules that results in the relaxation of up to 10 percent of any density, or minimum lot size requirement applicable to low density development, or the relaxation of up to five percent of any density, or minimum lot size requirement applicable to high density development.

*Municipal separate storm sewer system (MS4).* Pursuant to 40CFR 122.26(b) a conveyance system of conveyances (including without limitation: roads with drainage systems, municipal streets, catch basins, stormwater detention facilities, curbs, gutters, ditches, natural or man-made channels, or storm drains), that:

- (1) Is located within the corporate limits of Greenville, North Carolina;
- (2) Is owned or operated by the city ;
- (3) Discharges to waters of the state or another municipal system, excluding publicly owned treatment works, and lawful connections thereto, which in turn discharge into the waters of the state.
- (4) Designed or used for collecting or conveying stormwater;
- (5) Which is not a combined sewer; and
- (6) Which is not part of a Publicly Owned Treatment Works (POTW) as defined in 40 GFR 122.2.

*NCDEQ.* North Carolina Department of Environmental Quality

*NPDES or National Pollutant Discharge Elimination System.* A program implemented pursuant to the Federal Water Pollution Control Act and corollary state law by NCDEQ to eliminate the discharge of pollutants to waters of the United States and waters of the state.

*One-year, five-year, ten-year and 25-year, 24-hour storm events.* The maximum amount of rainfall during a 24 consecutive hour period expected, per the stated interval, as determined by the National Oceanic and Atmospheric Administration (NOAA) Precipitation Frequency Data Server (PFDS).

*Ordinance.* This ordinance – the Stormwater Management and Control Ordinance.

*Pollutant.* Has the same meaning as in 33 U.S.C. 1362(6)

*Primary SCM.* Has the same meaning as in 15A NCAC 02H .1002(37)

*Private Drainage.* Any portion of the stormwater drainage system that is not "public drainage" as defined in this section.

*Project.* Has the same meaning as in 15A NCAC 02H .1002(38).

*Public Drainage.* Any portion of the stormwater drainage system that conveys "public runoff" as defined in this section, excluding stormwater control measures and detention facilities not owned or operated by the city.

*Public runoff.* Stormwater runoff wholly or partially from publicly owned rights-of-way, owned or operated by the city or North Carolina Department of Transportation (NCDOT), and from city-owned property.

*Qualified professional.* As determined by the Stormwater Administrator an individual who both: has received a baccalaureate or postgraduate degree in the natural sciences or engineering; and is trained and experienced in stormwater treatment techniques and related fields as may be demonstrated by state registration, professional certification, or completion of coursework that enable the individual to make sound, professional judgments regarding stormwater control/treatment and drainage planning and subject to the requirements of Section 9-9-21.

*Record Drawings.* A set of plan drawings from site survey information reflecting actual development as it was constructed. Minimum information to be included in the record drawings is established in the City of Greenville Manual of Standard Designs and Details.

*Redevelopment.* Has the same meaning as in N.C.G.S. 143-214.7 (a1)(2)

*Registered professional.* An individual who is registered in the State of North Carolina as a professional engineer.

*Riparian buffer.* The 50-foot wide area directly adjacent to surface waters in the Tar-Pamlico and Neuse River Basins (intermittent streams, perennial streams, lakes, ponds and estuaries), excluding wetlands. For the purpose of this definition, a surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS).

*Stormwater.* Has the same meaning as defined in N.C.G.S. 143-213(16a).

*Stormwater Administrator.* The City Engineer or his or her designee responsible for all decisions concerning application and enforcement of the stormwater management and control ordinance, programs, and policies and any matters related to the program.

*Stormwater Control Measures (SCMs).* Has the same meaning as 15A NCAC 02H .1002(49)

*Stormwater drainage system.* The system of natural features and constructed devices that collect and transport stormwater. Those include, but are not limited to, swales, ditches, swamps, rivers, streams, creeks, branches, lakes and reservoirs, ponds, inlets, catch basins, pipes and drains, culverts and head walls.

*Stormwater management program.* Program designed to protect water quality by controlling the level of pollutants in, and the quantity and flow of, stormwater.

*Surface drainage.* A system by which the stormwater runoff is conducted to an outlet. This would include the proper grading of parking lots, streets, driveways and yards so that stormwater runoff is removed without ponding and flows to the stormwater drainage system.

*Swale.* A natural or constructed waterway, usually broad and shallow, covered with erosion-resistant grasses, used to convey surface water from a field, diversion or other site feature.

- (1) A swale for the sole purpose of conveyance shall have characteristics as identified in the MSDD.
- (2) A treatment swale for the purpose of water quality treatment shall be classified as a Stormwater Control Measure and shall meet the minimum design criteria as established in 15A NCAC 2H .1061.

*Vegetated conveyance.* Has the same meaning as in 15A NCAC 02H .1002(52)

*Watershed Master Plan(s).* Detailed hydraulic studies completed by the City of Greenville to evaluate existing flooding, water quality, and erosion problems, recommend and prioritize stormwater capital improvements, and map and inventory existing stormwater drainage system components. These plans include: Greens Mill Run Watershed Master Plan, Swift Creek Watershed Master Plan, Fork Swamp Watershed Master Plan, Hardee Creek Watershed Master Plan, Harris Mill Run / Schoolhouse Branch Watershed Master Plan, Parkers Creek / Johnsons Mill Run Watershed Master Plan, and Meetinghouse Branch Watershed Master Plan.

*Waters of the state.* Has the same meaning as in N.C.G.S. 143-212(6).

## **SEC. 9-9-5 APPLICABILITY; EXCLUSIONS.**

(A) Beginning with and subsequent to its effective date, this ordinance shall be applicable to all development and expansion of development throughout the corporate limits and extraterritorial jurisdiction of the City of Greenville unless exempt pursuant to this ordinance.

(B) The following are exempt from this ordinance:

- (1) Single family and duplex residential and related recreational development and expansion of development that disturbs less than one acre;
- (2) Commercial, industrial, institutional, multifamily residential or local government development that disturbs less than one half acre and does not expand existing structures on a parcel;
- (3) Commercial, industrial, institutional, multifamily residential or local government development that disturbs less than one half acre and expands existing structures on a parcel and, but does not result in a cumulative built-upon area for the parcel exceeding twenty-four (24) percent;
- (4) Development of an individual single-family or duplex residential lot that is not part of a larger common plan of development or sale and does not result in greater than five (5) percent built-upon area on the lot;
- (5) Existing development or redevelopment pursuant to N.C.G.S. 143-214.7(b3);
- (6) Development or expansion of development with a vested right per the standards of N.C.G.S. 160D-108;
- (7) Development or expansion of development for which the permit application was submitted prior to adoption of this ordinance;
- (8) Activities subject to requirements of the Neuse Agriculture Rule (15A NCAC 02B .0712) or Tar-Pamlico Agriculture Rule (15A NCAC 02B .0732), provided that agricultural master plan communities subject to Section 9-4-161 of the Zoning ordinance meet the attenuation requirements of Sections 9-9-15 of this ordinance; and
- (9) Any area or subject matter where federal, state or local government, including their agencies, have jurisdiction preempting the city unless intergovernmental agreements have been established giving the city enforcement authority.

(C) No development or expansion of development shall occur except in compliance with the provisions of this ordinance or unless exempted. No development or expansion of development for which a permit is required pursuant to this ordinance shall occur except in compliance with the provisions, conditions, and limitations of the permit.

## **SEC. 9-9-6 ADMINISTRATION AND PROCEDURES.**

(A) The City Engineer or his or her designee shall serve as the Stormwater Administrator and shall be responsible for all decisions concerning application and enforcement of the ordinance, programs, and policies and any matters related to the program.

(B) *Stormwater Management Permit*

- (1) A stormwater management permit is required for all development and expansion of development unless exempt pursuant to this ordinance. A permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to this section.
- (2) A stormwater management permit shall govern the design, installation, construction, operation, and maintenance of stormwater management and control practices on the site, including stormwater control measures and elements of site design for stormwater management other than stormwater control measures.
- (3) The permit is intended to provide a mechanism for the review, approval, and inspection of the approach to be used for the management and control of stormwater for the development site consistent with the requirements of this ordinance, whether the approach consists of stormwater control measures or other techniques such as low-impact or low-density design. The permit continues in existence indefinitely for the life of the development. Expansion or redevelopment of a permitted development may require amendment to the stormwater management permit. Continued compliance after project construction is assured by the deed restriction and inspection and maintenance provisions of this ordinance.

(C) *Stormwater Management Permit Application Submittal*

- (1) A permit application may be submitted by the landowner, a lessee or person holding an option or contract to purchase or lease the land for the proposed development, or an authorized agent of the landowner. An easement holder may also apply for a permit for development as is authorized by the easement.
- (2) The City Council will establish and revise from time-to-time permit application review fees, as well as policies regarding refund of any fees upon withdrawal of an application. The fees will be set to recoup the City's costs in permit application review.
- (3) The Stormwater Administrator shall establish requirements for the content and form of all applications and shall amend and update those requirements from time to time. The Stormwater Administrator shall establish a checklist of minimum required information to constitute a complete application. The Stormwater Administrator shall compile the application requirements, submission schedule, fee schedule, a copy of this ordinance, form notice of deed restrictions or protective covenants, and information on how and where to obtain the Manual of Standard Details and Design in an Administrative Manual, which shall be made available to the public
- (4) At a minimum, the stormwater permit application shall describe in detail how *post-development* stormwater runoff will be controlled and managed, the design of all stormwater facilities and practices, and how the proposed *project* will meet the requirements of this ordinance.
- (5) The applicant must also acknowledge and consent to the recordation of deed restrictions or covenants that prevent the removal or alteration of SCMs or detention facilities without the Stormwater Administrator's prior consent.
- (6) All such plans shall be prepared by a qualified registered North Carolina professional engineer, surveyor, soil scientist or landscape architect, and the engineer, surveyor, soil scientist or landscape architect shall perform services only in their area of competence, and shall verify and certify that the design of all stormwater management facilities and practices meets the submittal requirements for complete applications, that the designs and plans comply with applicable standards promulgated pursuant to this ordinance, including those set forth in the Manual of Standard Designs and Details.
- (7) The Stormwater Administrator shall establish a submission schedule for applications. The schedule shall establish deadlines by which complete applications must be submitted for the purpose of ensuring that there is adequate time to review applications, and that the various stages in the review process are accommodated.
- (8) Applications for a stormwater management permit shall be submitted to the Stormwater Administrator pursuant to the application submittal schedule in the form established by the Stormwater Administrator, along with the appropriate information pursuant to this section.
- (9) An application shall be considered as timely submitted only when it contains all elements of a complete application pursuant to this ordinance. If the Stormwater Administrator finds that an application is incomplete, the applicant shall be notified of the deficient elements within 5 business days and shall be provided with an opportunity to submit a complete application. However, the submittal of an incomplete application shall not suffice to meet a deadline contained in the submission schedule established above.
- (10) Before a stormwater management permit application is submitted, the applicant may request a consultation on a concept plan for the post-construction stormwater management to be utilized in the proposed development project. This consultation meeting should take place at the time of the preliminary plan of subdivision or other early step in the development process. The purpose of this meeting is to discuss the stormwater management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering is commenced.

(D) *Stormwater Management Permit Application Review and Approval*

- (1) The Stormwater Administrator shall establish a review schedule for applications. The schedule shall establish deadlines by which complete applications are reviewed and a determination is made as to whether the application complies with the standards of this ordinance. This review schedule may distinguish different review periods for initial application submittals from revised application submittals.

- (2) Within the review schedule the Stormwater Administrator shall review the application and determine whether the application complies with the standards of this ordinance.
- (3) If the Stormwater Administrator finds that the application complies with the standards of this ordinance, the Stormwater Administrator shall approve the application and issue the stormwater management permit for the project. The Stormwater Administrator may impose conditions of approval as needed to ensure compliance with this ordinance. The conditions shall be included as part of the approval.
- (4) If the Stormwater Administrator finds that the application fails to comply with the standards of this ordinance, the Stormwater Administrator shall notify the applicant and shall indicate how the application fails to comply. The applicant shall have opportunity to submit a revised application.
- (5) A complete revised application shall be reviewed by the Stormwater Administrator pursuant to the established review schedule after its re-submittal and shall be approved, approved with conditions or disapproved and the applicant shall have opportunity to submit a revised application.
- (6) If a revised application is not re-submitted within a period of six consecutive months from the date the applicant was notified, the application shall be considered withdrawn, and a new application submittal shall be required.
- (7) Approval and issuance of the stormwater management permit authorizes the applicant to go forward with only the specific plans and activities authorized in the permit. The approval shall not be construed to exempt the applicant from obtaining other applicable approvals from local, state, and federal authorities.
- (8) Pursuant to N.C.G.S. 160D-108 an approved permit shall become null and void if the applicant fails to make substantial progress on the site within the applicable vesting period.

*(E) Record Drawings, Deed Restrictions or Protective Covenants, and Final Approvals*

- (1) Upon completion of a project, the applicant shall certify that the completed project is in accordance with the approved stormwater management plans and designs, and shall submit record drawings for all stormwater control measures or detention facilities after final construction is completed.
- (2) The applicant shall further certify to the Stormwater Administrator that the notice of deed restrictions or protective covenants preventing the removal or alteration of the SCMs and detention facilities reflected in the approved plans without the Stormwater Administrator's prior consent has been recorded in the chain of title on the development property with the Register of Deeds, Pitt County, with a copy of the recorded document.
- (3) The Stormwater Administrator shall establish the submittal format and a checklist of minimum required information to be included in the record drawing submittal. The licensed professional who designed the stormwater control measures, detention facilities, and plans shall certify, under seal, that the stormwater control measures, detention facilities, controls, and devices are constructed and in compliance with the approved stormwater management plans and designs and with the requirements of this ordinance.
- (4) No certificate of compliance or occupancy shall be issued without final record drawings, the certification of recording the notice of deed restrictions or private covenants, and a final inspection and approval by the Stormwater Administrator, except where financial sureties have been submitted to and approved by the Stormwater Administrator to ensure compliance with this ordinance.

#### **SEC. 9-9-7 EXISTING STORMWATER CONROL MEASURES**

(A) For projects draining to and relying upon an existing detention facility or SCM for compliance with this ordinance, the existing detention facility or SCM must be in compliance at the time of site plan or residential final plat approval unless a written plan of action to bring them into compliance is submitted to and approved by the Stormwater Administrator.

(B) No certificate of compliance or occupancy shall be issued without a final inspection and approval by the Stormwater Administrator of such existing SCMs or detention facilities, except where financial sureties have been submitted to and approved by the Stormwater Administrator to ensure compliance with this ordinance.



### **SEC. 9-9-8 STORMWATER ALTERATION PERMIT.**

(A) No person shall construct, repair or alter the stormwater drainage system for the purpose of draining water from any land or premises unless he shall have first applied for and obtained therefore a permit from the city engineer. It is unlawful for any person to perform any work or make any alteration for which a permit is required under this section except in compliance with said permit.

(B) The application shall be in writing and on a form provided by the city engineer.

(C) The city engineer shall issue the permit unless the city engineer finds that the construction or repair work or alternations proposed would be contrary to the provisions of this article. The city engineer may impose reasonable conditions upon the issuance of the permit to ensure compliance with this article which conditions may include, but shall not be limited to, specifications of the materials to be used and the manner in which the work or alteration is to be performed.

### **SEC. 9-9-9 PROTECTION OF RIPARIAN AREAS.**

(A) The Tar-Pamlico riparian buffer protection rule, 15A NCAC 2B .0734 and Neuse riparian buffer rule, 15A NCAC 02B .0714, require that 50-foot riparian buffers be maintained on all sides of intermittent and perennial streams, ponds, lakes and estuarine waters in the basin. The buffer rule provides for certain “allowable” uses within the buffer with NCDEQ approval, such as road and utility crossings.

(B) The City shall disapprove any new development activity proposed within the first 50 feet adjacent to a waterbody that is shown on either the USGS 7.5 minute topographic map or the NRCS soil survey map unless the owner can show that the activity has been approved by NCDEQ. NCDEQ approval may consist of the following:

- (1) An on-site determination that surface waters are not present;
- (2) An authorization certificate from NCDEQ for an “allowable” use such as a road crossing or utility line, or for a use that is “allowable with mitigation” along with a NCDEQ-approved mitigation plan. A table delineating such uses is included in the buffer rule;
- (3) An opinion from NCDEQ that vested rights have been established for the proposed development activity; and/or
- (4) A letter from NCDEQ documenting that a variance has been approved for the proposed development activity.

(C) After site development, it shall be the responsibility of the landowner or person in possession or control of the land to properly maintain all SCMs necessary to meet the requirements of the riparian buffer rules.

### **SEC. 9-9-10 NITROGEN AND PHOSPHORUS LOADING RATE TARGETS.**

(A) The project shall meet one or a combination of the following for the entire project area:

- (1) Projects draining to the Tar-Pamlico river basin shall meet a nitrogen loading rate target of 4.0 pounds per acre per year (lbs/ac/yr) and a phosphorus stormwater loading target of 0.8 lbs/ac/yr, OR
- (2) Projects draining to the Neuse river basin shall meet a nitrogen loading rate target of 3.6 pounds per acre per year (lbs/ac/yr). Projects draining to the Neuse river basin are not required to meet phosphorus loading rate targets, OR
- (3) Projects meet “runoff volume match” as defined in 15A NCAC 02H .1002.

(B) The project area used for nutrient calculation and stormwater requirements includes the site area less any existing built-upon area. The project density used for determining stormwater requirements is the amount of built-upon area subject to this ordinance at project completion divided by the project area.

(C) The developer shall determine the nitrogen and phosphorus loading generated from the project area without engineered stormwater controls, and determine the needed nitrogen or phosphorus reduction by using the approved accounting tool.

(D) The nitrogen and phosphorus loading standards in this ordinance are supplemental to, not replacements for, stormwater standards otherwise required by federal, state or local law, including without limitation any riparian buffer requirements applicable to the location of the development. This includes, without limitation, the riparian buffer protection

requirements of 15A NCAC 02B .0714, 15A NCAC 02B .0734 and 15A NCAC 02B .0295.

#### **SEC. 9-9-11 CONTROL AND TREATMENT OF RUNOFF VOLUME.**

(A) All projects not subject to more stringent standards shall meet the stormwater system design requirements set forth in 15A NCAC 02H .1003. Projects shall use a project density threshold of twenty-four (24) percent built-upon area or greater, whereupon high-density stormwater design is required. All engineered stormwater controls will meet the standards set in the Manual of Standard Designs and Details (MSDD) and the state's Minimum Design Criteria (MDC), 15A NCAC 02H .1050 through .1062.

(B) Where high-density stormwater design is required, stormwater systems shall meet the standards set forth in 15A NCAC 02H .1003(3) and be designed to control and treat the volume of runoff generated from all built-upon area by one inch of rainfall or equivalent runoff volume in one or more Primary SCMs or combination of Primary and Secondary SCMs that provides equal or better treatment. These projects may utilize offsite SCMs dedicated to treating an area encompassing the project.

(C) Phased projects may have a combination of low-density and high-density phases.

(D) Low density projects or phases may be expanded and redeveloped to increase to high-density at which time the high-density requirements in part B of this section shall apply to the project or phase.

#### **SEC. 9-9-12 METHODS TO MEET NUTRIENT CONTROL REQUIREMENTS.**

(A) Projects subject to this ordinance shall meet nitrogen and phosphorus loading targets through one or a combination of the following methods:

- (1) Projects may reduce nitrogen or phosphorus through any combination of SCMs treating runoff on the site or in an approved offsite regional stormwater control measure. The developer shall calculate the nitrogen and phosphorus reduction provided by these controls using the approved accounting tool.
- (2) Sufficient nitrogen or phosphorus reduction needs not provided by SCMs serving the project shall be acquired prior to construction through the use of permanent nutrient offset credits pursuant to the Nutrient Offset Credit Trading Rule, 15A NCAC 02B .0703. The Stormwater Administrator shall issue a letter, as condition of the approval, that documents the needed nitrogen or phosphorus credits and the location of the project with relation to hydrologic unit code (HUC). All offset measures permitted by this ordinance shall meet the requirements of 15A NCAC 02B .0703.
- (3) Proposed development undertaken by a local government solely as a public road expansion or public sidewalk project, or proposed development subject to the jurisdiction of the Surface Transportation Board, may meet nitrogen and phosphorus reduction needs for the project entirely through the use of permanent nutrient offset credits pursuant to the Nutrient Offset Credit Trading Rule, 15A NCAC 02B .0703.

(B) Permanent nutrient offset credits shall be acquired pursuant to NCGS 143-214.26 and 15A NCAC 02B .0703 prior to the start of construction of the project through one of the following methods:

- (1) A private nutrient bank
- (2) Offsite offset provided by the developer and approved by the Stormwater Administrator
- (3) An offset option provided by the City of Greenville
- (4) Payment into the Riparian Buffer Restoration Fund established in NCGS 143-214.21.

(C) Excess permanent nutrient offset credits acquired beyond what is required for the project may not be applied to any other project.

#### **SEC. 9-9-13 IMPERVIOUS SURFACE AVERAGING.**

Impervious surface averaging allows development plans for two or more noncontiguous parcels to be submitted together and treated as a single project for density and nutrient loading calculations in order to meet the requirements of this ordinance.

(A) Application to use the impervious surface averaging option shall be included with the submittal of the stormwater management permit application. Application for impervious surface averaging shall include a plat showing the 2 (or more) properties and a binding legal agreement to be reviewed and approved by the Stormwater Administrator, and recorded prior to the issuance of a building permit. The Stormwater Administrator has the power to authorize, in specific cases, impervious surface averaging for projects that meet the criteria outlined below. The city, in its sole discretion, may accept or reject a

proposed paired-parcel, averaged- impervious surface development.

(B) The total amount of development (built-upon area) allowed for the paired parcels taken together cannot exceed the amount of built-upon area that would be allowed if the parcels were developed separately.

(C) Parcels being submitted for approval under this provision shall be submitted for development approval as a single proposal and shall be located in the same watershed basin.

(D) Parcels to be used in pairs can be located throughout the city, unless specifically prohibited herein, according to the following standards:

- (1) If one of the parcels is located in a water supply watershed critical area and one is located in a protected area, the critical area parcel shall not be developed.
- (2) Impervious surface averaging is not allowed between parcels when both are in the critical area of a protected watershed.

(E) Peak flow requirements in Section 9-9-XX must be calculated and controlled on the developing lot using the area of the developing lot only, so as to minimize drainage impact on downstream properties.

(F) Applicants shall agree to bind themselves and their successors in title, individually and collectively, to maintain the pattern of development proposed for so long as the requirements of this section are applicable. Parties to enforcement of such agreement shall include the city. No such agreement shall be accepted without approval of the staff attorney as to the legal sufficiency of the documents involved.

(G) The conservation easement must provide the City with standing to enforce it. The conservation easement, once approved by the Stormwater Administrator, must be recorded in the Register of Deeds Office, with a recorded copy provided to the Stormwater Administrator, before a building permit will be issued for the project.

#### **SEC. 9-9-14 STORMWATER CONTROL MEASURES (SCMS) AND DETENTION FACILITIES**

(A) Stormwater Control Measures and detention facilities in any new development shall be the entire and sole responsibility of the landowner except those natural streams, channels, ditches, branches and drainage outfall lines for which the city has accepted the responsibility for continuous maintenance.

(B) All detention facilities, SCMs, and stormwater management plans required under this ordinance shall be evaluated by the Stormwater Administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice in the city's Manual of Standard Designs and Details (MSDD), and the state's Minimum Design Criteria (MDC), 15A NCAC 02H .1050 through .1062. The Stormwater Administrator shall determine whether proposed engineered stormwater controls will be adequate to meet the requirements of this ordinance.

(C) Stormwater Control Measures that are designed, constructed, and maintained in accordance with the criteria and specifications in the MSDD and MDC will be presumed to meet the minimum water quality and quantity performance standards of this ordinance. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the MSDD and MDC, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this ordinance. The Stormwater Administrator may require the applicant to provide the documentation, calculations, and examples necessary for the Stormwater Administrator to determine whether such an affirmative showing is made.

(D) Disconnected Impervious Surface as defined in Chapter C-10 of the NCDEQ Stormwater Design Manual and MDC defined in 15A NCAC 02H .1060 are prohibited for use as an approved SCM for single-family developments. For other than single-family developments these SCMs must meet all required MDC in 15A NCAC 02H .1050 and .1060 as well as the following:

- (1) A recorded easement on the vegetated area and maintenance access to a public right-of-way,
- (2) Drawings that show any roof ridgelines and the drainage area to each SCM vegetated area,
- (3) Easements and inspections shall not include the area of building gutters and downspouts,
- (4) No other landscaping, equipment, fences, or improvements, with exception of subsurface utilities, are allowed within the SCM easement, and
- (5) The design engineer shall certify on record drawing, that the drainage area for each SCM vegetated area is per design.

(E) The Stormwater Administrator shall have the authority to disallow, limit, or include additional necessary design criteria for any type of detention facility or SCM that he/she has determined to be ineffective, unmaintainable, or

unenforceable in the City of Greenville.

#### **SEC. 9-9-15 ATTENUATION REQUIREMENTS.**

(A) At a minimum, new development and redevelopment as described in section 9-9-5 shall not result in a net increase in peak flow leaving the site from pre-development conditions for the one-year, five-year and ten-year, 6-hour storm events.

(B) New development and redevelopment, as described in section 9-9-5, in areas at special risk with well documented water quantity problems as determined by the Stormwater Administrator, shall not result in a net increase in peak flow leaving the site from pre-development conditions for the 25-year, 6-hour storm event.

(C) Peak flow leaving the site from pre-development conditions for the one-year, five-year, ten-year and 25-year, 6-hour storm events shall be calculated, and the plan shall be prepared and approved using the standards of the City Engineer, as set forth in the city's *Manual of Standard Designs and Details* and stormwater management program.

(D) The drainage plan as required by this section shall include but not be limited to a site plan showing existing proposed buildings, storm drainage facilities, ground cover, site construction plans with grading plan, and drainage system; drainage facility design data including area map, engineering calculations, area of impervious cover and total land area.

(E) In the event that literal interpretation of this section creates an undue hardship, the applicant may appeal to the Board of Adjustment for a variance in whole or in part from this section.

(F) No part of this section shall be applied to structures existing prior to the effective date of this section nor shall existing impervious ground cover be used in the calculation of runoff.

(G) New development and redevelopment, as described in section 9-9-5 is deemed compliant with the requirements of this section when meeting the conditions of an approved Public Private Partnership Development Agreement subject to NCGS 160D-1001

#### **SEC. 9-9-16 PAYMENT IN LIEU OF ATTENUATION.**

(A) Where a proposed development results in a net increase in peak flow from pre-development conditions, the applicant may choose to make a one-time payment of fees in lieu of required attenuation improvements if one or more of the following conditions are met::

- (1) The increase in peak flow between pre- and post-development conditions does not exceed 10% (note that this exemption makes it easier to conduct redevelopment activities); or
- (2) The development occurs in a part of a drainage basin in which no study, analysis, or watershed master plan identifies any component of the stormwater drainage system downstream of the development is insufficient to meet the desired level of service as determined by the city. The Engineering Department will maintain and publish a map identifying the areas ineligible for the payment of fees in lieu.

(B) Payment of fees shall be in accordance with the Manual of Fees adopted by City Council and determined based upon the impact of the development to peak flow from pre-development conditions.

(C) All fees collected by the City pursuant to this section shall be deposited in the stormwater management fund and used only for the design and installation of stormwater capital improvements.

(D) Full payment shall be made prior to the issuance of any building permit for any use covered by the development plan.

(E) The map of areas ineligible to use the payment of fees in lieu of attenuation will be regularly updated as updates or additional watershed master plans are conducted or as improvements are made to the stormwater drainage system.

- (1) The developer may apply to amend the boundaries of the published map by submitting a request and sufficient survey to the Stormwater Administrator.
- (2) The Stormwater Administrator will approve, deny, or request additional information for the application to amend the map within 30 days.
- (3) If the requested amendment is approved, the map shall be updated and published to reflect the amendment.
- (4) If the requested amendment is denied, the developer may file an appeal pursuant to Section 9-9-9 of this ordinance.

## **SEC. 9-9-17 DRAINAGE SYSTEM RESPONSIBILITY.**

(A) Storm drainage systems shall be the entire and sole responsibility of the property owner except those natural streams, channels, ditches, branches and drainage outfall lines that carry public runoff for which the city has accepted the responsibility for continuous maintenance. All new subdivisions shall have drainage systems installed by the developer in accordance with Title 9, Chapter 5 of this Code.

(B) Any drainage ditch in a new development that conveys public runoff and will require a 48-inch diameter or smaller pipe must either be piped or designed and constructed to the standards as established in 15A NCAC 2H .1003(2)(c) for vegetated conveyances as part of a low-density development or 15A NCAC 2H .1061 for treatment swales. The required pipe size shall be as determined by the engineer for the developer and approved by the Stormwater Administrator .

(C) Vegetated conveyances subject to 15A NCAC 2H .1003(2) shall be the entire and sole responsibility of the property owner and shall have a maintenance plan and agreement on file in the office of the Stormwater Administrator per Section 9-9-20.

## **SEC. 9-9-18 VARIANCES.**

- (A) Any person may petition the Board of Adjustment for a variance granting permission to use the person's land in a manner otherwise prohibited by this ordinance. Requests for a variance to the Board of Adjustment shall be made pursuant to Title 9, Article 5 of the City code.
- (B) For all proposed major and minor variances from the requirements of this ordinance, the Board of Adjustment shall make findings of fact in accordance with the procedures of N.C.G.S 160D-406 showing that:
- (1) there are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of the ordinance;
  - (2) the variance is in harmony with the general purpose and intent of the local watershed protection ordinance and preserves its spirit; and
  - (3) in granting the variance, the project will ensure equal or better protection of waters of the State than the requirements of 15A NCAC 02B .0711 or 15A NCAC 02B .0731, and that the public safety and welfare have been assured and substantial justice has been done.
- (C) In the case of a request for a minor variance, the Board of Adjustment may vary or modify any of the regulations or provisions of the ordinance so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done may impose reasonable and appropriate conditions and safeguards upon any variance it grants.
- (D) The Board of Adjustment may attach conditions to the major or minor variance approval that support the purpose of this ordinance. If the variance request qualifies as a major variance, and the Board of Adjustment decides in favor of granting the major variance, the Board shall then prepare a preliminary record of the hearing and submit it to the North Carolina Environmental Management Commission for review and approval. If the Commission approves the major variance or approves with conditions or stipulations added, then the Commission shall prepare a Commission decision which authorizes the City of Greenville to issue a final decision which would include any conditions or stipulations added by the Commission. If the Commission denies the major variance, then the Commission shall prepare a decision to be sent to the City of Greenville. The Board of Adjustment shall prepare a final decision denying the major variance.
- (E) Decisions of the Board of Adjustment on requests for a variance shall be subject to Superior Court review by proceedings in the nature of certiorari.

## **SEC. 9-9-19 SCM ACCEPTANCE AND WARRANTY.**

(A) Upon initial construction inspection and approval by the Stormwater Administrator, the detention facility or SCM is warrantied and maintained by the developer for a minimum of 12 months. During this time any repairs or maintenance shall be the responsibility of the developer.

(B) Not sooner than 11 months after initial construction inspection and approval, the developer may request the Stormwater Administrator to perform a warranty inspection of the detention facility or SCM. The Stormwater Administrator shall perform the warranty inspection within 30 days of the request. If the Stormwater Administrator fails to perform the warranty inspection within 30 days of the request, the city shall assume one-time responsibility for any required

maintenance or repairs to the detention facility or SCM in order to return it to “like-new condition”.

(C) The Stormwater Administrator will notify the developer of any required maintenance or repairs to the detention facility or SCM. The developer shall have 90 days to perform the required maintenance or repairs or to submit a written plan of action subject to approval of the Stormwater Administrator. Upon completing all required maintenance or repairs, the developer shall request a reinspection of the detention facility or SCM subject to part (G) of this section.

(D) If the Stormwater Administrator, upon inspection, finds the detention facility or SCM to be in “like-new condition”, he/she shall issue a warranty inspection approval notice at which time the developer may choose to transfer ownership and maintenance responsibilities to a permanent owner such as home owners association or property owners association.

#### **SEC. 9-9-20 SCM INSPECTION AND MAINTENANCE.**

(A) Each detention facility, vegetated conveyance, or SCM shall have a maintenance plan and agreement on file in the office of the Stormwater Administrator. Maintenance plans must be on file prior to construction and shall contain the following information:

- (1) Owner’s name or names;
- (2) Owner’s mailing address;
- (3) Deed book, page number or other recording information for the land containing the detention facility or SCM(s);
- (4) Any easements for maintenance, ingress, egress and regress to the detention facility or SCM(s);
- (5) A description of the detention facility or SCM(s);
- (6) Maintenance recommended for the detention facility or SCM(s) to achieve the maximum effect; and
- (7) Notarized signature of the owner of the detention facility or SCM(s) and statement that the owner understands the requirements of the rules and regulations for the detention facility or SCM(s).

(B) Each detention facility or SCM shall be maintained as required in the maintenance plan as to allow the detention facility or SCM to achieve its maximum effect. Maintenance is to be performed as needed.

(C) Maintenance of the detention facility or SCM includes maintaining access for the stormwater to reach and leave the detention facility or SCM, maintenance of the detention facility or SCM structure itself, and maintaining access to the detention facility or SCM for the purpose of inspections, maintenance and repairs.

(D) An annual maintenance and inspection report completed by a qualified professional shall be maintained by the owner for each detention facility or SCM in accordance with the operation and maintenance agreement submitted in the initial plan submittal. The annual report will describe the maintenance and repair activities of the subject year, including copies of inspection and repair logs, and note any needed modifications to the repair plan for the following year. Annual reports shall be provided to the Stormwater Administrator annually upon completion and kept on record for a minimum of five years. Records of annual and any other inspections required by the Operation and Maintenance agreement shall be made available to the city upon request.

(E) Annual inspection reports shall be submitted to the city in the form and method as determined by the Stormwater Administrator.

(F) If repairs or maintenance to the detention facility or SCM is required, the qualified professional will the maintenance required on the inspection report provided to the owner and the city. The owner will have 90 days from the receipt of the report to bring the detention facility or SCM into proper working order and provide a re-inspection report showing the detention facility or SCM is compliant.

(G) The qualified professional shall certify that the detention facility or SCM is fully functioning and operating as designed and intended.

(H) If any person, having been ordered to perform such maintenance, fails, neglects or refuses to perform the maintenance within 90 days from receipt of the order, the Director of Engineering shall, at his or her own discretion, have

employees of the city or other designated persons go upon said premises and perform the necessary maintenance.

(I) The cost of repairs and work completed by the city shall be the responsibility of the owner. The city will submit a statement of charges to be reimbursed by the owner. The owner shall have 30 days to remit payment.

(J) All detention facilities or SCM(s) shall be inspected by the city at least once every three years in addition to the inspections performed by the owner's qualified professional. This inspection by the city will be to verify consistency with inspections performed by the qualified professionals.

(K) The city will provide the owner and his/her qualified professional the inspection report and detail any required repairs or maintenance. Where there are differences in the inspection report from the qualified professional's inspection and the city's inspection, the city's inspection and list of required repairs and maintenance shall take precedence.

#### **SEC. 9-9-21 QUALIFIED PROFESSIONAL STATUS.**

(A) If the Stormwater Administrator determines there to be significant and major errors or omissions in one or more annual inspection reports provided by a qualified professional, the Stormwater Administrator shall:

- (1) Notify the SCM owner and the qualified professional in writing of the errors or omissions,
- (2) Offer relevant training and education for the qualified professional including on-site consultation, and
- (3) Schedule the subject SCM for additional annual inspections by the city.

(B) If the Stormwater Administrator determines there to be significant and major errors or omissions in three or more annual inspection reports provided by a qualified professional, regardless of the particular detention facility or SCM inspected or the time frame of the inspections, the Stormwater Administrator shall:

- (1) Suspend the qualified professional status of the inspector for a minimum period of 12 months. During this time, inspections from the suspended individual will not be accepted by the city to comply with the annual inspection requirement. This suspension applies only to the individual inspector and not to his/her company or firm,
- (2) Notify the detention facility or SCM owner(s) and the qualified professional in writing of the suspension and instructions for status restoration,

(C) An inspector whose qualified professional status has been suspended may apply to restore his/her qualified professional status only after a minimum of 12 months and completion of an on-site personalized training with city staff. The inspector should coordinate scheduling of this training with the Stormwater Administrator anytime during the suspension as city staff are available.

(D) Once qualified professional status has been restored to an inspector, the city will audit the next three inspection reports submitted by that qualified professional to ensure accuracy and consistency. If the Stormwater Administrator determines there to be significant and major errors or omissions in one or more of these three reports, the inspector shall be re-suspended and shall repeat the restoration per this section.

(E) For repeated, fraudulent, or egregious errors or omissions submitted by a qualified professional, the Stormwater Administrator shall have the authority to permanently revoke his/her qualified professional status and/or file a report with any applicable licensing or certifying board or agency.

#### **SEC. 9-9-22 DRAINAGE ASSISTANCE PROJECTS LOCATED OUTSIDE OF CITY-OWNED RIGHTS-OF-WAY.**

(A) *Piping Assistance*; The city will participate with property owners in the installation of storm drains crossing private property in other than new subdivisions within the city's corporate limits under the following conditions:

- (1) The storm drain to be installed will carry public runoff; stormwater discharged from an existing city or state street or streets dedicated for public street purposes, including alleys, and accepted for maintenance by the city or state. Storm drainage systems not meeting this requirement are the responsibility of the property owner(s) and the city will not participate in the installation of such storm drains.
- (2) An application for the installation of storm drains must be signed by 100% of the owners of the affected property within the limits of the proposed project and submitted to the Stormwater Administrator.
- (3) The property owners must dedicate a drainage easement of a width, length, and type as specified by the Stormwater Administrator. The dedication of such easement will be at no cost to the city.

- (4) The shortest distance in which the city will participate in the installation of storm drainage will be 300 linear feet; any shorter distances than 300 linear feet must be deemed feasible by the Stormwater Administrator before city participation.
- (5) All pipe sizes, structural accessories, discharge points and other specifications shall be as determined by the Stormwater Administrator.
- (6) The city will furnish all labor and equipment and the adjoining property owners will pay for all materials for construction. These materials shall be as determined necessary by the Stormwater Administrator and shall include headwalls, manholes, catch basins and all other structures normal to a complete storm drainage system. All monies for materials must be deposited by property owners before construction is started.
- (7) All authorized work shall be performed by the city, its agents and/or contractors. The city will direct all necessary activities including but not limited to design, engineering, contracting, and construction.
- (8) Nothing in this subsection (A) shall be construed, interpreted or applied in a manner to mean that the city will participate in any way in the construction of any box culvert or other structure to be built or constructed in place. The piping of streams shall be restricted in all instances to that drainage where pre-cast or preassembled pipe will be of sufficient capacity, as calculated by the Stormwater Administrator, for the piping and enclosing herein mentioned and contemplated.
- (9) Cost for each property owner shall be determined by dividing the total cost of materials by the total footage of property owners adjoining the proposed pipe locations directly and multiplying the result by the footage of each individual owner to determine his share of the cost.
- (10) All storm drainage construction on private property shall be done on a scheduled basis so as not to interfere with other city projects and then only as budgeted funds of the city are available.
- (11) The city will not participate in the construction of any storm drainage systems which will require a pipe size larger than 48 inches due to the greatly increased cost of labor, equipment and engineering required due to the use of box culverts, paved channels and other types of solutions.
- (12) The city will not participate in the piping of jurisdictional streams.

(B) *Bank Stabilization Assistance*; The city will stabilize banks on ditches or streams, both jurisdictional and non-jurisdictional, crossing private property within the city's corporate limits under the following conditions:

- (1) The ditch or non-jurisdictional stream carries public runoff; stormwater discharged from an existing city or state street or streets dedicated for public street purposes, including alleys, and accepted for maintenance by the city or state. Storm drainage systems not meeting this requirement are the responsibility of the property owner(s) and the city will not participate in such drainage projects.
- (2) An application for bank stabilization must be signed by 100% of the owners of the affected property within the limits of the proposed project and submitted to the Stormwater Administrator.
- (3) The property owners must dedicate a drainage easement of a width, length, and type as specified by the Stormwater Administrator. The dedication of such easement will be at no cost to the city.
- (4) Materials and construction methods shall be as determined necessary by the Stormwater Administrator. All authorized work shall be performed by the city, its agents and/or contractors. The city will direct all necessary activities including but not limited to design, engineering, contracting, and construction.
- (5) All drainage projects on private property shall be done on a scheduled basis so as not to interfere with other city projects and then only as budgeted funds of the city are available.

(C) Drainage assistance projects listed in subsections (A), and (B) above may be funded with stormwater utility funds or other funds provided that all of the following eligibility criteria are met:

- (1) The drainage system is not part of a water quality treatment facility or water quantity control device that was required to be constructed and maintained as part of an approved development.
- (2) The drainage system is not located on property which is undergoing development or redevelopment unless the development/redevelopment project is funded in part by other city funds.



- (3) The project shall be the most cost effective, reasonable and practical alternative to correct the existing problem, as determined by the Stormwater Administrator. Any excess costs above the determined most cost effective, reasonable and practical alternative shall be borne entirely by the property owner. Design criteria shall meet, but are not limited to, the following criteria:
  - (a) The proposed project shall meet current city stormwater design standards to the maximum extent practical;
  - (b) Existing ditches or non-jurisdictional streams shall not be piped unless engineering reasons require such work or significant cost savings would be realized; and
  - (c) Jurisdictional streams and their associated buffers shall be protected to the maximum extent practical.
- (4) The application of the above factors and the determination as to eligibility for stormwater utility funding or other funding shall be made by the Stormwater Administrator. Property owners may appeal any decision by the Stormwater Administrator to the Director of Engineering. Property owners may appeal any decision by the Director of Engineering to the City Manager. If property owners are not satisfied with the decision of the City Manager, property owners may appeal any decision by the City Manager to City Council.

(D) No action or inaction of the city pursuant to the policy established by this section shall impose upon the city, its agents, officers or employees any responsibility of liability of any kind, past or future, relating to any person or property. The petitioners shall agree to covenant to and hold the city harmless from any death, personal injury or property damage resulting from the work. No such action by the city shall be considered as a taking or appropriation of any stream, drain or ditch as a part of the city's drainage system.

(E) The conditions set forth in this section shall be binding on the heirs, successors, assigns and grantees of the property owners.

(F) Nothing in this section shall be construed, interpreted or applied in such manner as to aid or assist in the subdivision or development of property in the city. The policy set out herein shall be applicable only to those properties for which no new subdivision or development is anticipated or planned.

(G) The intent of this section is not to transfer responsibility or liability to the city for drainage system components on property not owned by the city that carry stormwater. Rather, it is to establish criteria and priorities to be used when making available funds for work on drainage system components located outside of city-owned rights-of-way.

(H) City participation in work on drainage system components outside of the right-of-way is limited to the extent to which funds are available for such purpose and no entitlement to receive funds for such work arises from this section. (Ord. No. 11-006, § 4, passed 1-13-2011)

#### **SEC. 9-9-23 ACCEPTANCE OF MAINTENANCE RESPONSIBILITY FOR OPEN CHANNELS BY THE CITY.**

(A) The city accepts the responsibility for the maintenance and upkeep of all SCMs, detention facilities and other components of the stormwater drainage system, located within a city right-of-way, or city property within the city's corporate limits and not within a state right-of-way.

(B) The responsibility of the city for the maintenance of streams, located within the city's corporate limits and not within a state right-of-way, includes only the removal of trees and debris that block the flow of the stream. The city will only remove that portion of a trees and debris that is blocking or is an imminent threat to block stream flow. Property owners are responsible for maintaining the vegetation to the standards established by the state (riparian buffer rule). Removal of trash in a stream is the property owner's responsibility including in any adjoining right-of-way. (Ord. No. 11-006, § 5, passed 1-13-2011)

#### **SEC. 9-9-24 ILLICIT DISCHARGES AND CONNECTIONS.**

(A) *Illicit discharges.*

- (1) Except as provided for below in this section, no person shall cause or allow the discharge, emission,

disposal, pouring or pumping (directly or indirectly) of any fluid, solid, gas or other substance, other than stormwater, to any stormwater drainage conveyance, the municipal separate storm sewer system or to the waters of the state, or upon the land in such proximity to such waters (such that the substance is likely to reach a stormwater drainage conveyance, the MS4, or the waters of the state), The following non-stormwater discharges are deemed permitted and do not result in a violation of this section, provided that they do not significantly impact water quality:

- (a) Dechlorinated filter backwash and drainage associated with swimming pools;
  - (b) Filter backwash and drainage associated with raw water intake screening and filtering devices;
  - (c) Condensate from residential or commercial air conditioning;
  - (d) Residential and charity vehicle wash water;
  - (e) Flushing and hydrostatic testing water associated with utility distribution systems;
  - (f) Discharges associated with emergency removal and treatment activities, for hazardous materials, authorized by the federal, state or local government on-scene coordinator;
  - (g) Uncontaminated ground water (including the collection or pumping of springs, wells, or rising ground water and ground water generated by well construction or other construction activities);
  - (h) Collected infiltrated stormwater from foundation or footing drains;
  - (i) Collected ground water and infiltrated stormwater from basement or crawl space pumps;
  - (j) Irrigation water;
  - (k) Street wash water;
  - (l) Flows from firefighting;
  - (m) Discharges from the pumping or draining of natural watercourses or waterbodies;
  - (n) Unmodified potable water associated with flushing and cleaning of stormwater conveyances;
  - (o) Wash water from the cleaning of the exterior of buildings, including gutters, provided that the discharge does not pose an environmental or health threat; and
  - (p) Other non-stormwater discharges for which a valid NPDES discharge permit has been approved and issued by Department of Environmental Management, and provided that any such discharges to the Municipal Separate Storm Sewer System shall be authorized by the city.
- (2) Prohibited substances include but are not limited to: oil, anti-freeze, chemicals, animal waste, paints, garbage, sediment, and litter.

*(B) Exposure of substances to stormwater.*

- (1) It is unlawful for any person to manage or store any substances, liquid or solid, in a manner that permits exposure to stormwater if by reason of its nature, the substance:
  - (a) Is, or has the potential to be, harmful or toxic to human, animal, or plant health,
  - (b) Degrades or impairs water quality,
  - (c) Interferes or may interfere with free and rapid flow of surface water, or
  - (d) Adversely affects the State of North Carolina classification of the stream into which the stormwater drainage system discharges.
- (2) Substances defined in subsection B(1) placed outdoors must be stored under a shelter or otherwise protected from being allowed into the stormwater runoff.

*(C) Illicit connections.*

- (1) Connections to the municipal separate storm sewer system or stormwater drainage system that allow the discharge of non-stormwater, other than the exclusions described in subsection (A) above, are unlawful. Prohibited connections include but are not limited to: floor drains, waste water from washing machines or

sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and waste water from septic systems.

- (2) Where it is determined that the connection may result in the discharge of hazardous materials or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife or habitat; or was made in violation of any applicable regulation or ordinance, the Stormwater Administrator or his or her designee shall designate the time within which the connection shall be removed. In setting the time limit for compliance, the city shall take into consideration:

1. The quantity and complexity of the work;
2. The consequences of delay;
3. The potential harm to the environment, to the public health, and to public and private property; and
4. The cost of remedying the damage.

(D) *Spills.*

- (1) Spills or leaks of polluting substances discharged to, or having the potential to be indirectly transported to the stormwater drainage system, shall be contained, controlled, collected and removed promptly. All affected areas shall be restored to their preexisting condition.
- (2) Persons associated with the spill or leak shall immediately notify the City Fire Chief or his or her designee of all spills or leaks of polluting substances. Notification shall not relieve any person of any expenses related to the restoration, loss, damage or any other liability which may be incurred as a result of the spill or leak, nor shall such notification relieve any person from other liability which may be imposed by state or other law.

(E) *Nuisance.* Illicit discharges and illicit connections which occur or exist within the city limits are hereby found, deemed and declared to be dangerous or prejudiced to the public health or public safety and are found, deemed and declared to be public nuisances. Such public nuisances may also be abated in accordance with the procedures set forth in section 12-3-4.

(Ord. No. 04-112, passed 9-9-2004)

## **SEC. 9-9-25 ENFORCEMENT.**

(A) *Authority to enter.*

- (1) Any city personnel or contractor, authorized by the Stormwater Administrator shall be permitted to enter upon public or private property for the purposes of observation, inspection, sampling, monitoring, testing, surveying and measuring for compliance. Should the owner or occupant of any property refuse to permit such reasonable access, the Stormwater Administrator or his or her designee shall proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2 or its successor.
- (2) No person shall obstruct, hamper or interfere with any such representative while carrying out his or her official duties. For the purpose of enforcing this chapter, the Stormwater Administrator or any employee so designated by him or her may at any time enter upon a property to inspect or repair any part of the stormwater system.

(B) *Civil penalties.*

- (1) Any person who violates any of the provisions of this chapter, or rules or orders adopted or issued pursuant to this chapter, or who initiates or continues a land-disturbing activity for which a plan is required except in accordance with the terms, conditions and provisions of an approved plan, is subject to a civil penalty. The maximum civil penalty for a violation of this ordinance is \$10,000 per violation per day. Each day of continuing violation shall constitute a separate violation. A person may also be assessed a one-time civil penalty of up to \$10,000 for the day the violation is first detected
- (2) In determining the amount of the penalty, the Stormwater Administrator shall consider:
  1. The degree and extent of harm to the environment, the public health, and public and private property;
  2. The cost of remedying the damage;
  3. The duration of the violation;
  4. Whether the violation was willful;
  5. The prior record of the person responsible for the violation in complying or failing to comply with this chapter;
  6. The costs of enforcement to the public; and

7. The amount of money saved by the violator through his, her or its noncompliance.
- (3) Civil penalties shall be assessed by the City Engineer or his or her designee. No penalty shall be assessed until the person alleged to be in violation is served written notice of the violation by registered mail, certified mail-return receipt requested, or personal service. Refusal to accept the notice shall not relieve the violator of the obligation to pay the penalty. The notice shall describe the violation with particularity and specify the measures needed to come into compliance. The notice shall designate the time within which the measures must be completed. In setting the time limit for compliance, the city shall take into consideration:
    1. The quantity and complexity of the work;
    2. The consequences of delay;
    3. The potential harm to the environment, the public health, and public and private property; and
    4. The cost of remedying the damage.
  - (4) The notice shall warn that failure to correct the violation within the specified time period may result in the assessment of additional civil penalty and/or other enforcement action. If after the allotted time period has expired, and the violation has not been corrected, the penalty shall be assessed from the date the violation was first detected and each day of continuing violation thereafter shall constitute a separate violation under this section.
  - (5) The Stormwater Administrator shall make written demand for payment upon the person in violation. If the payment is not received or equitable settlement reached within 30 days after demand for payment is made, the matter shall be referred to the City Attorney for institution of a civil action in the name of the city, in the appropriate division of the general court of justice in Pitt County for recovering the penalty.
- (C) *Stop-Work Order.*
- (1) Whenever the City Engineer has a reasonable cause to believe that any person is violating or threatening to violate this chapter, rule, regulation, order duly adopted or issued pursuant to this chapter or making a connection to a stormwater conveyance or stormwater conveyance system other than in accordance with the terms, conditions, and provisions of approval, the city may, either before or after the institution of any other action or proceeding authorized by the code issue a stop-work order. The stop-work order shall be in writing and directed to the person doing the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a separate violation of this ordinance subject to civil penalty.

(D) *Injunctive relief.*

- (1) Whenever the City Engineer has a reasonable cause to believe that any person is violating or threatening to violate this chapter, rule, regulation, order duly adopted or issued pursuant to this chapter or making a connection to a stormwater conveyance or stormwater conveyance system other than in accordance with the terms, conditions, and provisions of approval, the city may, either before or after the institution of any other action or proceeding authorized by the code, institute a civil action in the name of the city for injunctive relief to restrain and abate the violation or threatened violation.
- (2) The institution of an action for injunctive relief under subsection (C) shall not relieve any party to such proceeding from any further civil or criminal penalty prescribed for violations of this Code.

(E) *Criminal penalties.* Any person who knowingly or willfully violates any provision of this chapter, rule, regulation, order duly adopted or issued pursuant to this chapter shall be guilty of a misdemeanor, punishable by a fine not to exceed \$500 or imprisonment for not longer than 30 days. Each violation shall be a separate offense.

## **SEC. 9-9-26 APPEALS.**

- (A) Any aggrieved person affected by any decision, order, requirement, civil penalty assessment, or determination relating to the interpretation or application of this ordinance made by the Stormwater Administrator, may contest the decision by submitting a written request for a review of the decision by the Stormwater Administrator to the Director of Engineering within 15 days after receipt of the notice of decision. Upon receipt of the written request, the Stormwater Administrator shall confer with the Director of Engineering concerning the decision; and after the conference, the Director of Engineering shall notify the aggrieved person within ten days after receipt of the written request for a review whether the decision has been upheld or modified.
- (B) Any aggrieved person not satisfied with the action of the Director of Engineering, may file an appeal to the Board of Adjustment within 30 days. In the case of requests for review of proposed civil penalties for

violations of this ordinance, the Board of Adjustment shall make a final decision on the request for review within 90 days of the date the request for review is filed.

- (C) Appeals requests to the Board of Adjustment shall be made pursuant to Title 9, Article S of the city code. The Stormwater Administrator shall transmit to the Board of Adjustment all documents constituting the record on which the decision appealed from was taken.
- (D) Decisions of the Board of Adjustment shall be subject to Superior Court review by proceedings in the nature of certiorari.

SECTION 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 3. Any part or provision of this ordinance found by a court of competent jurisdiction to be in violation of the Constitution or laws of the United States or North Carolina is hereby deemed severable and shall not affect the validity of the remaining provisions of the ordinance.

SECTION 4. This ordinance will become effective July 1, 2024.

Adopted this 11th day of April, 2024.

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P.J. Connelly, Mayor

ATTEST:

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Valerie Shiuwegar, City Clerk