

PHASE II STORMWATER ORDINANCE



2013

Revised 1/15/15

CITY OF KINGS MOUNTAIN, NORTH CAROLINA CODE OF ORDINANCES

2014 S-1 Supplement contains:
Local legislation current through Ord. 13-36, passed 12-10-2013; and
State legislation current through 2013 North Carolina Legislative Service, Pamphlet No. 6

Published by:
American Legal Publishing Corporation
432 Walnut Street, 12th Floor
Cincinnati, Ohio 45202
Tel: (800) 445-5588
Fax: (513) 763-3562
Email: customerservice@amlegal.com
Internet: <http://www.amlegal.com/>

CITY OFFICIALS

Edgar O. Murphrey, Jr.	Mayor
Rodney Gordon	City Council
Keith Miller	City Council
Curtis Pressley	City Council
Howard Shipp	City Council
Mike Butler	Mayor Pro-Tem
Tommy Hawkins	City Council
Rick Moore	City Council
Marilyn H. Sellers	City Manager
Ann L. Sessom	City Clerk
Mickey Corry	City Attorney

ADOPTING ORDINANCE

ORDINANCE 12-24

ENACTING A CODE OF ORDINANCES FOR THE CITY OF KINGS MOUNTAIN, NORTH CAROLINA, REVISING, AMENDING, RESTATING, CODIFYING AND COMPILING CERTAIN EXISTING GENERAL ORDINANCES OF THE CITY OF KINGS MOUNTAIN DEALING WITH SUBJECTS EMBRACED IN SUCH CODE OF ORDINANCES

WHEREAS, the present general and permanent ordinances of the political subdivision are inadequately arranged and classified and are insufficient in form and substance for the complete preservation of the public peace, health, safety and general welfare of the municipality and for the proper conduct of its affairs; and

WHEREAS, the Acts of the Legislature of the State of North Carolina empower and authorize the City of Kings Mountain to revise, amend, restate, codify and compile any existing ordinances and all new ordinances not heretofore adopted or published and to incorporate such ordinances into one ordinance in book form; and

WHEREAS, the City Council of the City of Kings Mountain has authorized a general compilation, revision and codification of the ordinances of the City of Kings Mountain of a general permanent nature and publication of such ordinance in book form; and

WHEREAS, it is necessary to provide for the usual daily operation of the municipality and for the immediate preservation of the public peace, health, safety and general welfare of the municipality that this ordinance take effect at an early date.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Kings Mountain, North Carolina:

Section 1. The general ordinances of the City of Kings Mountain as revised, amended, restated, codified, and compiled in book form are hereby adopted as and shall constitute the “Code of Ordinances of the City of Kings Mountain, North Carolina.”

Section 2. Such Code of Ordinances as adopted in Section 1 shall consist fo the following Titles:

CODE OF ORDINANCES

CHAPTER 54: STORMWATER

Section

General Provisions

- 54.001 Title
- 54.002 Authority
- 54.003 Stormwater utility
- 54.004 Findings of fact
- 54.005 Statement of purpose
- 54.006 Service charges, rates and fee schedule
- 54.007 Exemptions and credits
- 54.008 Applicability and jurisdiction
- 54.009 Interpretation
- 54.010 Design manual
- 54.011 Relationship to other laws, regulations and private agreements
- 54.012 Effective date and transitional provisions
- 54.013 Definitions

Administration and Procedures

- 54.030 Review and decision-making entities
- 54.031 Review procedures
- 54.032 Applications for approval
- 54.033 Approvals
- 54.034 Appeals

Standards

- 54.050 General standards
- 54.051 Development standards for low-density projects
- 54.052 Development standards for high-density projects
- 54.053 Standards for stormwater control measures
- 54.054 Dedication of BMPs, facilities and improvements

- 54.055 Variances
- 54.056 Additional standards for special situations
- 54.057 Onsite wastewater

Maintenance

- 54.070 General standards for maintenance
- 54.071 Operation and maintenance agreement
- 54.072 Inspection program
- 54.073 Performance security for installation and maintenance
- 54.074 Notice to owners
- 54.075 Records of installation and maintenance activities
- 54.076 Nuisances

Illicit Discharges

- 54.080 Illicit discharges and connections

Enforcement and violations

- 54.100 General
- 54.101 Remedies and penalties
- 54.102 Procedures

GENERAL PROVISIONS

§ 54.001 TITLE.

This chapter shall be officially known as "The Phase II Stormwater Ordinance." It is referred to herein as "this chapter."

(Ord. 13-33, passed 11-26-2013)

§ 54.002 AUTHORITY.

The City Council is authorized to adopt this chapter to create a stormwater utility and establish a schedule of stormwater fees for property in the corporate limits, pursuant to state law, including but not limited to Article 14, § 5 of the Constitution of North Carolina; G.S. § 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2004-163; Chapter 160A §§ 174 and 185.

(Ord. 13-33, passed 11-26-2013)

§ 54.003 STORMWATER UTILITY.

A stormwater utility is hereby established to provide stormwater management services, as authorized by state law. Stormwater service charges will be determined and modified from time to time so that the total revenues generated by the charges will be used to pay the principal of and interest on the debt incurred for stormwater purposes and such expenses as are reasonably necessary or convenient in the planning, construction, operation, and maintenance of the stormwater system. (See Article 14, § 5 of the Constitution of North Carolina; G.S. § 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2004-163; Chapter 160A §§ 174 and 185.)

(Ord. 13-33, passed 11-26-2013)

§ 54.004 FINDINGS OF FACT.

(A) Whereas, development and redevelopment alter the hydrologic response of local watersheds and increases stormwater runoff rates and volumes, flooding, soil erosion stream channel erosion, non-point and point source pollution, sediment transport and deposition, and reduce groundwater recharge.

(B) Whereas, these changes in stormwater runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology which are harmful to public health and safety as well as to the natural environment. These effects can be managed and minimized by applying proper design and well-planned controls to manage stormwater runoff from development sites.

(C) Whereas, the Federal Water Pollution Control Act of 1972 (Clean Water Act) and Federal Phase II Stormwater Rules promulgated under it, as well as rules of the North Carolina Environmental Management Commission promulgated in response to federal Phase II requirements, compel certain urbanized areas, including the city, to adopt stormwater controls as included in this chapter.

(D) Whereas, the city's National Pollutant Discharge Elimination System (NPDES) permit became effective December 1, 2011 and requires the city to adopt a local ordinance implementing stormwater controls on sites during and after construction activity.

(E) Therefore, the City Council hereby establishes this set of regulations to meet the requirements of state and federal law regarding control of stormwater runoff and discharge.

(Ord. 13-33, passed 11-26-2013)

§ 54.005 STATEMENT OF PURPOSE.

(A) *Statement of purpose.* It is the purpose of this chapter to protect, maintain and enhance the public health, safety, environment and general welfare by establishing requirements and procedures to control the adverse effects of increased post-development stormwater runoff and nonpoint and point source pollution associated with new development and redevelopment as well as illicit discharges into municipal stormwater systems. Proper management of construction-related and post development stormwater runoff will minimize damage to public and private property and infrastructure; safeguard the public health, safety, and general welfare; and protect water and aquatic resources.

(B) The chapter seeks to meet the requirements of the city's National Pollutant Discharge Elimination System (NPDES) permit and its general purposes through:

(1) Establishing decision-making process for development that protects the integrity of watersheds and preserve the health of water resources;

(2) Requiring new development and redevelopment maintain the pre-development hydrologic response in their post-development state as nearly as practicable to reduce flooding, stream bank erosion, nonpoint and point source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats;

(3) Establishing minimum post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;

(4) Establishing design and review criteria for the construction, function, and use of structural stormwater best management practices (BMP's) to meet the minimum post-development stormwater management standards;

(5) Encouraging the use of better management and set design practices, such as the use of vegetated conveyances for stormwater and the preservation of green space, riparian buffers and other conservation areas to the maximum extent practicable;

(6) Establishing provisions for the long-term responsibility for and maintenance of structural and nonstructural stormwater BMPs to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety; and

(7) Establishing administrative procedures for the submission, review, approval and disapproval of stormwater management plans, for the inspection of approved projects, and to assure appropriate long term maintenance;

(Ord. 13-33, passed 11-26-2013)

§ 54.006 SERVICE CHARGES, RATES AND FEE SCHEDULE.

(A) Stormwater service charges shall accrue beginning on January 1, 2014. Stormwater service charges shall apply to all property within the city limits that is serviced by the city's stormwater system without regard to ownership. Such charges shall be based on the amount of impervious surface on each parcel as determined by the equivalent residential unit standard. For purposes of this chapter, an equivalent residential unit (ERU) is 2000 square feet of impervious surface.

(B) The City Council shall set a base rate for single-family residential uses and charges for non-single-family residential uses shall be calculated utilizing the equivalent residential unit. For purposes of this chapter, a non-single-family residential use shall be any land use other than single family residential, except for undeveloped land.

(C) The stormwater fee of \$2.50 per residence and \$2.50/2000 square feet of impervious surface for business and commercial customers is set forth and to apply the current code's civil penalties to the sotrmwater permits and fees effective January 1, 2014.

(Ord. 13-33, passed 11-26-2013; Ord. 13-37, passed 12-10-2013)

§ 54.007 EXEMPTIONS AND CREDITS.

Except as provided in this section, no public or private property shall be exempt from stormwater service charges or receive a credit against such charges.

(A) Only undeveloped land shall be exempt from stormwater service fees.

(B) Properties subject to stormwater service fees may be granted credits against the fees in accordance with a credit policy manual developed by the City Manager and referenced in the City of Kings Mountain Fee Schedule. Any non-single-family residential use that provides measures to mitigate the impacts of runoff on the stormwater system shall be eligible for a maximum credit of 40% of the service fee. The amount of the credit shall be proportional to the extent the measures address the impacts on peak discharge, total runoff volume and water quality as compared to the applicable city, state, and federal standards. Water quantity and water quality measures shall each be eligible for a 20% maximum credit. Any credit allowance shall be conditional on continuing compliance with applicable standards, including requirements for operation and maintenance.

(C) Subject to approval in accordance with the credit policy, any credits shall be effective on the date of application therefore.

(Ord. 13-33, passed 11-26-2013)

§ 54.008 APPLICABILITY AND JURISDICTION.

(A) *General.* Beginning with and subsequent to its effective date, this chapter shall be applicable to all development and redevelopment, including, but not limited to, site plan applications, subdivision applications, and grading applications, unless exempt pursuant to division (B) of this section.

(B) *Exemptions.* Activities that are exempt from permit requirements of § 404 of the federal Clean Water Act as specified in 40 C.F.R. § 232 (primarily, ongoing farming and forestry activities) are exempt from the provisions of this chapter.

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

(D) *Map.*

(1) The provisions of this chapter shall apply within the areas designated on the map titled "Phase II Stormwater Map of Kings Mountain, North Carolina", which is adopted simultaneously herewith. The Stormwater Map and all explanatory matter contained thereon accompany, and are hereby made a part of this chapter.

(2) The Stormwater Map shall be kept on file by the Stormwater Administrator and shall be updated to take into account changes in the land area covered by this chapter and the geographic location of all structural BMP and permitted under this chapter. In the event of a dispute, the applicability of this chapter to a particular area of land or BMP shall be determined by reference

to the North Carolina Statutes, the North Carolina Administrative Code, and local zoning and jurisdiction boundary ordinances.

(Ord. 13-33, passed 11-26-2013)

§ 54.009 INTERPRETATION.

(A) *Meaning and intent.* All provisions, terms, phrases, and expressions contained in this chapter shall be construed according to the general and specific purposes set forth. If a different or more specific meaning is given for a term defined elsewhere in the City of Kings Mountain's Municipal Code, the meaning and application of the term in this chapter shall control for purposes of application of this chapter.

(B) *Text controls in event of conflict.* In the event of a conflict or inconsistency between the text of this chapter and any heading, caption, figure, illustration, table, or map, the text shall control.

(C) *Authority for interpretation.* The Stormwater Administrator has authority to determine the interpretation of this chapter. Any person may request an interpretation by submitting a written request to the Stormwater Administrator, who shall respond in writing within 30 days. The Stormwater Administrator shall keep on file a record of all written interpretations of this chapter.

(D) *References to statutes, regulations, and documents.* Whenever reference is made to a resolution, ordinance, statute, regulation, manual (including the Design Manual), or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.

(E) *Computation of time.* The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the city, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by the city. References to days are calendar days unless otherwise stated.

(F) *Delegation of authority.* Any act authorized by this chapter to be carried out by the Stormwater Administrator of the city may be carried out by his or her designee.

(G) *Usage.*

(1) *Mandatory and discretionary terms.* The words "shall," "must," and "will" are mandatory in nature, establishing an obligation or duty to comply with the particular provision. The words "may" and "should" are permissive in nature.

(2) *Conjunctions.* Unless the context clearly indicates the contrary, conjunctions shall be interpreted as follows: The word "and" indicates that all connected items, conditions, provisions and events apply. The word "or" indicates that one or more of the connected items, conditions, provisions or events apply.

(3) *Tense, plurals, and gender.* Words used in the present tense include the future tense. Words used in the singular number include the plural number and the plural number includes the

singular number, unless the context of the particular usage clearly indicates otherwise. Words used in the masculine gender include the feminine gender, and vice versa.

(H) *Measurement and computation.* Lot area refers to the amount of horizontal land area contained inside the lot lines of a lot or site.

(Ord. 13-33, passed 11-26-2013)

§ 54.010 DESIGN MANUAL.

(A) *Adoption of State Design Manual.* The city hereby adopts the North Carolina State BMP Manual, hereafter called the Design Manual, with any and all future updates and/or revisions.

(B) *References to Design Manual.*

(1) The Stormwater Administrator shall use the policy, criteria, and information, including technical specification and standards, in the Design Manual as the basis for decisions about stormwater permits and about the design, implementation and performance of the structural and nonstructural SMPs.

(2) The Design Manual includes a list of acceptable stormwater treatment practices, including specific design criteria for each stormwater practice. Stormwater treatment practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the Phase II laws.

(C) *Relationship of Design Manual to other laws and regulations.* If the specifications or guidelines of the Design Manual are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications in the Design Manual.

(D) *Changes to standards and specifications.* If the standards, specifications, guidelines, policies, criteria, or other information in the Design Manual are amended subsequent to the submittal of an application for approval pursuant to this chapter but prior to approval, the new information shall control and shall be utilized in reviewing the application in implementing this chapter with regard to the application.

(Ord. 13-33, passed 11-26-2013)

§ 54.011 RELATIONSHIP TO OTHER LAWS, REGULATIONS AND PRIVATE AGREEMENTS.

(A) *Conflicts of laws.* This chapter is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this chapter are in addition to the requirements of any other ordinance, rule, regulation or other provision of law. Where any provision of this chapter imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare shall control.

(B) *Private agreements.* This chapter is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this chapter are more restrictive or impose higher standards or requirements than such easement, covenant, or other

private agreement, the requirements of this chapter shall govern. Nothing in this chapter shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this chapter. In no case shall the city be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

(Ord. 13-33, passed 11-26-2013)

§ 54.012 EFFECTIVE DATE AND TRANSITIONAL PROVISIONS.

(A) *Effective date.* This chapter shall take effect on November 26, 2013.

(B) *Final approvals, complete applications.*

(1) All development and redevelopment projects for which complete and full applications were submitted and approved by the city prior to the effective date of this chapter and which remain valid, unexpired, unrevoked and not otherwise terminated at the time of development or redevelopment shall be exempt from complying with all provisions of this chapter dealing with the control and/or management of post-construction runoff, but shall be required to comply with all other applicable provision.

(2) A phased development plan shall be deemed approved prior to the effective date of this chapter if it has been approved by all necessary government units, it remains, valid, unexpired, not revoked and not otherwise terminated, and it shows:

(a) For initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved.

(b) For any subsequent phase of development, sufficient detail so that implementation of the requirements of this chapter to that phase of development would require a material change in that phase of the plan.

(C) *Violations continue.* Any violation of provisions existing on the effective date of this chapter shall continue to be a violation under this chapter and be subject to penalties and enforcement under this chapter unless the use, development, construction, or other activity complies with the provisions of this chapter.

(Ord. 13-33, passed 11-26-2013)

§ 54.013 DEFINITIONS.

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BEST MANAGEMENT PRACTICE (BMP). Control measures taken to mitigate changes to both quantity and quality of water runoff caused thru land use changes. The term BMP has been used to describe both structural or engineered control devices and systems (e.g. retention ponds) to treat polluted stormwater, as well as operational or procedural practices (e.g. minimizing use of chemical fertilizers and pesticides).

BUILT-UPON AREA (BUA). That portion of a development 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. **BUILT-UPON AREA** does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

DEPARTMENT. The North Carolina Division of Energy, Mineral and Land Resources.

DESIGN MANUAL. The stormwater design manual approved for use in Phase II jurisdictions by the Department for the proper implementation of the requirements of the federal Phase II stormwater program. All references herein to the Design Manual are to the latest published edition or revision.

DEVELOPMENT. Any land-disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the soil.

DIVISION. The Division of Water Quality in the Division of Energy, Mineral and Land Resources.

HIGH-DENSITY PROJECT. Any project that exceeds the low-density threshold for dwelling units per acre or built-upon area.

LARGER COMMON PLAN OF DEVELOPMENT 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 piece of documentation (including but not limited to a sign, public notice or hearing, sales pitch, advertisement, loan application, drawing, permit application, zoning request, or computer design) or physical demarcation (including but not limited to boundary signs, lot stakes, or surveyor markings) indicating that construction activities may occur on a specific plot.

LOW-DENSITY PROJECT.

(1) For a project that is not located within one-half mile of and draining to Shellfish Resource Waters: the project is a low-density project if it has no more than two dwelling units per acre or 24% built-upon area (BUA) for all residential and non-residential development.

(2) For a project that is located within one-half mile of and draining to Shellfish Resource Waters: the project is a low-density project only if it contains no more than 12% built-upon area (BUA).

(3) A project with an overall density at or below the relevant low density threshold, but containing areas with a density greater than the overall project density, may be considered low density as long as the project meets or exceeds the post construction model practices for low density projects and locates the higher density in upland areas and away from surface waters and drainage ways to the maximum extent practicable.

ONE-YEAR, 24-HOUR STORM. The surface runoff resulting from a 24-hour rainfall of intensity expected to be equaled or exceeded, on average, once in 12 months and with duration of 24 hours.

OWNER. The legal or beneficial owner of land, including but not limited to a mortgagee or vendee in possession, receiver, executor, trustee, or long-term or commercial lessee, or any other person or entity holding proprietary rights in the property or having legal power of management and control of the property. **OWNER** shall include long-term commercial tenants; management entities, such as those charged with or engaged in the management of properties for profit; and every person or entity having joint ownership of the property. A secured lender not in possession of the property does not constitute an owner, unless the secured lender is included within the meaning of **OWNER** under another description in this definition, such as a management entity.

REDEVELOPMENT. Any development on previously-developed land, other than a rebuilding activity that results in no net increase in built-upon area and provides equal or greater stormwater control than the previous development.

STRUCTURAL 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-development hydrology on a developed site; or to achieve any combination of these goals. **STRUCTURAL BMP** includes physical practices such as constructed wetlands, 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 chapter.

SUBSTANTIAL PROGRESS. For the purposes of determining whether sufficient 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 on a continuous basis and not discontinued for more than 30 days; or 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.

(Ord. 13-33, passed 11-26-2013)

ADMINISTRATION AND PROCEDURES

§ 54.030 REVIEW AND DECISION-MAKING ENTITIES.

(A) *Stormwater Administrator.* A Stormwater Administrator shall be designated by the City Manager to administer and enforce this chapter.

(B) *Powers and duties.* In addition to the powers and duties that may be conferred by other provisions of the City of Kings Mountain Municipal Code and other laws, the Stormwater Administrator shall have the following powers and duties under this chapter.

(1) To review and approve, approve with conditions, or disapprove, applications for approval of plans pursuant to this chapter.

(2) To make determinations and render interpretations of this chapter.

(3) To establish application requirements and schedules for submittal and review of applications and appeals, to review and make recommendations to the City Council on applications for development or redevelopment approvals.

(4) To enforce the provisions of this chapter in accordance with its enforcement provisions.

(5) To maintain records, maps, forms and other official materials as relate to the adoption, amendment, enforcement, and administration of this chapter.

(6) To provide expertise and technical assistance to the City Council and/or Board of Adjustment upon request.

(7) To designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Administrator.

(8) To take any other action necessary to administer the provisions of this chapter.

(Ord. 13-33, passed 11-26-2013)

§ 54.031 REVIEW PROCEDURES.

(A) *Permit required; must apply for permit.* A stormwater permit is required for all development and redevelopment unless exempt pursuant to this chapter. A permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to this section.

(B) *Effect of permit.*

(1) A stormwater permit shall govern the design, installation, and construction of stormwater management and control practices on the site, including structural BMPs and elements of site design for stormwater management other than structural BMPs.

(2) The permit is intended to provide a mechanism for the review, approval, and inspection of the approach to be used for management control of stormwater for the development or redevelopment site consistent with the requirements of this chapter, whether the approach consists of structural BMPs or other techniques such as low-impact or low-density design. The permit does not continue in existence indefinitely after the completion of the project; rather, compliance after project construction is assured by the maintenance provisions of this chapter.

(C) *Authority to file applications.* All applications required pursuant to this Code shall be submitted to the Stormwater Administrator by the land owner or the land owner's duly authorized agent.

(D) *Establishment of application requirements, schedule, and fees.*

(1) *Application contents and forms.* 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. 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 chapter.

(2) *Submission schedule.* 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.

(3) *Permit review fees.* The City Council shall establish permit review fees as well as policies regarding refund of any fees upon withdrawal of an application, and may amend and update the fees and policies from time to time.

(4) *Administrative manual.* For applications required under this Code, the Stormwater Administrator shall compile the application requirements, submission schedule, fee schedule, a copy of this chapter, and information on how and where to obtain the Design Manual in an Administrative Manual, which shall be made available to the public.

(E) *Submittal of complete application.*

(1) Applications 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 fee established pursuant to this section.

(2) An application shall be considered as timely submitted only when it contains all elements of a complete application pursuant to this chapter, along with the appropriate fee. If the Stormwater Administrator finds that an application is incomplete, the applicant shall be notified of the deficient elements 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.

(F) *Review.*

(1) *Approval.* If the Stormwater Administrator finds that the application complies with the standards of this chapter, the Stormwater Administrator shall approve the application. The Stormwater Administrator may impose conditions of approval as needed to ensure compliance with this chapter. The conditions shall be included as part of the approval.

(2) *Fails to comply.* If the Stormwater Administrator finds that the application fails to comply with the standards of this chapter, the Stormwater Administrator shall notify the applicant and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application.

(3) *Revision and subsequent review.*

(a) A complete revised application shall be reviewed by the Stormwater Administrator after its re-submittal and shall be approved, approved with conditions or disapproved.

(b) If a revision application is not re-submitted within 30 calendar days from the date of the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee for a new submittal.

(c) One re-submittal of a revised application may be submitted without payment of an additional permit review fee. Any re-submittal after the first re-submittal shall be accompanied by a permit review fee additional fee, as established pursuant to this chapter.

(Ord. 13-33, passed 11-26-2013)

§ 54.032 APPLICATIONS FOR APPROVAL.

(A) *Concept plan and consultation meeting.*

(1) Before a stormwater management permit application is deemed complete, the Stormwater Administrator or developer may request a consultation on a concept plan for the post-construction stormwater management system 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 post-construction 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. Local watershed plans, and other relevant resource protection plans should be consulted in the discussion of the concept plan.

(2) To accomplish this goal, the following information should be included in the concept plan, which should be submitted in advance of the meeting:

(a) *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; mapping of predominant soils from soil surveys (if available); boundaries of existing predominant vegetation; proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.

(b) *Natural resources inventory.* A written or graphic inventory of 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, flood plains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, and the like). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development and stormwater management

(c) *Stormwater management system concept plan.* A written or graphic concept plan of the proposed post-development stormwater management system including: preliminary selection and location of proposed structural stormwater controls; low-impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of any proposed stream channel modifications, such as bridge or culvert crossings

(B) *Stormwater management permit application.*

(1) The stormwater management permit application shall detail how post-development stormwater runoff will be controlled and managed and how the proposed project will meet the requirements of this chapter. All such plans for any non-single-family residence shall be prepared by a qualified registered state 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 that the design of all stormwater management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the Design Manual, and that the designs and plans ensure compliance with this chapter.

(2) The submittal shall include all of the information required in the submittal checklist established by the Stormwater Administrator. Incomplete submittals shall be treated pursuant to § 54.031(F)(2).

(C) *As-built plans and final approval.*

(1) Upon completion of a project, and before a certificate of occupancy shall be granted, the applicant shall certify that the completed project is in accordance with the approved stormwater management plans and designs, and shall submit actual as built plans for all stormwater management facilities or practices after final construction is completed.

(2) The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. The designer of the stormwater management measures and plans shall certify, under seal, that the as-built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this chapter. A final inspection and approval by the Stormwater Administrator shall occur before the release of any performance securities.

(D) *Other permits.* No certificate of compliance or occupancy shall be issued by the Building Inspector without final as-built plans and a final inspection and approval by the Stormwater Administrator, except where multiple units are served by the stormwater practice or facilities, in which case the Building Inspector may elect to withhold a percentage of permits or certificates of occupancy until as-built plans are submitted and final inspection and approval has occurred.

(Ord. 13-33, passed 11-26-2013)

§ 54.033 APPROVALS.

(A) *Effect of approval.* Approval 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.

(B) *Time limit/expiration.*

(1) An approved plan shall become null and void if the applicant fails to make substantial progress on the site within one year after the date of approval. The Stormwater Administrator may grant a single, one-year extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.

(2) In granting an extension, the Stormwater Administrator may require compliance with standards adopted since the original application was submitted unless there has been substantial reliance on the original permit and the change in standards would infringe the applicant's vested rights.

(Ord. 13-33, passed 11-26-2013)

§ 54.034 APPEALS.

(A) *Right of appeal.* Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this chapter made by the Stormwater Administrator, may file an appeal to the Board of Adjustment within 45 days.

(B) *Filing of appeal and procedures.*

(1) 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. The Stormwater Administrator shall transmit to the Board of Adjustment all documents constituting the record on which the decision appealed from was taken.

(2) The hearing conducted by the Board of Adjustment shall be conducted in the nature of a quasi-judicial proceeding with all findings of fact supported by competent, material evidence.

(C) *Review by Superior Court.* Every decision of the Board of Adjustment shall be subject to Superior Court review by proceedings in the nature of certiorari. Petition for review by the Superior Court shall be filed with the Clerk of Superior Court within 30 days after the latter of the following:

(1) The decision of the Board of Adjustment is filed; or

(2) A written copy of the decision is delivered to every aggrieved party who has filed a written request for such copy with the Secretary of the Board of Adjustment at the time of its hearing of the case.

(Ord. 13-33, passed 11-26-2013)

STANDARDS

§ 54.050 GENERAL STANDARDS.

All development and redevelopment to which this chapter applies shall comply with the standards of this § 54.051 through 54.057.

(Ord. 13-33, passed 11-26-2013)

§ 54.051 DEVELOPMENT STANDARDS FOR LOW-DENSITY PROJECTS.

Low-density projects shall comply with each of the following standards:

(A) Stormwater runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable.

(B) All built-upon area shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) 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). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B.0233(3)(a) or similar site-specific determination made using Division-approved methodology.

(C) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.

(Ord. 13-33, passed 11-26-2013)

§ 54.052 DEVELOPMENT STANDARDS FOR HIGH-DENSITY PROJECTS.

High-density projects shall implement stormwater control measures that comply with each of the following standards:

(A) The measures shall control and treat runoff from the first inch of rain. Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.

(B) All structural stormwater treatment systems used to meet these requirements shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids (TSS).

(C) General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H.1008(c), as explained in the Design Manual.

(D) All built-upon area shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) 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). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B.0233 (3)(a) or similar site-specific determination made using Division-approved methodology.

(E) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as recorded deed restrictions or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.

(Ord. 13-33, passed 11-26-2013)

§ 54.053 STANDARDS FOR STORMWATER CONTROL MEASURES.

(A) *Evaluation according to contents of design manual.* All stormwater control measures and stormwater treatment practices (also referred to as Best Management Practices, or BMPs) required under this chapter 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 Design Manual. The Stormwater Administrator shall determine whether proposed BMPs will be adequate to meet the requirements of this chapter.

(B) *Determination of adequacy; presumptions and alternatives.* Stormwater treatment practices that are designed, and constructed, and maintained in accordance with the criteria and specifications in the Design Manual will be presumed to meet the minimum water quality and quantity performance standards of this chapter. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the Design Manual, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this chapter. 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.

(C) *Separation from seasonal high water table.* For BMPs that require a separation from the seasonal high water table, the separation shall be provided by at least 12 inches of naturally occurring soil above the seasonal high water table.

(Ord. 13-33, passed 11-26-2013)

§ 54.054 DEDICATION OF BMPS, FACILITIES AND IMPROVEMENTS.

The city may accept dedication of any existing or future stormwater management facility for maintenance, provided the facility meets all the requirements of this chapter and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

(Ord. 13-33, passed 11-26-2013)

§ 54.055 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 chapter. To qualify for a variance, the petitioner must show all of the following:

- (1) Unnecessary hardships would result from strict application of this chapter.
- (2) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
- (3) The hardships did not result from actions taken by the petitioner.
- (4) The requested variance is consistent with the spirit, purpose, and intent of this chapter; will secure public safety and welfare; and will preserve substantial justice.

(B) The Board of Adjustment may impose reasonable and appropriate conditions and safeguards upon any variance it grants.

(C) *Statutory exceptions.* Notwithstanding division (A) of this section, exceptions from the 30-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants requirements shall be granted in any of the following instances:

(1) When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of the BMPs.

(2) When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.

(3) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

(Ord. 13-33, passed 11-26-2013)

§ 54.056 ADDITIONAL STANDARDS FOR SPECIAL SITUATIONS.

(Reserved)

(Ord. 13-33, passed 11-26-2013)

§ 54.057 ONSITE WASTEWATER.

(A) *Operation and maintenance requirements.* New and replaced onsite systems for domestic wastewater installed after the effective date of this chapter shall be subject to the same requirements for operation and maintenance as structural BMPs for stormwater, including, at a minimum, annual inspection reports and a recorded operation and maintenance agreement, pursuant to §§ 54.070 through 54.076 of this chapter.

(B) *Standards for operation and maintenance.* Onsite systems for domestic wastewater covered by this chapter shall be operated and maintained so as to avoid adverse effects on surface water and groundwater, including eutrophication (the process by which a body of water becomes enriched in dissolved nutrients (as phosphates) that stimulate the growth of aquatic plant life usually resulting in the depletion of dissolved oxygen) of surface water and microbial or nitrate contamination of groundwater. Septic tank residuals shall be pumped whenever necessary to assure the proper operation of the system to meet these standards, and the seepage

shall be reused or disposed of in a manner that does not present significant risks to human health, surface water or groundwater.

(Ord. 13-33, passed 11-26-2013)

MAINTENANCE

§ 54.070 GENERAL STANDARDS FOR MAINTENANCE.

(A) *Function of BMPs as intended.* The owner of each structural BMP installed pursuant to this chapter shall maintain and operate it so as to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the structural BMP was designed.

(B) *Annual maintenance inspection and report.*

(1) The person responsible for maintenance of any structural BMP installed pursuant to this chapter shall submit to the Stormwater Administrator an inspection report from one of the following persons performing services only in their area of competence; a qualified registered state professional engineer, surveyor, landscape architect, soil scientist, aquatic biologist, or person certified by the North Carolina Cooperative Extension Service for stormwater treatment practice inspection maintenance. The inspection report shall contain all of the following:

(a) The name and address of the land owner;

(b) The recorded book and page number of the lot of each structural BMP;

(c) A statement that an inspection was made of all structural BMPs;

(d) The date the inspection was made;

(e) A statement that all inspected structural BMPs are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this chapter; and

(f) The original signature and seal of the engineer, surveyor, or landscape architect.

(2) All inspection reports shall be on forms supplied by the Stormwater Administrator. An original inspection report shall be provided to the Stormwater.

(3) Administrator beginning one year from the date of as-built certification and each year thereafter on or before the date of the as-built certification.

(Ord. 13-33, passed 11-26-2013)

§ 54.071 OPERATION AND MAINTENANCE AGREEMENT.

(A) *In general.*

(1) Prior to the conveyance or transfer of any lot or building site to be served by a structural BMP pursuant to this chapter, and prior to issuance of any permit for development or redevelopment requiring a structural BMP pursuant to this chapter, the applicant or owner of the site must execute an operation and maintenance agreement that shall be binding on all

subsequent owners of the site, portions of the site, and lots or parcels served by the structural BMP, until the transference of all property, sites, or lots served by the structural BMP, the original owner or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.

(2) The operation and maintenance agreement shall require the owner or owners to maintain, repair and if necessary, reconstruct the structural BMP, and shall state the terms, conditions, and schedule of maintenance for the structural BMP. In addition, it shall grant to the city a right of entry in the event that the Stormwater Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair or reconstruct the structural BMP, however, in no case shall the right of entry, of itself, confer an obligation on the city to assume responsibility for the structural BMP.

(3) The operation and maintenance agreement must be approved by the Stormwater Administrator prior to plan approval, and it 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 maintenance agreement shall be given to the Stormwater Administrator within 14 days following its recordation.

(B) *Special requirement for homeowners' and other associations.* For all structural BMPs required pursuant to this chapter 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 all the following provisions:

(1) Acknowledgement that the association shall continuously operate and maintain the stormwater control and management facilities.

(2) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the structural BMPs. If structural BMPs are not performing adequately or as intended or are not properly maintained, the city, in its sole discretion, may remedy the situation, and in such instances the city shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the structural BMPs, provided that the city shall first consent to the expenditure.

(3) Both developer contribution and annual sinking funds shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount equal to 15% of the initial construction cost of the structural BMPs. Two-thirds of the total amount of sinking fund budget 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. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.

(4) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the city depending on the design and materials of the stormwater control and management facility.

(5) Granting to the city a right of entry to inspect, monitor, maintain, repair, and reconstruct structural BMPs.

(6) Allowing the city to recover from the association and its members any and all costs the city expends to maintain or repair the structural BMPs or to correct any operational deficiencies. Failure to pay the city all of its expended costs, after 45 days written notice, shall constitute a breach of the agreement. In case of a deficiency, the city shall thereafter be entitled to bring action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both. Interest collection costs, and attorney fee shall be added to the recovery.

(7) A statement that this agreement shall not obligate the city to maintain or repair any structural BMPs, and the city shall not be liable to any person for the condition or operation of structural BMPs.

(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 chapters as authorized by law.

(9) A provision indemnifying and holding harmless the city for any costs and injuries arising from or related to the structural BMP, unless the city has agreed in writing to assume the maintenance responsibility for the BMP and has accepted dedication of any and all rights necessary to carry out that maintenance.

(Ord. 13-33, passed 11-26-2013)

§ 54.072 INSPECTION PROGRAM.

(A) Inspections and inspection programs by the city may be conducted or established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in BMPs; and evaluating the condition of BMPs.

(B) If the owner or occupant of any property refuses to permit such inspection, the Stormwater Administrator shall proceed to obtain an administrative search warrant pursuant to G.S. § 15-27.2 or its successor. No person shall obstruct, hamper or interfere with the Stormwater Administrator while carrying out his or her official duties.

(Ord. 13-33, passed 11-26-2013)

§ 54.073 PERFORMANCE SECURITY FOR INSTALLATION AND MAINTENANCE.

(A) *May be required.* The city may, at its discretion, require the submittal of a performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the structural BMPs are:

(1) Installed by the permit holder as required by the approved stormwater management plan; and/or

(2) Maintained by the owner as required by the operation and maintenance agreement.

(B) *Amount.*

(1) *Installation.* The amount of an installation performance security shall be the total estimated construction cost of the BMPs approved under the permit, plus 25%.

(2) *Maintenance.* The amount of a maintenance performance security shall be the present value of an annuity of perpetual duration based on a reasonable estimate of the annual cost of inspection, operation and maintenance of the BMPs approved under the permit, at a discount rate that reflects the jurisdiction's cost of borrowing minus a reasonable estimate of long-term inflation.

(C) *Uses of performance security.*

(1) *Forfeiture provisions.* The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or owner in accordance with this chapter, approvals issued pursuant to this chapter, or an operation and maintenance agreement established pursuant to this chapter.

(2) *Default.* Upon default of the owner to construct, maintain, repair and, if necessary, reconstruct any structural BMP in accordance with the applicable permit or operation and maintenance agreement, the Stormwater Administrator shall obtain and use all or any portion of the security to make the necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the owner to comply with the permit or maintenance agreement. In the event of default triggering the use of installation performance security, the city shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.

(3) *Costs in excess of performance security.* If the city takes action upon such failure by the applicant or owner, the city may collect from the applicant or owner the difference between the amount of the reasonable cost of such action and the amount of the security held, in addition to any other penalties or damages due.

(4) *Refund.* Within 60 days of the final approval, the installation performance security shall be refunded to the applicant or terminated, except any amount attributable to the cost (plus 25%) of landscaping installation and ongoing maintenance associated with the BMPs covered by the security. Any such landscaping shall be inspected one year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

(Ord. 13-33, passed 11-26-2013)

§ 54.074 NOTICE TO OWNERS.

(A) *Deed recordation and indications on plat.* The applicable operations and maintenance agreement, conservation easement, or dedication and acceptance into public maintenance

(whichever is applicable) pertaining to every structural BMP shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. If no subdivision plat is recorded for the site, then the operations and maintenance agreement, conservation easement, or dedication and acceptance into public maintenance, whichever is applicable shall be recorded with the county Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.

(B) *Signage.* Where appropriate in the determination of the Stormwater Administrator to assure compliance with this chapter, structural BMPs shall be posted with a conspicuous sign stating who is responsible for required maintenance and annual inspection. The sign shall be maintained so as to remain visible and legible.

(Ord. 13-33, passed 11-26-2013)

§ 54.075 RECORDS OF INSTALLATION AND MAINTENANCE ACTIVITIES.

The owner of each structural BMP shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record and shall submit the same upon reasonable request to the Stormwater Administrator.

(Ord. 13-33, passed 11-26-2013)

§ 54.076 NUISANCES.

The owner of each stormwater BMP, whether structural or non-structural BMP, shall maintain it so as not to create or result in a nuisance condition.

(Ord. 13-33, passed 11-26-2013)

ILLICIT DISCHARGES

§ 54.080 ILLICIT DISCHARGES AND CONNECTIONS.

(A) *Illicit discharges.* No person shall cause or allow the discharge, emission, disposal, pouring, or pumping directly or indirectly to any stormwater conveyance, the waters of the state, or upon the land in manner and amount that the substance is likely to reach a stormwater conveyance or the waters of the state, any liquid, solid, gas, or other substance, other than stormwater, provided that non-stormwater discharges associated with the following activities are allowed and provided that they do not significantly impact water quality:

- (1) Water line flushing;
- (2) Landscape irrigation;
- (3) Diverted stream flows;
- (4) Rising ground waters;
- (5) Uncontaminated ground water infiltration (as defined at 40 C.F.R. § 35.2005(20));
- (6) Uncontaminated pumped ground water;
- (7) Discharges from potable water sources;

- (8) Foundation drains;
- (9) Air conditioning condensation;
- (10) Irrigation water;
- (11) Springs;
- (12) Water from crawl space pumps;
- (13) Footing drains;
- (14) Lawn watering;
- (15) Individual residential car washing;
- (16) Flows from riparian habitats and wetlands;
- (17) De-chlorinated swimming pool discharges;
- (18) Street wash water; and

(19) Other non-stormwater discharges for which a valid NPDES discharge permit has been approved and issued by the state, and provided that any such discharges to the municipal separate storm sewer system shall be authorized by the city. Prohibited substances include but are not limited to: oil, anti-freeze, chemicals, animal waste, paints, garbage, and litter.

(B) *Illicit connections.*

(1) Connections to a stormwater conveyance or stormwater conveyance system that allow the discharge of non-stormwater, other than the exclusions described in division (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 such connections exist in violation of this section and the connections were made prior to the adoption of this provision or any other ordinance prohibiting such connections, the property owner or the person using the connection shall remove the connection within one year following the effective date of this chapter. However, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat.

(3) Where it is determined that the connection:

(a) 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

(b) Was made in violation of any applicable regulation or ordinance, other than this section.

(4) The Stormwater Administrator shall designate the time within which the connection shall be removed, in setting the time limit for compliance, the Stormwater Administrator shall take into consideration:

- (a) The quantity and complexity of the work;
- (b) The consequences of delay;
- (c) The potential harm to the environment, to the public health, and to public and private property; and
- (d) The cost of remedying the damage.

(C) *Spills.*

(1) Spills or leaks of polluting substances released, discharged to, or having the potential to released or discharged to the stormwater conveyance system, shall be contained, controlled, collected, and properly disposed. All affected areas shall be restored to their preexisting condition.

(2) Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were released or discharged, shall immediately notify the Fire Chief of the release or discharge, as well as making any required notifications under state and federal law. 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 said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by state or other law.

(D) *Nuisance.* Illicit discharges and illicit connections which exist within the City of Kings Mountain's 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 shall be abated in accordance with the procedures set forth in the Stormwater BMP Design Manual.

(Ord. 13-33, passed 11-26-2013)

ENFORCEMENT AND VIOLATIONS

§ 54.100 GENERAL.

(A) *Authority to enforce.* The provisions of this chapter shall be enforced by the Stormwater Administrator, his or her designee, or any authorized agent of the city. Whenever this section refers to the Stormwater Administrator, it includes his or her designee as well as any authorized agent of the city.

(B) *Violation unlawful.* Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by this chapter, or the terms or conditions of any permit or other development or redevelopment approval or authorization granted pursuant to this chapter, is unlawful and shall constitute a violation of this chapter.

(C) *Each day a separate offense.* Each day that a violation continues shall constitute a separate and distinct violation or offense.

(D) *Responsible persons/entities.*

(1) Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct alter, repair or maintain any structure, BMP, practice, or condition in violation of this chapter shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section. Persons subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this chapter, or fails to take appropriate action, so that a violation of this chapter results or persists; or an owner, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or development of the property on which the violation occurs.

(2) For the purposes of this chapter, responsible person(s) shall include but not be limited to:

(a) *Person maintaining condition resulting in or constituting violation.* An architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this chapter, or fails to take appropriate action, so that a violation of this chapter results or persists.

(b) *Responsibility for land or use of land.* The owner of the land on which the violation occurs, any tenant or occupant of the property, any person who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person, who has control over, or responsibility for, the use, development or redevelopment of the property.

(Ord. 13-33, passed 11-26-2013)

§ 54.101 REMEDIES AND PENALTIES.

The remedies and penalties provided for violations of this chapter, whether civil, or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

(A) *Remedies.*

(1) *Withholding of certificate of occupancy.* The Stormwater Administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

(2) *Disapproval of subsequent permits and development approvals.* As long as a violation of this chapter continues and remains uncorrected, the Stormwater Administrator or other authorized agent may withhold, and the Planning and Zoning Board, City Council and/or Board of Adjustment may disapprove, any request for permit or development approval or authorization provided for by this chapter or the Zoning, Subdivision and/or the North Carolina Building Code for the land on which the violation occurs.

(3) *Injunction, abatements, and the like.* The Stormwater Administrator, with the authorization of the City Council, may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this chapter. Any person violating this chapter shall be subject to the full range of equitable remedies provided in the general statutes or at common law.

(4) *Correction as public health nuisance, costs as lien, and the like.* If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by G.S. § 160A-193, the Stormwater Administrator, with the authorization of the City Council may cause the violation to be corrected and the costs to be assessed as a lien against the property.

(5) *Stop work order.* The Stormwater Administrator may issue a stop work order to the person(s) violating this chapter. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such violation or violations.

(B) *Civil penalties.* Violation of this chapter may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the Stormwater Administrator. Civil penalties may be assessed up to the full amount of penalty to which city is subject for violations of its Phase II Stormwater permit

(C) *Criminal penalties.* Violation of this chapter may be enforced as a misdemeanor subject to the maximum fine permissible under state law.

(Ord. 13-33, passed 11-26-2013)

§ 54.102 PROCEDURES.

(A) *Initiation/compliant.* Whenever a violation of this chapter occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint shall state fully the alleged violation and the basis thereof, and shall be filed with the Stormwater Administrator, who shall record the complaint. The complaint shall be investigated promptly by the Stormwater Administrator.

(B) *Inspection.* The Stormwater Administrator shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this chapter.

(C) *Notice of violation and order to correct.*

(1) When the Stormwater Administrator finds that any building, structure, or land is in violation of this chapter, the Stormwater Administrator shall notify, in writing, the property owner or other person violating this chapter. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. If civil penalties are to be assessed, the notice of violation shall also contain a

statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection as a debt.

(2) The Stormwater Administrator may deliver the notice of violation and correction order personally, by the City Police or by the City's Code Enforcement Officer, by certified or registered mail, return receipt requested, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure.

(3) If a violation is not corrected within a reasonable period of time, as provided in the notification, the Stormwater Administrator may take appropriate action under this chapter to correct and abate the violation and to ensure compliance with this chapter.

(D) *Extension of time.* A person who receives a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the Stormwater Administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the Stormwater Administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 90 days. The Stormwater Administrator may grant 30-day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this chapter. The Stormwater Administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.

(E) *Enforcement after time to correct.* After the time has expired to correct a violation, including any extension(s) if authorized by the Stormwater Administrator, the Stormwater Administrator shall determine if the violation is corrected. If the violation is not corrected, the Stormwater Administrator may act to impose one or more of the remedies and penalties authorized by this chapter.

(F) *Emergency enforcement.* If delay in correcting a violation would seriously threaten the effective enforcement of this chapter or pose an immediate danger to the public health, safety, or welfare, then the Stormwater Administrator may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The Stormwater Administrator may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this chapter.

(Ord. 13-33, passed 11-26-2013)