

ORDINANCE 2023-21

AMENDING CHAPTER 38 OF THE NASHVILLE CODE OF ORDINANCES WITH  
A NEW ARTICLE XII "STORMWATER MANAGEMENT"

BE IT ENACTED by the Town Council of the Town of Nashville, North Carolina:

SECTION 1. NEW ARTICLE. That Chapter 38 "Utilities" of the Nashville Code of Ordinances is hereby amended with the addition of Article XII "Stormwater Management" which shall read as follows:

**Chapter 38 UTILITIES**

***ARTICLE XII. STORMWATER MANAGEMENT***

**Sec. 38-498. Title.** This chapter shall be known as "The Phase II Stormwater Management Ordinance of the Town of Nashville, North Carolina."

**Sec. 38-499. Findings and purpose.**

It is hereby determined that:

- (1) Development and redevelopment alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, soil erosion, stream channel erosion, nonpoint and point source pollution, and sediment transport and deposition, as well as reducing groundwater recharge;
- (2) These changes in stormwater runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology that are harmful to public health and safety as well as to the natural environment; and
- (3) These effects can be managed and minimized by applying proper design and well-planned BMPs to manage stormwater runoff from development sites.
- (4) Further, 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 state environmental management commission promulgated in response to federal Phase II requirements, compel certain urbanized areas, including this jurisdiction, to adopt minimum stormwater design standards such as those included in this chapter.
- (5) Therefore, the town establishes this set of water quality and quantity regulations to meet the requirements of state and federal law regarding control of stormwater runoff and discharge.
- (6) The purpose of this chapter is to protect and promote public health, safety, and general welfare, and to safeguard the natural resources of the town by regulating stormwater runoff and illicit discharges into municipal stormwater systems. This is accomplished by requiring permits for and imposing conditions and requirements upon development activities, and by establishing procedures upon development activities, and by establishing procedures by which these requirements and conditions are to be administered and enforced.
- (7) The impacts of stormwater cannot be addressed solely through best management practices on individual properties. The town has a role in management of stormwater

---

through the planning, construction, operation and maintenance of BMPs to reduce the adverse effects of stormwater.

**Sec. 38-500. Design manual.**

- (a) The town manager or his/her designee shall use the policy, criteria, and information, including technical specifications and standards, in the state division of water quality best management practices manual (design manual) as the basis for decisions about stormwater permits and about the design, implementation and performance of structural and nonstructural stormwater BMPs.
- (b) The design manual includes a list of acceptable stormwater BMPs, including specific design criteria for each stormwater BMP. Stormwater BMPs 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) The current version of the design manual at the time of original permit application shall be used to determine design specifications for all submittals and minor revisions to approved plans subsequent to the original application for each development project. All major modifications to approved plans, including redevelopment projects, shall be subject to current design specifications and criteria as of the date of request for modification or redevelopment application unless otherwise agreed to, in writing, by the town manager or his/her designee.

**Sec. 38-501. Applicability of this chapter.**

- (a) Except as otherwise provided herein, the provisions of this chapter shall apply to each of the following:
  - (1) Beginning with and subsequent to the effective date of the ordinance from which this chapter is derived, the provisions of this chapter shall be applicable to all development activity including, but not limited to, site plan applications, building permit applications, subdivision applications, and grading applications, unless otherwise specifically listed.
  - (2) Exemptions.
    - a. Thresholds. Development that cumulatively disturbs less than 10,000 square feet of land and is not part of a larger common plan of development or sale is exempt from the provisions of this chapter.
    - b. Redevelopment that results in no net increase in built-upon area and provides equal or greater stormwater control than the previous development is exempt from the provisions of this chapter.
    - c. Development and redevelopment that disturb less than the stated area threshold are not exempt if such activities are part of a larger common plan of development or sale that exceeds the area threshold, even though multiple, separate or distinct activities take place at different times on different schedules.
- (b) In applying the provisions of this chapter, the cumulative area of the proposed development activity and all development activity on a site within a two-year period immediately preceding the date of application for a stormwater discharge permit shall be considered together.

- (c) Activities that are exempt from permit requirements of Section 404 of the federal Clean Water Act as specified in 40 CFR 232 (primarily, ongoing farming and forestry activities) are exempt from the provisions of this chapter.
- (d) The provisions of this chapter shall apply within the areas designated on the map titled "Phase II Stormwater Map of The Town of Nashville, North Carolina" ("the stormwater map"), which is adopted simultaneously herewith. The stormwater map and all explanatory matter contained thereon accompany and are hereby made a part of this chapter.
- (e) The stormwater map shall be kept on file by the town manager or his/her designee and shall be updated to take into account changes in the land area covered by this chapter and the geographic location of all structural BMPs 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 state statutes, the state administrative code, and local zoning and jurisdictional boundary ordinances.

### **Sec. 38-502. Definitions.**

For the purpose of this chapter, and any rules or regulations established hereunder, the definitions published in 15A NCAC 02H.1002 and G.S. 143-212 and 143-213 shall be used when not in conflict with the definitions set out below. The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Applicant* means an owner or developer of a site who executes the forms required for the obtaining of a stormwater discharge permit pursuant to this chapter.

*Authorized registered professional* means a professional engineer, registered land surveyor, landscape architect or other professional registered, licensed, or certified pursuant to the North Carolina General Statutes and authorized by law to prepare the plans and specifications and provide the certifications required by the various provisions of this chapter.

*Best management practice (BMP)* means a structural or nonstructural stormwater management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

*Built upon area (BUA)* means the portion of developed land, which is covered by impervious, or partially impervious cover including but not limited to buildings, pavement, gravel, and parking areas. (Note: Wooden slatted decks shall not constitute built upon area so long as adequate spacing is provided between the wood slats to allow for rainwater to drain through the slats. A portion of pervious pavement area shall be considered impervious as defined in the design manual.)

*Clearing* means any activity which removes the vegetative ground cover.

*Common plan of development* means any contiguous land area or parcel where multiple land disturbing activities may be taking place simultaneously or in separate phases, under one proposed plan, master plan, plat, permit application, unit development, development district, or advertisement.

*Detention* means the storage, and possible treatment, of stormwater runoff with subsequent discharge to surface waters.

*Developed land* means parcels altered from a natural state by construction or installation of impervious surfaces. For new construction, parcels shall be considered developed upon final approval of the site improvements by the town.

*Developer* means a person undertaking any or all the activities covered by this chapter, or for whose benefit such activities are commenced or carried on. General contractors or subcontractors, or both, without a proprietary interest in a project are not included within this definition.

*Development* means any project resulting in the construction, replacement or alteration of impervious surface on a given property.

• *Equivalent residential unit (ERU)* means 2,500 square feet of impervious surface.

*Erosion* means the process by which the ground surface is worn by the action of wind, water, ice or gravity.

*Expansion* means the replacement of pervious land area with the addition of new buildings, structures, parking lots, or any other new impervious surfaces on a site currently meeting the definition of developed land. Construction of any new impervious surface on an area previously pervious area within a parcel which does not meet the definition of redevelopment, in whole or in part, as defined in this section shall be considered as expansion.

*Facility* means a stormwater management facility, and shall include all land, materials, and appurtenances used in construction and operation of said facility. Facilities include, but are not necessarily limited to, retention ponds, detention ponds, open and closed systems, etc.

*Fill* means any act, or the conditions resulting therefrom, by which soil, earth, sand, gravel, rock or any similar material is deposited, placed, pushed, pulled or transported.

*Floodplain* means any land susceptible to being inundated by water from any source.

*Grading* means any act causing disturbance of the earth. This shall include but is not limited to any excavating, filling, stockpiling of earth materials, grubbing, root mat or topsoil disturbance, or any combination of such.

*Illicit discharge* means any discharge to a town separate storm sewer that is not composed entirely of stormwater except discharge pursuant to a NPDES permit (other than the NPDES permit for discharge from the town separate storm sewer) and discharges resulting from firefighter activities.

*Impervious* means the condition of being impenetrable by water. Impervious surface area includes, but is not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. The term "impervious area" does not include a wooden slatted deck, or the water area of a swimming pool.

*Land disturbing activity* means any earth movement and land use changes which may result in soil erosion.

*National Pollutant Discharge Elimination System (NPDES)* means a permitting system established by Section 402 of the Clean Water Act. NPDES permits are issued by the state for discharges directly to the surface waters of the state.

*Nonerosive velocity* means the velocity of flowing water which will not cause erosion, siltation or scouring within a drainageway. Calculations to determine velocity shall take into account the physical conditions of the drainageway, including but not limited to, shape, slope, surface condition and contributing watershed.

*Non-single-family residential use* means any land use other than single-family residential, except for undeveloped land.

*Off-site facility*, with respect to any particular property, means a stormwater BMP serving said property but not located on said property.

*On-site facility*, with respect to any particular property, means a stormwater BMP serving the subject property and located thereon.



*One-year, 24-hour storm event* means 4.05 inches of rainfall within a 24-hour period.

*Owner* means the owner or owners of a site on which land disturbing activity is, will, or has been done.

*Permit* means either a stormwater discharge, building, erosion and sedimentation control, or subdivision development construction permit, as may be appropriate within the context of the specific provision of this chapter.

*Permittee* means any person to whom a stormwater discharge, building, or subdivision development construction permit is issued pursuant to this chapter.

*Person* means any individual, corporation, partnership, joint venture, agency, unincorporated association, municipal corporation, county, state, or federal agency or any combination thereof.

*Permeable pavement* means paving material that absorbs water or allows water to infiltrate through the paving material to natural soil below. Permeable pavement materials include porous concrete, permeable interlocking concrete pavers, concrete grid pavers, porous asphalt, and any other material with similar characteristics. Compacted gravel shall not be considered permeable pavement.

*Pervious* means ground that permits penetration of water, opposite of impervious.

*Predevelopment state* means a site in its natural condition prior to any development activity.

*Private facility/BMP* means any stormwater facility or BMP not owned and operated by the town.

*Public facility* means any stormwater BMP owned and operated by the town, the state, a government agency, or a federal agency.

*Redevelopment* means the alteration or replacement of impervious area on a site which meets the definition of "developed land," as described above, not to include interior remodeling or interior modifications which do not include substantial structural modifications to the facility.

*Retention* means the storage, and possible treatment, of stormwater runoff without subsequent discharge to surface waters.

*Sediment* means soil transported or deposited by the action of erosion or artificial means.

*Single-family residential use* means one structure on one parcel containing only one house unit, to include attached garages, and any other structures that may be on the lot to include sheds, car ports, slabs of concretes, etc.

*Site* means that portion of land, lot or parcel of land, or combination of contiguous lots or parcels of land upon which grading or other land disturbing activity is to be performed.

*Soil* means any earth, sand, gravel, rock or other similar material.

*Standards and specifications* means those standards and specifications relating to stormwater management that may now or hereafter be established.

*Stormwater discharge permit* means the permit issued by the town authorizing stormwater discharge activities in accordance with this chapter and applicable ordinances and regulations.

*Stormwater management* means:

- (1) For quantitative control, a system of vegetative and structural measures which control the increased volume and rate of surface runoff caused by manmade changes to the land and have the effect of maintaining the predevelopment patterns of flood magnitude and frequency.
  - (2) For qualitative control, a system of vegetative, structural, and other measures which control or treat pollutants carried by surface runoff.
-

*Stormwater management plan* means a plan designed to minimize erosion, prevent off-site sedimentation, treat stormwater runoff, and control stormwater, submitted as a prerequisite to obtaining a stormwater discharge permit. The plan shall be prepared and designed in accordance with this chapter, town regulations, and applicable state laws and regulations, including applicable standards and specifications.

*Stormwater system* means all manmade structures or natural features within the town that serve to provide for conveyance of runoff water resulting from natural storm events. Components of the stormwater system include but are not limited to swales, ditches, pipes, channels, creeks, ponds, weirs, culverts, manholes, inlet structures, and tidal gates.

*Substantial progress* means a level of accomplishment or work on a project, or development, which produces measurable and verifiable evidence that the owner or permit holder is in the process of completing all work specifically shown on the approved plans for the development activity for which the permit was issued.

*Ten-year frequency storm event* means a ten percent annual chance storm of a 24-hour duration, or an intensity based on the time of concentration determined based on watershed conditions.

*Town manager* means the town manager of the Town of Nashville or the town manager's authorized representative.

*Undeveloped land* means land that does not meet the definition of developed land.

*Vegetated conveyance* means any drainageway, conveyance, swale, ditch, channel or stream with a surface consisting of, and able to support the growth of grass or other natural vegetative ground cover capable of protecting the conveyance from erosion, siltation and scour. Certain temporary and flexible liners may be used to provide additional protection against erosion, siltation and scour provided that the liner does not restrict the infiltration of water into the natural soil material or create impervious surface within the drainageway.

*Watercourse or drainageway* means any natural or artificial watercourse, including, but not limited to: streams, rivers, creeks, ponds, lakes, ditches, channels, canals, conduits, culverts, drains, waterways, gullies, ravines, or washes in which waters flow in a definite direction or course, either continuously or intermittently; and including any area adjacent thereto which is subject to inundation by reason of overflow or floodwater.

*Wetlands (404 wetlands)* means those areas defined by the U.S. Army Corps of Engineers as jurisdictional 404 wetlands.

### **Sec. 38-503. Interpretation.**

- (a) In interpreting and applying this chapter, the requirements contained herein are declared to be minimum requirements which are imposed and are to be conformed to, and are in addition to, and not in lieu of, all other legal requirements, and shall be liberally construed to accomplish the purposes set forth herein.
- (b) This chapter shall not be deemed to interfere with, abrogate, annul, or otherwise affect in any manner whatsoever any ordinance, rules, regulations, permits, easements, covenants, or other agreements between parties; provided, however, that where this chapter imposes greater restrictions and controls with respect to stormwater management than are imposed or required by other ordinances, rules, regulations, permits, easements, covenants, or agreements between parties, the provisions of this chapter shall prevail.

- 
- (c) Where multiple regulations, ordinances or rules are present for any given project requiring a permit under this chapter, the more restrictive rule shall apply unless otherwise determined by the town manager or his/her designee.

**Sec. 38-504. Administration.**

- (a) The town manager or his/her designee is hereby authorized and directed to administer the provisions of this chapter, and shall have such other powers and perform such other duties as are set forth in other sections of this chapter and as may be conferred or imposed from time to time.
- (b) The town manager or his/her designee is hereby authorized to establish regulations and guidelines, by whatever title, for the implementation of the provisions of this chapter, including but not limited to establishing specific requirements and standards which shall govern land disturbing activities and the utilization and implementation of stormwater BMPs, inspections and enforcement. Said regulations shall become effective upon their approval by the town council.
- (c) The town manager or his/her designee shall also have the following powers under this chapter:
- (1) For those applications to be reviewed by the town, 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 town 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 town council, upon request.
  - (7) To designate appropriate other person(s) who shall carry out the powers and duties of the town manager or his/her designee.
  - (8) To take any other action necessary to administer the provisions of this chapter.

**Sec. 38-505. Effective date and transitional provisions.**

- (a) *Effective date.* This chapter shall take effect on November 14, 2023.
- (b) *Final approvals; complete applications.* All development and redevelopment projects for which complete and full applications were submitted to the state or the town prior to the effective date of the ordinance from which this chapter is derived 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 vegetated buffers and/or management of post-construction runoff, but shall be required to comply with all other applicable provisions, including but not limited to illicit discharge provisions. A phased development plan shall be deemed approved prior to the effective date of the ordinance from which this chapter is derived if a complete application

---

has been received by the state division of water quality or the town, and it remains valid, unexpired, unrevoked and not otherwise terminated, and it shows:

- (1) For the 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.
  - (2) 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 the ordinance from which this chapter is derived 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.

**Sec. 38-506. Delegation of reviewing agency.**

All applications for stormwater management permits shall be submitted to the town manager or his/her designee for review. The town manager or his/her designee reserves the right to delegate review of submitted stormwater plans to a designated reviewing authority or third-party contractor at any time. All application packages shall conform to the design standards listed in this chapter unless otherwise agreed to in writing by the applicant, town manager or his/her designee, and other affected departments or agencies.

***ARTICLE XIII. STORMWATER DISCHARGE PERMIT***

**Sec. 38-507. Required.**

No owner or developer of a site shall commence any of the development activities defined in section 38-502 without obtaining a stormwater discharge permit pursuant to the provisions of this chapter.

**Sec. 38-508. Application.**

- (a) An application for a stormwater discharge permit shall be made by, or on behalf of, the owner or developer of the site for which a permit is sought. A separate application shall be required for each permit, but a permit and application therefor may cover any number of contiguous lots being developed as a single project. The application shall be filed with the town on a form supplied by the town, and signed by the applicant, or by the applicant's agent or representative.
- (b) Effect of permit.
  - (1) A stormwater permit shall govern the design, installation, and construction of stormwater infrastructure or BMPs 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 the management and 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. 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) Each application for a stormwater discharge permit shall include the following:
  - (1) The name, address and telephone number of the applicant(s) and of the person signing the application, if different than the applicant;
  - (2) A complete and detailed stormwater management plan, including detailed design plans and construction specifications (refer to the design manual), for stormwater management facilities; the exact location of any on-site stormwater management facility and the easement(s) for said facility; and the exact location of any access easement(s);
  - (3) The specifics of any off-site stormwater management facilities to be utilized, including the amount and proof of any contribution thereto;
  - (4) All necessary easements and stormwater management maintenance agreements; and
  - (5) The appropriate stormwater discharge permit application fee as set forth in the current fee schedule published by the town.
- (d) Submittal of complete application.
  - (1) Applications shall be submitted to the town manager or his/her designee pursuant to the application submittal schedule in the form established by the town manager or his/her designee, along with the appropriate fee established pursuant to this section.
  - (2) An application shall be considered complete only when it contains all required elements of an application pursuant to this chapter, along with the appropriate fee. If the town manager or his/her designee 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.

**Sec. 38-509. Issuance—generally.**

No stormwater discharge permit shall be issued until the following conditions are met:

- (1) Approval of a stormwater management plan by the town manager or his/her designee.
- (2) Submission and approval of any required easements and stormwater management inspection and maintenance agreements or other documents as required by this chapter. All documents required by this section shall be fully executed prior to the recordation of the final subdivision plat or issuance of the certificate of occupancy.
- (3) Payment of stormwater management contribution where off-site stormwater management is applicable.
- (4) Payment of all required application fees.
- (5) Compliance with all applicable laws, ordinances, regulations, standards, and specifications.

**Sec. 38-510. Same—non-transferability.**

Stormwater discharge permits shall be issued in the name of the applicant. No permit issued to a project subject to this chapter, and which disturbs, constructs, replaces, or otherwise alters more than 10,000 square feet built upon area shall be transferred or assigned without the written consent of the town.

---

**Sec. 38-511. Conditions of approval.**

- (a) The town manager or his/her designee shall review all submitted permit applications and shall notify the applicant of any deficiencies or comments, or shall issue the stormwater discharge permit, within 45 days from the date of the most recent submittal.
- (b) If the town manager or his/her designee finds that the application complies with the standards of this chapter, the town manager or his/her designee shall approve the application.
- (c) All stormwater discharge permits are conditioned on compliance with the approved plan and with all relevant laws, ordinances, regulations, and standards of any state or local government or agency, including any standards established by the town relating to stormwater management. Permits are also conditioned on the agreement and obligation of the applicant to hold harmless the town, its officers, and employees, from any expense incurred through the failure of the applicant, or the applicant's agents to complete any required stormwater management measures, or from any damages growing out of the negligence of the applicant or the applicant's agents in connection with stormwater management measures.

**Sec. 38-512. Grounds for denial.**

- (a) No stormwater discharge permit shall be issued if it is found that the work proposed by the applicant will endanger any property or public way or pollute any water in violation of any federal or state standard or this chapter. Factors to be considered shall include, but not be limited to, possible saturation by rains, earth movement, surface water runoff, soil erosion, sedimentation, siltation, and subsurface conditions such as the nature and type of soil and rock.
- (b) No stormwater discharge permit shall be issued for activities within the 100-year flood plain of any stream or watercourse, until a determination has been made that said activity is in compliance with the town's flood plain regulations.
- (c) The town may deny the issuance of any permit to an applicant when it determines that the applicant is not in compliance with the provisions of an approved stormwater management plan for any project within the jurisdiction of the town.
- (d) Failure of the town manager or his/her designee to observe or recognize hazardous conditions or failure to deny the stormwater discharge permit shall not relieve the permittee from responsibility for the conditions or damages resulting therefrom and shall not result in the town, its officers, or employees, being responsible for the damages resulting therefrom.
- (e) If the town manager or his designee, or designated reviewing authority, finds that the application fails to comply with the standards of this chapter, the town manager or his/her designee shall notify the applicant and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application.
- (f) A completely revised application shall be reviewed by the town manager or his/her designee, or designated reviewing agency, after its re-submittal and shall be approved, approved with conditions, or disapproved.
- (g) If a revised application is not re-submitted within 30 calendar days from the date 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.

- (h) 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.

**Sec. 38-513. Expiration and renewal.**

- (a) The town manager or his/her designee may void any approved plan or permit if the applicant fails to make substantial progress on the site within one year after the date of approval, or during any uninterrupted three-month period thereafter until all conditions of the approved permit have been met. The town manager or his/her designee 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.
- (b) In granting an extension, the town manager or his/her designee 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.
- (c) If the stormwater discharge permit expires, the permittee shall make an application for a new permit in accordance with this chapter.

**Sec. 38-514. Authority to revoke or suspend.**

The town manager or his/her designee shall have the authority to suspend or revoke any stormwater discharge permit and to issue a stop work order for any violation of this chapter, applicable technical standards, stormwater discharge permit, any state, federal or local law applicable to the work or changes in site characteristics upon which plan approval and permit issuance was based.

**Sec. 38-515. Permit review fees.**

The town 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.

**Sec. 38-516. Concept plan and consultation meeting.**

- (a) *Consultation.* Before a stormwater management permit application is deemed complete, the town manager or his/her designee or developer may request a consultation on a concept plan for the post-construction stormwater management infrastructure and/or BMPs to be utilized in the proposed development project. This consultation meeting should take place at the time of the preliminary subdivision planning or other early step in the development process. The purpose of this meeting is to discuss the post-construction stormwater infrastructure and/or BMPs 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.

***ARTICLE XIV. STORMWATER MANAGEMENT PLANS***

---

**Sec. 38-517. Plan and specification requirements.**

An approved stormwater management plan and construction specifications are required for all activities requiring a stormwater discharge permit and shall be available on-site at all times. The plan and specifications shall be prepared and sealed by an authorized registered professional engineer. The plan and specifications shall meet the regulations and requirements of this chapter, and the criteria contained in any applicable standards and specifications adopted by the town council. If conflicting regulations or requirements apply, the more restrictive shall be used.

An approved stormwater management plan will contain the following:

- (1) Existing conditions/proposed site plans. Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: Existing and proposed topography; perennial and intermittent streams; 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.
- (2) 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, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc.). Particular attention should be paid to environmentally sensitive features that provide opportunities or constraints for development and stormwater management.
- (3) Stormwater management system plan. A written or graphic plan of the proposed post-development stormwater management system, including preliminary selection and location of proposed structural stormwater infrastructure and BMPs; 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, driveway or culvert crossings.

**Sec. 38-518. Required approvals.**

- (a) Plans and specifications for stormwater management require the approval of the town, and appropriate state and federal agencies.
- (b) The various approving departments and agencies may request additions, deletions and modifications to the plan as deemed necessary prior to approval. Said modifications shall be reflected on a revised plan prior to approval and issuance of the stormwater discharge permit.

**Sec. 38-519. Modification of approved plan.**

- (a) No modification of the approved plan shall be made until approved by the town in accordance with its rules and regulations.
- (b) Requests for modifications to an approved plan shall be submitted in writing to the town manager or his/her designee.

- 
- (c) All modifications shall be made in accordance with the criteria contained in the design manual and other applicable state law or regulation.

***ARTICLE XV. ON-SITE STORMWATER MANAGEMENT***

**Sec. 38-520. Applicability of this section.**

- (a) Except as otherwise provided herein, the provisions of this chapter, pertaining to on-site stormwater management, shall apply to each of the following:
- (1) Projects that require an Erosion and Sedimentation Control Plan pursuant to G.S. 113A-57;
  - (2) Projects that do not require an Erosion and Sedimentation Control Plan, but meet one of the following criteria:
    - a. Non-residential projects that propose to cumulatively add 10,000 square feet or more of built-upon area; or
    - b. Residential projects that propose to cover 12 percent or more of the undeveloped portion of the property with built-upon area.

**Sec. 38-521. Design and construction of stormwater management BMPs.**

- (a) Post-construction model practices for all projects. The following standards apply to all projects to which this chapter is applicable, as defined in section 38-502. All projects subject to the requirements of section 38-520 must:
- (1) Control and treat the difference in the stormwater runoff volume between the predevelopment and post-development conditions for the one-year, 24-hour storm. The minimum runoff volume to be treated shall be calculated based on the entire treatment area, as outlined in subsection (b) of this section, and the project's location.
  - (2) Draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.
  - (3) Discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one-year, 24-hour storm.
  - (4) Remove an 85 percent average annual amount of total suspended solids.
  - (5) Meet the general engineering design criteria set out in 15A NCAC 02H.1008(c).
  - (6) Control and treat runoff from all impervious areas and permeable pavement, within the contributing drainage area unless otherwise approved in writing by the town manager or his/her designee.
  - (7) All structural stormwater BMPs on projects which disturb, construct, replace, or otherwise alter greater than 10,000 square feet of impervious area shall be located in recorded drainage easements for the purposes of operation and maintenance and shall have recorded access easements to the nearest public right-of-way unless otherwise approved in writing by the town manager or his/her designee. These easements shall be granted in favor of the party responsible for operating and maintaining the stormwater management facilities.
  - (8) All structural BMPs shall meet the requirements of article XVII of this chapter.
- (b) The treatment area shall be determined as follows:
- (1) For new development, the treatment area shall include all land area located within the project boundary.

- (2) For redevelopment and expansion projects which disturb, construct, replace, or otherwise alter impervious area and disturb, add, replace, or otherwise alter an impervious area equivalent to or less than 50 percent of the existing impervious surface area on site, the treatment area shall include only those portions of the site which have been disturbed, constructed, replaced, or otherwise altered during construction.
- (3) For redevelopment and expansion projects which disturb, construct, replace, or otherwise alter impervious area or disturb, add, replace, or otherwise alter an impervious area greater than 50 percent of the existing impervious surface area on site, the treatment area shall include all land area located within the project boundary.
- (c) All newly constructed impervious areas 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 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 02B .0734 or similar site-specific determination made using division-approved methodology, or when existing impervious surfaces existing on site prior to the effective date of the ordinance from which this chapter is derived.
- (d) The approval of the stormwater permit on projects which disturb, construct, replace, or otherwise alter greater than 10,000 square feet of impervious area 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 or redevelopment maintains the site consistent with the approved project plans.
- (e) For structural stormwater BMPs that are required under this section and that require separation from the seasonal high-water table, a minimum separation of two feet is required. Where a separation of two feet from the seasonal high-water table is not practicable, the town manager or his/her designee or division of water quality may grant relief from the separation requirement pursuant to the alternative design criteria set out in 15A NCAC 02H.1008(h).
- (f) In designing on-site stormwater BMPs, those BMPs to be utilized shall be considered in the following order of preference:
  - (1) Flow attenuation by use of open vegetated swales and natural depressions;
  - (2) Infiltration;
  - (3) Retention structures; and
  - (4) Detention structures.The order of preference shall be modified where necessary, to accommodate requirements of the state for controlling stormwater quality.
- (g) The town manager or his/her designee reserves the right to consider, evaluate, and approve alternative design strategies which are consistent with the objectives of the regulations of this section. Alternative designs will be evaluated on a case-by-case basis, but at a minimum shall also include a detailed design narrative explaining how the project's stormwater management plan will adhere to the intent of the water quality protection measures described in this section.

**Sec. 38-522. Other considerations in design preparation.**

- (a) The developer shall give consideration to incorporating use of natural topography and land cover such as wetlands, ponds, natural swales, and depressions as they exist prior to development to the degree that they can accommodate the additional flow of water.
- (b) Where on-site storm drainage systems convey off-site stormwater through the site, computations reflecting the drainage area of land tributary to the site, and estimated runoff of the area served by such systems, shall be provided. In addition, a complete ten-year frequency storm event storm drainage study shall be submitted for the site. All on-site storm drainage systems conveying off-site stormwater through the site shall be public systems or private systems which shall be designed, constructed, and maintained to at least the standards of a public storm drainage system as contained in the design manual. All design calculations shall be computed based on full buildout of the upstream drainage basin, and shall include all property, on-site and off-site, draining to the analysis point. The design and construction shall be certified by an authorized registered professional as meeting or exceeding the requirements of this chapter and the design manual.
- (c) Projects which add, replace, or otherwise alter 10,000 square feet of impervious area or greater shall control the entire treatment volume on site according to the project's location.

**Sec. 38-523. Stormwater management requirements during and after construction.**

- (a) The town may require the relocation, reconstruction or encasement by the developer or project applicant of water or sewer facilities located or planned within the limits of proposed stormwater management facilities.
- (b) Precautions shall be taken to avoid degradation of infiltration areas during construction. Erosion control plans shall provide detailed construction sequences to ensure adequate protection of all proposed infiltration areas from siltation, construction traffic and general disturbance until the contributing drainage area is stabilized.
- (c) Record (as built) drawings (reproducible Mylar) for all structural stormwater BMPs must be certified by an authorized registered professional and provided to the town for permanent record.

**Sec. 38-524. Stormwater best management practice fee**

For development, redevelopment or expansion projects which increase the amount of impervious surface on the property within residential or non-residential areas, the developer shall pay to the town a fee for the construction and maintenance of stormwater infrastructure or BMPs in accordance with the current fee schedule. Stormwater best management practice fee is not available for on-site structure stormwater BMPs listed under section 38-520.

If a property, which already contains an impervious surface, is redeveloped and the amount of impervious surface is not increased over the prior total amount of impervious surface on the property, than no stormwater best management practice fee is required.

If the property owner chooses to install a structural stormwater BMP that contributes to the management of stormwater quality and quantity, than a credit may be awarded, and the stormwater best management practice fee reduced. The amount of the credit will be proportionate to the percent of stormwater retention on the property.

**Sec. 38-525. Combination of measures permitted.**

- (a) Nothing in these regulations shall be construed to mean that stormwater management requirements cannot be satisfied by a combination of on-site and off-site facilities, payment of fees, grant of easement, dedication of land and/or stormwater management facility if so, required by the town.
- (b) Development, redevelopment, or expansion projects which add, replace, or otherwise alter less than 10,000 square feet of impervious area may use a combination of on-site and/or off-site structural stormwater management systems (existing or proposed) such that the total cumulative volume of stormwater controlled, on-site and/or off-site, meets or exceeds the treatment volume requirements described in section 38-521(a) according to the project's location. Projects which add, replace, or otherwise alter 10,000 square feet of impervious area or greater shall control the entire treatment volume on site according to the project's location.

**Sec. 38-526. Additional requirements for fee alternative.**

Fees approved and accepted by the town for off-site stormwater management may be used by the town for land acquisition (including easements and rights-of-way) and the study, engineering, design, purchase, construction, expansion, repair, maintenance, landscaping, and inspection of public stormwater management facilities. Fees collected from the development shall be applied to improvements to the town's stormwater drainage system or affiliated projects at the discretion of the town manager or his/her designee.

**Sec. 38-527. Variances.**

- (a) Any person may petition the town council 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 do not result from actions taken by the petitioner.
  - (4) The requested variance is consistent with the spirit, purpose, and intent of this chapter and applicable state standards; will secure public safety and welfare; and will preserve substantial justice.
  - (5) The town may impose reasonable and appropriate conditions and safeguards upon any variance it grants.
- (b) Notwithstanding subsection (a) of this section, exceptions from the 30-foot landward location of impervious 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 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 a less adverse impact to surface waters.

**Sec. 38-528. Pet waste.**

Restrictions on pet waste are as follows:

- (1) It shall be unlawful for the owner or custodian of any dog to take it off the owner's own property limits without the means to properly remove and dispose of the dog's feces from any public or private property.
- (2) It is the responsibility of a dog's owner or custodian to clean up the dog's feces from any public or private property outside of the dog's owner's own property limits. Such property includes, but is not limited to, parks, rights-of-way, paths, and public access areas.
- (3) Means to properly remove and dispose of feces" shall consist of having on or near one's person a device such as a plastic bag, or other suitable plastic or paper container, that can be used to clean up and contain dog waste until it can be disposed of in an appropriate container. Such a device must be produced and shown, upon request, to anyone authorized to enforce this section.
- (4) This provision shall not apply to handicapped persons assisted by trained guide or assistance dogs.
- (5) The term "public nuisance" is defined to include a dog which deposits feces on public property or on private property without the consent of the owner or person in lawful possession of the private property, and the person owning, possessing, harboring or having the care, charge, control or custody of the dog fails to remove the feces so deposited; provided, however, this definition shall not apply to any dog assisting a handicapped person.

***ARTICLE XVI. STORMWATER DRAINAGE PERMIT***

**Sec. 38-529. Stormwater drainage permit.**

The purpose of the stormwater drainage permit is to identify properties that have the potential of changing the natural or existing stormwater drainage patterns and develop a system that allows development without negatively impacting the stormwater drainage of adjacent properties. There are two types of stormwater drainage permits:

- (a) A stormwater permit without a drainage plan shall be submitted to the town manager or his/her designee for the following:
  - (1) Removal of vegetation down to bare soil including the removal of stumps and underground material, and limited leveling on the site that does not change the topographic conditions of the property;
  - (2) An increase of impervious surface on the property; or

- (3) For situations not covered in section 38-529 by determination of the town manager or his/her designee.
- (b) A stormwater permit with a drainage plan shall be submitted to the town manager or his/her designee for the following:
  - (1) Grading/filling or other changes to the topographic conditions of the property;
  - (2) Permanent placement of fill soils or other materials on the property;
  - (3) When a building permit for increased impervious surface is required;
  - (4) If the location has a history of flooding or erosion that may be further aggravated by, or have a harmful effect on adjoining properties; or
  - (5) If it is determined by the town manager or his/her designee that conditions in this section apply, however there will be no substantial change to the topography and/or stormwater flow then a drainage plan may be waived.
- (c) Procedures.
  - (1) The removal of vegetation, the pouring or placement of impervious materials, fill soil or other materials in or upon lands located within the jurisdictional limits of the town shall be prohibited unless and until a valid permit has been issued by the town manager or his/her designee.
  - (2) The fees for such permits shall be designated in the current fee schedule as published by the town.
  - (3) No permits shall be issued by the building inspector unless and until the town manager or his/her designee determines that the proposed activity complies with all applicable town, state and federal regulations relative to surface and subsurface drainage and runoff and removal of vegetation, the pouring or placement of impervious materials, fill soil, or materials and issues preliminary or final approval certification as applicable.
  - (4) The engineers, architect, landscape architect or other fields licensed to perform stormwater management practice design certification of the pre and post construction drainage conditions shall ensure that the vegetation removal, the pouring or placement of materials, soil, or other materials shall not increase drainage runoff onto public streets, cause erosion or sedimentation of adjacent properties, drainageways, wetlands, or water and which do not violate town, state, and federal regulations.
  - (5) All properties requiring a stormwater drainage permit with a drainage plan must grade the property so that grading results in positive drainage of stormwater to existing surrounding drainage features; such as streams, creeks, swales, pipes or town stormwater conveyance systems within the public right-of-way and will not impact adjacent properties. Where possible it is encouraged that commercial properties tie in directly to existing systems to avoid adverse impacts on adjacent properties and rights-of-way.
  - (6) All properties requiring either type of stormwater drainage permit must protect adjacent properties and conveyance systems by installing and maintaining erosion control devices.
- (d) Stormwater drainage plan contents.
  - (1) A stormwater and drainage plan shall be prepared by a registered civil engineer, architect, landscape architect or other fields licensed to perform stormwater

management practice design and include the following site and drainage information:

- a. Existing and proposed flow lines of surface and subsurface waters onto and off of the site;
- b. Existing and finished contours, at two-foot intervals;
- c. The location of any existing buildings, structures or improvements on the property where the work is to be performed and on adjacent lots;
- d. The location of all existing natural and man-made drainage facilities for the storage or conveyance of runoff, including drainage swales, ditches, culverts and berms, sumps, sediment basins, channels, ponds, storm drains and drop inlets serving the site;
- e. All surface and subsurface drainage devices, walls, cribbing, dams and other protective devices to be built with or as a part of the proposed construction;
- f. Hydraulic calculations that show the flow-carrying capacities of proposed conveyance devices and justify the estimated runoff of the area served by any proposed conveyance device;
- g. Discharges and velocities of proposed conveyance devices, and storage volumes of any sumps, ponds or sediment basins; and
- h. Estimates of existing and increased runoff resulting from proposed improvements and methods for reducing the velocity of any increased runoff.

## ***ARTICLE XVII. MAINTENANCE, INSPECTIONS AND ENFORCEMENT***

### **Sec. 38-530. Maintenance.**

- (a) *Applicability.* This section shall apply to all structural stormwater BMPs installed, as required by this chapter.
- (b) *Function of BMPs as intended.* The owner of each structural BMP installed pursuant to this chapter shall maintain and operate it 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.
- (c) *Annual maintenance inspection and report.* The person responsible for maintenance of any structural BMP installed pursuant to this chapter shall submit to the town manager or his/her designee 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 state cooperative extension service for stormwater treatment practice inspection and maintenance.

The person responsible for maintenance of any structural BMP may contract with the town to perform the inspections of BMP's or contract with a private company or organization to perform the inspection. All deficiencies identified during the inspection must be corrected by the person responsible for maintenance of the BMP within six months of the inspection. If inspections or corrective actions are not performed by the person responsible, the town will perform said work and charge the person responsible for the expense.

The inspection report shall contain all of the following:

- (1) The name and address of the landowner;
  - (2) The recorded book and page number of the lot of each structural BMP;
  - (3) A statement that an inspection was made of all structural BMPs;
-

- (4) The date the inspection was made;
- (5) 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;
- (6) The original signature and seal of the engineer, surveyor, or landscape architect; and
- (7) All inspection reports shall be on forms supplied by the town manager or his/her designee. An original inspection report shall be provided to the town manager or his/her designee beginning one year from the date of as-built certification and each year thereafter on or before the date of the as-built certification.

**Sec. 38-531. Operation and maintenance agreement.**

(a) *Generally.*

- (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, on projects which disturb, construct, replace, or otherwise alter impervious area, 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 town a right of entry in the event that the town manager or his/her designee 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 town to assume responsibility for the structural BMP.
- (3) The operation and maintenance agreement must be approved by the town manager or his/her designee 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 town manager or his/her designee within 14 days following its recordation.
- (4) Whenever a private stormwater BMP is designed to receive stormwater runoff from public streets or other public property, as a condition of the approval of the stormwater management plan, the owners of the BMP and their successors and assigns shall release, indemnify and hold the town, its officials and employees, harmless from any responsibility or liability for any and all damage or injury of any kind or nature whatsoever (including death resulting therefrom) to all persons, whether employees of the town or otherwise, and to all property, caused by, resulting from, arising out of, or occurring in connection with the drainage, flow or runoff of surface water from public property over and into the stormwater BMPs and from the stormwater facilities on to adjacent properties. As a further condition of the approval, the owner and its successors and assigns shall be deemed to have agreed that the town shall have no responsibility or liability for the maintenance of the stormwater BMPs, and the owner and its

successors and assigns shall maintain the BMPs so that they do not become a public or private nuisance or cause damage to adjacent property. These agreements shall be appurtenant to and run with the land benefited by the stormwater BMPs and shall be binding on the owner and its successors and assigns and occupants thereof.

- (b) *Special requirement for homeowners' and other associations.* For all structural BMPs required pursuant to this chapter 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 of the following provisions:
  - (1) Acknowledgment that the association shall continuously operate and maintain the stormwater BMPs.
  - (2) Granting to the town a right of entry to inspect, monitor, maintain, repair, and reconstruct structural BMPs.
  - (3) Allowing the town to recover from the association and its members, any and all costs the town expends to maintain or repair the structural BMPs or to correct any operational deficiencies. Failure to pay the town all of its expended costs, after 45 days' written notice, shall constitute a breach of the agreement. In case of a deficiency, the town shall thereafter be entitled to bring an 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 fees shall be added to the recovery.
  - (4) A statement that this agreement shall not obligate the town to maintain or repair any structural BMPs, and the town shall not be liable to any person for the condition or operation of structural BMPs.
  - (5) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the town to enforce any of its ordinances as authorized by law.
  - (6) A provision indemnifying and holding harmless the town for any costs and injuries arising from or related to the structural BMP.
- (c) *Deed recordation and indications on plat.* The applicable operations and maintenance agreement pertaining to every structural BMP installed on projects which disturb, construct, replace, or otherwise alter greater than 10,000 square feet of impervious area, 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 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.
- (d) *Signage.* Where appropriate in the determination of the town manager or his/her designee to ensure 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.

**Sec. 38-532. Inspections.**

- (a) An approved stormwater management plan and all permits shall be posted and available on site at all times during construction.
  - (b) Periodic inspection during construction of stormwater BMPs shall be conducted by the town. If the work performed upon the site fails to comply with any ordinance, regulation, or
-

---

standard of condition of any permit, the owner and permittee shall be informed of the violation and the nature of the corrections required.

- (c) The town may require the applicant to provide engineering inspection and testing during construction. Upon completion of construction, certification by an authorized registered professional that all work completed, and construction materials used meet or exceed requirements of approved plans and specifications shall be provided.

**Sec. 38-533. Emergency authority.**

If the town manager or his/her designee determines that the condition of any stormwater BMP presents an immediate danger to the public health or safety because of an unsafe condition or improper maintenance, the town manager or his/her designee shall take such actions as may be necessary to protect the public and make the BMP safe. Any costs incurred by the town as a result of the town manager, or his/her designee action shall be assessed against any or all of the owners of property served by said BMP who shall be jointly and severally liable for all said costs and whose property shall jointly and severally be subject to a lien for said costs which may be collected as provided in G.S. 160A-193.

If the town manager or his/her designee determines that weather related circumstances dictate the pumping or lowering of pond water levels in order to protect downstream properties from flooding, the town shall take such actions as may be necessary to protect the public. Any costs incurred by the town as a result of these actions will not be charged to the property owner.

***ARTICLE XVIII. LANDSCAPING AND VEGETATION***

**Sec. 38-534. Purpose.**

This section is established for the purpose of regulating, controlling, preserving and setting forth methods of continued maintenance assurance of all regulated vegetation located within the municipal limits of the town and, furthermore, establishes authority to regulate and control the degree of impervious surfaces constructed on properties and the placement and configuration of fill soil and material on properties located within such municipality.

**Sec. 38-535. Functions.**

Landscaping and the regulation of placement and arrangement of impervious and fill material accomplishes the following functions:

- (1) Maintains the visual character of the community.
- (2) Screens objectionable views within and between uses.
- (3) Defines functional exterior spaces.
- (4) Reduces glare into and from the site.
- (5) Reduces dust and other pollutants suspended in the air.
- (6) Controls noise and provides acoustical modification into and from the site.
- (7) Influences wind patterns and their effects upon uses.
- (8) Contains odors and minimizes their passage into and from a site.
- (9) Controls the direction and velocity of surface water runoff.
- (10) Minimizes soil erosion.
- (11) Moderates interior and exterior temperature by controlling solar radiation on structures and impervious surfaces.



- (12) Controls the quantity of impervious surface within a site interior, thus enhancing ground absorption capabilities and controls the placement of fill soil and materials and reduces the use of public monies for control of increased surface runoff.
- (13) Maintains the aesthetic quality of property and enhances its value.
- (14) Offers protection of adjacent properties from increased water runoff and erosion sedimentation.
- (15) Offers protection to adjacent natural resources.

**Sec. 38-536. Debris, vegetation, and waste.**

Debris from vegetation may be placed in the right-of-away for pick-up, though sand, dirt or grass clippings may not be blown into the streets, which may impede or eventually restrict and or hamper the flow of stormwater runoff. Grass clippings that are blown into the street are a violation of this chapter. Homeowners and landscaping contractors that are in violation of placing and or blowing vegetation debris into town streets may be fined. It is the responsibility of that homeowner or contractor to remove the vegetation waste properly.

**ARTICLE XIX. ILLICIT DISCHARGE AND CONNECTION STANDARDS**

**Sec. 38-537. Illicit discharges and connections.**

**(a) *Illicit discharges.***

- (1) 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:
  - a. Water line flushing;
  - b. Landscape irrigation;
  - c. Diverted stream flows;
  - d. Rising ground waters;
  - e. Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20));
  - f. Uncontaminated pumped ground water;
  - g. Discharges from potable water sources;
  - h. Foundation drains;
  - i. Air conditioning condensation;
  - j. Irrigation water;
  - k. Springs;
  - l. Water from crawl space pumps;
  - m. Footing drains;
  - n. Lawn watering;
  - o. Individual residential car washing;
  - p. Flows from riparian habitats and wetlands;
  - q. Dechlorinated swimming pool discharges;
  - r. Yard waste piled for removal, and debris placed for roadside pickup, provided it was placed at least five feet from any defined stormwater conveyance (ditch, curb, pipe, etc.) and all prohibited substances listed in subsection (a)(2) of this section

are contained in a manner to prevent them from being transported by stormwater flows;

- s. Street wash water;
  - t. 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 town.
- (2) Prohibited substances include, but are not limited to, oil, antifreeze, 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 subsection (a)(1) of this section, are unlawful. Prohibited connections include, but are not limited to floor drains, wastewater from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and wastewater from septic systems.
  - (2) Where such connections exist in violation of this section and said connections were made prior to the adoption of the ordinance from which this chapter is derived or any other ordinance prohibiting such connections, the property owner or the person using said connection shall remove the connection within one year following the effective date of the ordinance from which this chapter is derived. 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) a. Where it is determined that said connection:
    - 1. 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
    - 2. Was made in violation of any applicable regulation or ordinance, other than this section; the town manager or his/her designee shall designate the time within which the connection shall be removed.b. In setting the time limit for compliance, the town manager or his/her designee 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.
- (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 pre-existing 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 town 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 article X of this chapter.

## **ARTICLE XX. VIOLATIONS**

### **Sec. 38-538. Violations, penalties, and enforcement.**

- (a) Any of the following violations shall subject the offender to a civil penalty for the initial violation and a civil penalty for each subsequent violation, each pursuant to the town's annually adopted rate and fee schedule; or the full amount of penalty to which the town is subject for violations of the Phase II stormwater permit directly caused by the offender. The offender may also be imprisoned for not more than 30 days, or both, at the discretion of the court. Each day that a violation continues after the offender has been notified of the violation shall constitute a separate and distinct offense.
  - (1) The violation of any provision of this chapter or of any rule or regulation, by whatever name, issued or adopted pursuant to the provisions of this chapter.
  - (2) The failure to comply with the express or implied condition or term of any permit issued or agreement executed pursuant to the provisions of this chapter.
  - (3) The failure to comply with any order, notice, or directive of the Town Manager or his/her designee to stop work or to take corrective action.
  - (4) The failure of the owner of, or any person responsible for the maintenance of, any property served by an existing private on-site stormwater BMP to maintain said BMP in proper working order.
  - (5) If the offender fails to pay this penalty within ten days after being cited for a violation, the penalty may be recovered in a civil action in the nature of debt.
- (b) The town may seek to enforce this chapter or to prevent, restrain, correct or abate violations of this chapter through any appropriate equitable action.
- (c) The town may seek to enforce this chapter by using any one or any combination of the foregoing remedies.
- (d) No building permit shall be issued for any building without approval of the storm drainage BMPs for the property and buildings by the town manager or his/her designee.
- (e) In case of any violation of this chapter, the town manager or his/her designee or other appropriate official shall take action to put an end to such violation.

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. SEVERABILITY CLAUSE. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in effect from and after 12:01 AM the day after its final passage and approval.

PASSED, APPROVED, and ADOPTED this 14<sup>th</sup> day of November 2023.

Attest:

Louise Bennett  
Louise Bennett, Town Clerk

Brenda Brown  
Brenda Brown, Mayor

