

## ARTICLE IV. STORMWATER QUALITY CONTROL AND MANAGEMENT

### Sec. 60-46. Connection approval criteria; duty of owner; compliance by utilities.

(a) The city manager or his designee shall not be authorized to approve any connection to city drainage facilities unless he is of the opinion that the size, shape, and location of the newly installed drainage facilities are adequate for handling the anticipated amount of water.

(b) It shall be the responsibility of the property owner of any parcel of land when making any improvements or changes affecting the land, which alter the existing flow pattern of runoff water, to install appropriate facilities for carrying the runoff water into a properly approved storm sewer, ditch, or stream. No zoning compliance permit shall be issued for any property within the jurisdiction of the city until the conditions of this section are met.

(c) It shall be illegal for any utility company to allow electricity or public water to be connected to any facility on any land that has not complied with the provisions of this section.

(Ord. No. 07-108, § 1, 12-13-2007)

### Sec. 60-47. Non-stormwater discharge controls.

(a) *Illicit discharges.* No person shall cause the commencement, conduct, or continuance of any non-stormwater discharge to the stormwater conveyance system except as provided below.

- (1) Non-stormwater discharges associated with the following activities are allowed:
  - a. Filter backwash and draining associated with raw water intake screening and filtering devices;
  - b. Potable water line flushing and hydrostatic testing water associated with utility operations;
  - c. Flushing and cleaning of stormwater conveyances with unmodified potable water;
  - d. Uncontaminated pumped groundwater and other discharges from potable water sources such as water line leaks, draining for pipes for repairs, and emptying of potable water storage tanks;
  - e. Landscape irrigation and lawn watering water;
  - f. Diverted stream flows;
  - g. Uncontaminated rising groundwater;
  - h. Groundwater infiltration to the storm drain system;
  - i. Uncontaminated groundwater from foundation and footing drains;
  - j. Uncontaminated groundwater from crawl space pumps;
  - k. Residential or commercial air conditioning condensation;

- I. Uncontaminated water from roof drains;
- m. Wash water from the cleaning of the exterior of buildings, including gutters, provided that the discharge does not pose an environmental or health threat;
- n. Uncontaminated groundwater from springs;
- o. Individual residential and occasional non-commercial car washing;
- p. Water from riparian habitats and wetlands;
- q. Discharges from the pumping or draining of natural watercourses or waterbodies;
- r. Filter backwash and draining associated with swimming pools provided that water quality is not significantly impacted;
- s. Street wash water;
- t. Flows from fire fighting;
- u. Discharges associated with emergency removal and treatment activities, for hazardous materials, authorized by the federal, state, or local government on-scene coordinator; and
- v. Other non-stormwater discharges for which a valid NPDES discharge permit, waiver, or waste discharge order has been approved and issued by the State of North Carolina under the authority of the Federal Environmental Protection Agency, provided that:
  - 1. The discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations;
  - 2. Written notification of such permitted discharge has been filed with the stormwater administrator, in a form acceptable to the stormwater administrator; and
  - 3. Discharges to the municipal separate storm sewer system have been authorized by the stormwater administrator.

(2) Prohibited substances include, but are not limited to:

- a. Oil and grease of petroleum or synthetic hydrocarbon origin;
- b. Fats, oils, and grease of plant or animal origin;
- c. Anti-freeze, parts cleaner, and other motor equipment fluids;
- d. Chemicals, paints, pesticides, and other household hazardous wastes;
- e. Animal waste, gray water and waste water from RV's and travel trailers;
- f. Washdown water from concrete trucks, and floor mop water;,,
- g. Garbage, litter, yard waste, and any other solid waste materials; and
- h. Contaminated washdown or drainage from dumpster drains.

(3) With written concurrence of the North Carolina Department of Environment and Natural Resources, the city may exempt in writing other non-stormwater discharges, which are not a source of pollutants to the storm water conveyance system or waters

of the state.

(b) *Illicit connections*. Note: This regulation first became effective on December 13, 2007.

(1) The construction, use, maintenance, or continued existence of illicit connections to the storm drain system is prohibited. Prohibited connections include, but are not limited to:

- a. Floor drains,
- b. Wastewater from washing machines,
- c. Wastewater from sanitary sewers,
- d. Wash water from commercial vehicle washing or steam cleaning, and
- e. Wastewater from septic systems.

(2) This prohibition expressly includes, without limitation, illicit connections made prior to the adoption of this provision or any other ordinance prohibiting such connections, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. The property owner or the person using said connection shall remove the connection within one year following the effective date of this regulation; provided that the 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 said connection may result in the discharge of hazardous materials or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat; or was made in violation of any applicable regulation or ordinance, the city manager or his designee shall designate the time within which the connection shall be removed. In setting the time limit for compliance, the city shall take into consideration:

- 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) *Waste disposal*. No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, component of the storm drain system, or waters of the state, any refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that the same may cause or contribute to pollution. Wastes deposited in streets in proper waste receptacles for the purposes of collection are exempted from this prohibition.

(d) *Discharges in violation of industrial or construction activity NPDES stormwater discharge permit*. Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the city prior to or as a

condition of a subdivision map, site plan, building permit, or development or improvement plan; upon inspection of the facility; during any enforcement proceeding or action; or for any other reasonable cause.

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

(Ord. No. 07-108, § 1, 12-13-2007)

## **Sec. 60-48. Enforcement of stormwater control and management.**

(a) *Authority to enter.* Any authorized city personnel shall be permitted to enter upon public or private property for the purposes of observation, inspection, sampling, monitoring, testing, surveying, and measuring compliance. Should the owner or occupant of any property refuse to permit such reasonable access, the city manager or his designee 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 any such representative while carrying out his official duties.

(b) *Civil penalties.* Civil penalties may be assessed simultaneously for each kind of violation: discharge, connection, improper BMP, maintenance or other violation.

(1) *Illicit discharges.* Any designer, engineer, contractor, agent, or any other person who allows, acts in concert, participates, directs, or assists directly or indirectly in the creation of a violation of this chapter shall be subject to civil penalties as follows:

a. For first time offenders, if the quantity of the discharge is equal to or less than five gallons and consists of domestic or household products in quantities considered ordinary for household purposes, said person shall be assessed a civil penalty not to exceed \$100.00 per violation or per day for any continuing violation, and if the quantity of the discharge is greater than five gallons or contains non-domestic substances, including but not limited to process waste water, or if said person cannot provide clear and convincing evidence of the volume and nature of the substance discharged, said person shall be assessed a civil penalty not to exceed \$1,000.00 per violation or per day for any continuing violation.

b. For repeat offenders, the amount of the penalty shall be at least double the amount assessed for the previous penalty, not to exceed \$10,000.00 per violation or per day for any continuing violation.

c. In determining the amount of the penalty, the city manager or his designee shall consider:

1. The degree and extent of harm to the environment, the public health, and public and private property;
2. The cost of remedying the damage;

3. The duration of the violation;
4. Whether the violation was willful;
5. The prior record of the person responsible for the violation in complying or failing to comply with this chapter;
6. The costs of enforcement to the public; and
7. The amount of money saved by the violator through his, her, or its noncompliance.

(2) *Illicit connections.* Any person found with an illicit connection in violation of this chapter and any designer, engineer, contractor, agent, or any other person who allows, acts in concert, participates, directs, or assists directly or indirectly in the establishment of an illicit connection in violation of this chapter, shall be subject to civil penalties as follows:

- a. First time offenders shall be subject to a civil penalty not to exceed \$500.00 per day of continuing violation.
- b. Repeat offenders shall be subject to a civil penalty not to exceed \$1,000.00 per day of continuing violation.
- c. In determining the amount of the penalty, the city manager or his designee shall consider:
  1. The degree and extent of harm to the environment, the public health, and public and private property;
  2. The cost of remedying the damage;
  3. The duration of the violation;
  4. Whether the violation was willful;
  5. The prior record of the person responsible for the violation in complying or failing to comply with this chapter;
  6. The costs of enforcement to the public; and
  7. The amount of money saved by the violator through his, her, or its noncompliance.
- d. Procedures for assessing penalties pursuant to illicit connections. Said penalties shall be assessed by the city manager or his designee. No penalty shall be assessed until the person alleged to be in violation is served written notice of the violation by registered mail, certified mail-return receipt requested, or personal service. Refusal to accept the notice shall not relieve the violator of the obligation to pay the penalty. The notice shall describe the violation with particularity and specify the measures needed to come into compliance. The notice shall designate the time within which such measures must be completed. In setting the time limit for compliance, the city shall take into consideration:
  1. The quantity and complexity of the work;
  2. The consequences of delay;
  3. The potential harm to the environment, the public health, and public

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and private property; and

4. The cost of remedying the damage.

The notice shall warn that failure to correct the violation within the specified time period will result in the assessment of a civil penalty and/or other enforcement action. If after the allotted time period has expired, and the violation has not been corrected, the penalty shall be assessed from the date of receipt of notice of violation and each day of continuing violation thereafter shall constitute a separate violation under this section.

(3) *Improper BMP maintenance, inspection and reporting.* Any permittee found in violation of the BMP maintenance, inspection and reporting requirements of their maintenance agreement with the city or the conditions of their stormwater conveyance and control system permit shall be subject to a civil penalties as follows:

a. First time offenders shall be subject to a civil penalty not to exceed \$500.00 per day of continuing violation.

b. Repeat violators shall be subject to a civil penalty not to exceed one \$1,000.00 per day of continuing violation.

c. In determining the amount of the penalty, the city manager or his designee shall consider:

1. The degree and extent of harm to the environment, the public health, and public and private property;
2. The cost of remedying the damage;
3. The duration of the violation;
4. Whether the violation was willful;
5. The prior record of the person responsible for the violation in complying or failing to comply with this chapter;
6. The costs of enforcement to the public; and
7. The amount of money saved by the violator through his, her, or its noncompliance.

d. Procedures for assessing penalties pursuant to improper BMP maintenance, inspection and reporting. Said penalties shall be assessed by the city manager or his designee. No penalty shall be assessed until the permittee alleged to be in violation is served written notice of the violation by registered mail, certified mail-return receipt requested, or personal service. Refusal to accept the notice shall not relieve the violator of the obligation to pay the penalty. The notice shall describe the violation with particularity and specify the measures needed to come into compliance. The notice shall designate the time within which such measures must be completed. In setting the time limit for compliance, the city shall take into consideration:

1. The quantity and complexity of the work;
2. The consequences of delay;
3. The potential harm to the environment, the public health, and public

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and private property; and

4. The cost of remedying the damage.

The notice shall warn that failure to correct the violation within the specified time period will result in the assessment of a civil penalty and/or other enforcement action. If after the allotted time period has expired, and the violation has not been corrected, the penalty shall be assessed from the date of receipt of notice of violation and each day of continuing violation thereafter shall constitute a separate violation under this section.

(4) *Other violations.* Any person found in violation of other provisions of this chapter, not specifically enumerated elsewhere, shall be subject to a civil penalty not to exceed \$100.00 per violation or per day for any continuing violation.

(5) *Payment/collection procedures.* Penalties shall be assessed by the city manager or his designee. No penalty shall be assessed until the person alleged to be in violation is served written notice of the violation by registered mail, certified mail-return receipt requested, or personal service. Refusal to accept the notice shall not relieve the violator of the obligation to pay the penalty. The city manager or his designee shall make written demand for payment upon the person in violation. If the payment is not received or equitable settlement reached within 30 days after demand for payment is made, the matter shall be referred to the city attorney for institution of a civil action in the name of the city, in the appropriate division of the general court of justice in Cabarrus County for recovering the penalty.

(c) *Injunctive relief.*

(1) Whenever the city council has a reasonable cause to believe that any person is violating or threatening to violate this chapter, rule, regulation, order duly adopted or issued pursuant to this chapter or making a connection to a stormwater conveyance or stormwater conveyance system other than in accordance with the terms, conditions, and provisions of approval, the city may, either before or after the institution of any other action or proceeding authorized by the Code, institute a civil action in the name of the city for injunctive relief to restrain and abate the violation or threatened violation.

(2) The institution of an action for injunctive relief under subsection (c) shall not relieve any party to such proceeding from any further civil or criminal penalty prescribed for violations of this Code.

(d) *Criminal penalties.* Any person who knowingly or willfully violates any provision of this chapter, rule, regulation, order duly adopted or issued pursuant to this chapter shall be guilty of a misdemeanor, punishable by a fine not to exceed \$500.00 or imprisonment for not longer than 30 days. Each violation shall be a separate offense.

Criminal penalties are enforceable through the provisions of G.S. §160A-175 and Code of Ordinances § 1.6

(e) Appeals of this section 60-48 shall follow the procedures outlined in section 60-49.

(Ord. No. 07-108, § 1, 12-13-2007)

## **Sec. 60-49. Appeals.**

(a) *Persons entitled to a hearing.* The following persons are entitled to a hearing pursuant to this section, for any actions taken by the city pursuant to this Article IV, each of whom is hereafter referred to as "aggrieved person."

- (1) Any person whose application for a permit extending city stormwater utility under this article is denied;
- (2) Any person against whom the city assesses a penalty pursuant to this article.

(b) *Procedures for requesting a hearing.* The aggrieved person shall exercise such right to a hearing by making a written demand for a hearing in accordance with this subsection. Any person making a demand for a hearing shall deliver the demand to the stormwater administrator within 30 days of the following:

- (1) The date of issuance of the contested permit;
- (2) The date of the notice of the denial of permit issuance;
- (3) The date of the notice of a revocation, modification, or suspension of an issued permit; or
- (4) The date that a penalty was assessed.

(c) *Content of hearing request.* The written demand for a hearing must identify separately and with particularity the following:

- (1) The aggrieved person or persons;
- (2) The specific permit provision or condition or other issues contested to be considered;
- (3) The reason for the objection; and
- (4) Any alternate provisions, conditions, or terms the aggrieved person proposes.

(d) *Hearing procedures.*

- (1) The hearing shall be conducted by the stormwater administrator and shall be subject to such rules as have been approved by the city council or the stormwater administrator as hereinafter set forth.
- (2) If the demand for a hearing is not made in accordance with the provisions of this section, the stormwater administrator shall reject the demand and any right to a hearing shall be terminated.
- (3) If any person demanding a hearing shall fail to comply with an order of the stormwater administrator or with any rules issued by the stormwater administrator or approved by the city council concerning the conduct of the hearing, the stormwater administrator may reject the demand and any right to a hearing shall be terminated.
- (4) Within 90 days of the receipt of the written hearing request, the stormwater administrator shall conduct a hearing and issue a final order or decision. The stormwater administrator shall transmit a copy of the final order or decision to the aggrieved person by registered or certified mail.
- (5) The stormwater administrator is authorized to take any action which is reasonably necessary or convenient in considering a demand for a hearing and in resolving the issues raised therein so long as such action is not contrary to the provisions of this article, or other applicable law.

- (6) The stormwater administrator may appoint a hearing officer to conduct any hearing authorized by this section. A hearing officer shall have the same authority to conduct a hearing and reach a decision as is provided to the stormwater administrator, provided that the decision of the hearing officer shall not be final, but shall be a recommended decision for consideration by the stormwater administrator.
- (7) The stormwater administrator may approve such decision without change, reject the decision that is supported by evidence presented at the hearing, or issue a different or revised decision that is supported by evidence presented at the hearing.
- (8) The decision of the stormwater administrator shall be final.
- (9) A final order may provide that the action that is the basis for the demand for a hearing is approved without change or may modify such action in any manner that is supported by the evidence presented at the hearing.
- (10) The stormwater administrator may, but is not required to, provide for any part of the hearing to be recorded by any reasonable means including, but not limited to, audio and/or video recording, stenographer, or court reporter. A transcript of any hearing, part thereof, which is recorded need not be prepared unless requested. The original of a requested transcript shall be filed with the stormwater department. Each person shall bear the cost of the transcript which such person requests, including any copy thereof. The decision of the stormwater administrator shall be reviewable only by seeking a writ of mandamus from the superior court within 30 days of the entry of the final order set forth herein.

(Ord. No. 07-108, § 1, 12-13-2007)

Secs. 60-50--60-75. Reserved.