

## **Town of Davidson Surface Water Pollution Control Ordinance**

### **Section 30-171. Title**

This Ordinance shall be cited as the “Town of Davidson Surface Water Pollution Control Ordinance.”

### **Section 30-172 General Authorization and Ordinance Purpose**

The State legislature has, in NCGS § 160A-459, authorized cities to adopt and enforce a Stormwater control Ordinance to protect water quality and control water quantity.

The purpose of this Ordinance is to meet the requirements of the Town of Davidson’s NPDES MS4 Stormwater permit and to support the protection of surface water quality within the Town’s jurisdiction by controlling the Discharge of Pollutants to the Stormwater System and making it illegal for Non-Stormwater or Pollutants to be Discharged to the Stormwater System or Waters of the State. This Ordinance is supplemental to and in no way replaces regulations, rules, statutes, and laws administered by the State or federal government.

The objectives of this Ordinance are:

- (1) To regulate the Discharge of Pollutants to the Stormwater System and the Waters of the State;
- (2) To prohibit Illicit Discharges and Illicit Connections to the Stormwater System and the Waters of the State; and
- (3) To establish legal authority to carry out all investigation, inspection, surveillance, monitoring, enforcement and penalty procedures necessary to ensure compliance with this Ordinance.

### **Section 30-173. Territorial Jurisdiction**

This Ordinance is applicable within the corporate limits of the Town of Davidson.

### **Section 30-174. Definitions**

The following words, terms and phrases, whether shown in uppercase or in lowercase, when used in this Ordinance, or in a notice required by this Ordinance, shall have the meaning ascribed to them in this Section, except where the context clearly indicates a different meaning:

*Charity Vehicle Washing* means vehicle washing performed to raise money to be used for purposes other than making a profit.

*County* means Mecklenburg County, North Carolina.

*Commercial* means activity or property devoted in whole or in part to commerce, that is, the exchange and buying and selling of commodities or services.

*Day(s)* means calendar day(s), including Saturdays, Sundays, and holidays, unless otherwise specified.

*Director* means the person appointed by the County to lead the department that is responsible for management of the County's NPDES MS4 stormwater permit who is charged with certain duties and responsibilities by this Ordinance, or that person's duly authorized representative(s).

*Discharge or Discharged* means the addition, release, or disposal of Non-Stormwater or any pollutant, whether it is solid, liquid, or gaseous form, either directly or indirectly to the stormwater system or the Waters of the State.

*EPA* means the United States Environmental Protection Agency or other duly authorized official of the agency.

*High Polycyclic Aromatic Hydrocarbon (PAH) Pavement Product* means a product, material or substance that contains greater than 0.1% (1000 ppm) PAH by weight and is intended for use on an asphalt or concrete surface. High PAH pavement products may contain, but are not limited to, coal tar, coal tar pitch volatiles, RT-12, refined tar, steam-cracked petroleum residues, heavy pyrolysis oil, steam-cracked asphalt, pyrolysis fuel oil, heavy fuel oil, ethylene tar, ethylene cracker residue, or a variation of those substances assigned the chemical abstracts service (CAS) numbers 65996-92-1, 65996-93-2, 65996-89-6, 8007-45-2, 64742-90-1, or 69013-21-4.

*Illicit Connection* means any physical connection, actual or potential flow Discharge, or other condition that could allow Non-Stormwater or a Pollutant to enter the Stormwater System or the Waters of the State. Examples of illicit connections include, but are not limited to: Wastewater lines such as those from washing machines or sanitary sewers; and pipes, drains, hoses, ditches, troughs, etc. carrying Wastewater, Washwater or any other Non-Stormwater or Pollutant from a facility, dwelling, building, vehicle, operation, or property, except as allowed pursuant to Section 5(a) of this Ordinance.

*Illicit Discharge* means any Discharge not composed entirely of Stormwater that may directly or indirectly enter the Stormwater System or the Waters of the State, except as allowed pursuant to Section 5(a) of this Ordinance. Examples of Illicit Discharge include, but are not limited to: oil, grease, household and industrial chemical waste; sanitary sewage; Wastewater; paint; paint Washwater; garbage; yard waste; animal waste; food waste; cooking oil/grease; swimming pool/hot tub/spa water containing Pollutants; concrete; concrete equipment Washwater; commercial vehicle Washwater; heated water; soaps/detergents; sediment/silt or any other discarded or abandoned substances or waste materials.

*Incidental* means occurring by chance or without intention or calculation; also, occasional, minor, casual or subordinate in significance or nature.

*Mecklenburg County Land Use & Environmental Services Agency* means the department or division of Mecklenburg County government (regardless of the title given to it by Mecklenburg County) that is responsible for stormwater and water quality matters.

*MS4* means municipal separate storm sewer system.

*NCGS or GS* means North Carolina General Statute(s).

*NPDES Discharge Permit* means the National Pollutant Discharge Elimination System Permit issued pursuant to the federal Clean Water Act, 33 USC 1251 et seq.

*PAH* means polycyclic aromatic hydrocarbons.

*Person(s)* means any individual, partnership, firm, association, agency, joint venture, company, trust, estate, corporation, board, cooperative, interstate body, commission, institution, utility, governmental entity, NPDES permittee or other legal entity, or their legal representative, agents or assigns.

*Pollutant* means any substance that alters or has the potential to alter the chemical, physical, biological, thermal and/or radiological integrity of water.

*Potable Water* means water that is suitable for human consumption.

*State*, when referring to regulatory authority, means the NC Department of Environmental Quality or any duly authorized representative thereof; otherwise, it means the State of North Carolina.

*Stormwater* means any flow of water occurring during or following any form of natural precipitation and resulting therefrom.

*Storm Water Advisory Committee (“SWAC”)* means the Charlotte-Mecklenburg Storm Water Advisory Committee as established by joint resolutions of the Charlotte City Council, Mecklenburg County Board of Commissioners and the Towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill and Pineville, together with any amendments thereto.

*Stormwater System* means the network of curbs, gutters, inlets, catch basins, manholes, pipes, ditches, swales, ponds, detention and retention basins, and other natural or manmade facilities and appurtenances that serve to collect and convey stormwater through and from a given drainage area to the Waters of the State. For purposes of this Ordinance, Stormwater System includes the County and Towns’ municipal Stormwater System and privately owned and operated Stormwater Systems on private property that discharge or flow to the County/Town’s municipal Stormwater System or the Waters of the State.

*Town* means the Town of Davidson, North Carolina.

*Uncontaminated* means not containing any pollutants.

*Unmodified Potable Water* means Potable Water that does not contain any Pollutants or chemical agents such as detergents, acids, degreasers, surfactants or other agents added to or mixed with it, regardless of whether the added/mixed agent is labeled as or is generally considered to be environmentally safe and/or biodegradable.

*Violation* means an act, action, allowance, or occurrence that fails to comply with any prohibition or requirement set forth in this Ordinance.

*Violator* means the Person(s) determined to be responsible for the Violation.

*Washwater* is a subset of Wastewater, and means any water or liquid Discharged after and as a result of conducting washing or cleaning activity.

*Wastewater* means any water or other liquid, other than Uncontaminated Stormwater or Uncontaminated Potable Water, Discharged after use. Examples of Wastewater include but are not limited to: water Discharged after use generally for industrial or manufacturing process; sewage treatment; or water used for washing, flushing, or cleaning.

*Waters of the State*, as defined in NCGS § 143-212(6), as may be amended from time to time, in compliance with Federal and State law.

### **Section 30-175. Prohibitions**

#### **(a) Illicit Discharge(s)**

No Person shall cause or allow the Discharge of Non-Stormwater or any Pollutants, either directly or indirectly, to the Stormwater System, the Waters of the State, or upon the land in a manner or amount that is likely to reach the Stormwater System or the Waters of the State except as allowed pursuant to Section 5(h) of this Ordinance. Upon discovery, the Violator shall immediately: collect and remove the Non-Stormwater or Pollutant; restore all affected areas to their pre-Discharge condition; and implement actions to prevent further Discharges of Non-Stormwater or Pollutants.

#### **(b) Illicit Connection(s)**

No person shall install, maintain or use any connection to the Stormwater System or the Waters of the State for the Discharge of Non-Stormwater or Pollutants; or shall cause Non-Stormwater or Pollutants to be discharged or conveyed through any connection to the Stormwater System or the Waters of the State unless the Discharge is an allowable Discharge pursuant to Sub-Section 5(h). Upon discovery of the Illicit Connection, the Violator shall immediately remove the connection and restore all affected areas to their pre-connection condition in a manner to prevent any Discharges of Non-Stormwater or Pollutants to the Stormwater System.

This prohibition expressly includes, without limitation, Illicit Connection(s) made in the past regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

**(c) Accidental Discharge(s)**

Accidental Discharge(s), as described in this Sub-Section, shall be a Violation. If an accidental Discharge to the Stormwater System or the Waters of the State occurs, the Person responsible for the Violation shall immediately collect and remove the Discharge and restore all affected areas to their pre-Discharge condition. The Person responsible for the Violation shall immediately notify the County, and other local, State, and federal authorities as appropriate, of the accidental Discharge by telephone or other mode of instantaneous communication. The notification shall include the location of the Discharge, type of Pollutant, volume, time of Discharge and corrective action(s) taken. Such notification shall not relieve the Person responsible for the Violation of any of the expenses related to removal, restoration, loss, damages or any other liability that may be incurred as a result; nor shall such notification relieve the Person responsible for the Violation from other liability that may be imposed by this Ordinance or any other applicable regulations, rules, statues, or laws.

**(d) Improper Storage, Handling, or Processing of Materials**

No Person shall store, handle, or process any material upon the land in any manner or method that would allow the material to deposit Pollutants upon the land which may become intermixed with Stormwater entering into the Stormwater System or the Waters of the State.

**(e) Failure to Comply**

Failure to comply with any requirements or corrective actions set forth in a Notice of Violation, Notice of Civil Penalty Assessment, Compliance Order, or any other notice or order issued pursuant to Section 8 of this Ordinance, shall be deemed a Violation of the Ordinance. The Violation may be enforced against the Violator as a discrete Violation of or as a factor in conjunction with other enforcement remedies and penalties.

**(f) Use of High PAH Pavement Products Prohibited**

No person shall use, or permit to be used, a high PAH pavement product within the County. For purposes of this Sub-Section, the term “high PAH pavement product” means a product, material or substance that contains greater than 0.1% (1000 ppm) polycyclic aromatic hydrocarbons (PAH) by weight, and is intended for use on an asphalt or concrete surface, including but not limited to, a driveway, playground, parking area, pathway, or roadway. Refer to Section 4 of this Ordinance for further specifications of high PAH pavement products.

**(g) Obstruction**

No person shall obstruct, hamper, or interfere with the Director carrying out official duties

authorized by this Ordinance. Upon presentation of credentials by the Director, necessary arrangements shall be made to allow immediate access onto premises or into an area protected by security measures. Any obstruction to the safe and easy access to property, a facility, or enclosure on property, or to monitoring devices shall immediately be removed. Denial of access or unreasonable delays in providing safe and reasonable access or removing obstructions shall be deemed a Violation of this Ordinance. The Violation may be enforced against the Violator as a discrete Violation of this Ordinance or as a factor in conjunction with other enforcement remedies and penalties.

**(h) Allowable Incidental Discharges of Non-Stormwater**

Stormwater is the only discharge permitted in the Stormwater System or the Waters of the State with exception of the following allowable Incidental Non-Stormwater Discharges; provided that said Discharges do not negatively impact the surface water quality. Allowable Incidental Non-Stormwater Discharges include:

- (1) Water line flushing, providing the discharge does not cause an exceedance of surface water quality standards;
- (2) Landscape irrigation;
- (3) Diverted stream flows;
- (4) Uncontaminated groundwater infiltration (as defined as 40 CFR §35.2005(20));
- (5) Uncontaminated, pumped groundwater;
- (6) Rising groundwaters;
- (7) Discharges from Uncontaminated Potable Water sources;
- (8) Collected infiltrated Stormwater from foundation drains or footing drains;
- (9) Air conditioning condensate from residential or commercial units;
- (10) Irrigation water (does not include reclaimed water as described in 15A NCAC 2H .0200);
- (11) Uncontaminated springs;
- (12) Uncontaminated, collected groundwater and infiltrated Stormwater from basement or crawl space pumps;
- (13) Lawn watering;
- (14) Swimming pool and hot tub/spa Discharges, provided that the Discharge does not contain chlorine, bromine, salt, or any other treatment chemicals. These Discharges do not include swimming pool or hot tub/spa filter backwash Discharges or saltwater pool Discharge, which are expressly prohibited;
- (15) Street Washwater only when Unmodified Potable Water is used;
- (16) Flows from emergency fire and rescue operations other than those resulting from negligence on the part of the Person who owned or controlled the Pollutant. This allowance does not include discharge flows from fire and rescue training operations;
- (17) Single-family residential and charity vehicle washing (\*see note below);
- (18) Flows from riparian habitats and wetlands;
- (19) NPDES permitted discharges authorized by the State or EPA, provided said discharges are in compliance with the requirements, conditions, and discharge limitations of the NPDES permit;
- (20) Dye testing, using suitable dyes for verifying cross-connections, tracing plumbing lines, determining flow direction or rate and for similar purposes, provided that verbal notification by non-governmental entities is provided to the County prior to testing;

- (21) Water used for removal of Stormwater System blockages only when Unmodified Potable Water is used; and
- (22) Splash pad (spray ground) water from a Potable Water source only; refer to Section 5(h)(14) if the water is treated with chemicals used similarly for a swimming pool or hot tub/spa.

\*Designated vehicle wash areas at multi-family residential complexes are not allowed if they connect, directly or indirectly, to the Stormwater System or the Waters of the State. Charity vehicle washing performed by the same organization or at the same location on a routine basis (more than one time in a thirty-day period) is not allowed under this Ordinance.

**Section 30-176. Powers and Authority for Inspection**

**(a) Authority to Inspect and Monitor**

The Director, bearing proper identification, may enter upon public or private properties at all reasonable times to inspect, investigate, or monitor activities, and conditions subject to this Ordinance. Persons occupying premises to be inspected shall allow the Director ready access at all times to all parts of the premises to perform inspection, investigation, monitoring, records examination, copying, photography, video recording or other duties. The Director shall have the right to set up on a Person’s property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations. Where a Person has security measures in force that would require identification and clearance before entry into the premises, the Person shall make arrangements with security personnel so that, upon presentation of identification, the Director will be permitted to enter and perform their specific duties and responsibilities without delay.

**(b) Search Warrants**

Should the occupant of private property refuse to permit such reasonable access, the Director shall proceed to obtain an administrative search warrant pursuant to NCGS 15-27.2, or its successor to conduct investigations and determine compliance with this Ordinance.

**Section 30-177. Authority of Mecklenburg County**

The Mecklenburg County Land Use and Environmental Services Agency is a duly authorized representative of the Town of Davidson in the prevention and enforcement of this Ordinance and is entitled to all the rights granted to the Town.

**Section 30-178. Enforcement Remedies and Penalties**

**(a) Remedies Not Limited**

The remedies provided herein are not exclusive; may be exercised singly, simultaneously, or cumulatively; may be combined with any other remedies authorized by law; and may be exercised in any order.

**(b) Notice of Violation**

Any person who violates any provision contained herein, or allows a direct or indirect, act or acts which causes a Violation of this Ordinance is subject to the issuance of a written notice of Violation.

**(1) Content of Notice**

Except in emergencies, as described in Sub-Section 8(k), upon the Director’s determination that a Violation has occurred, the Director shall provide written notice that contains: a) the location of the Violation; b) the nature of the Violation; c) a general description of the remedies and penalties that may be incurred; d) the action(s) needed to correct the Violation, which shall include, as applicable, requirements to: 1) immediately cease any Discharge contributing to the Violation; 2) collect, remove, and properly dispose of the discharge material; 3) restore areas affected by the Violator’s Discharge(s) to their pre-Violation condition; and 4) take appropriate corrective and/or preventive actions to prevent further illegal Discharges; e) a deadline, if required, by which corrective actions must occur; f) how to provide explanatory or additional information to the Director; g) a contact person with whom the Violation can be discussed; and h) how to request a meeting with the Director for certain Violations as described in Sub-Section 8(b)-3. When deemed necessary by the Director, the notice shall also require the Violator to provide a written response explaining the actions taken to correct the Violation, restore affected areas, and to prevent future Violations. Only one such notice shall be required to each Violator, regardless of the number of remedies or penalties that are pursued or the timing of their institution.

The notice shall further advise the Violator that should the Violator fail to remediate or restore the affected area(s) within the established deadline, the restoration work may be done by the County or a contractor designated by the County pursuant to Sub-Section 8(j), and the expense thereof will be charged to the Violator.

**(2) Service of Notice**

Notice of the Violation may be served by United States Postal Service certified mail, regular mail, special delivery, hand delivery, or by any means authorized under NCGS 1A-1, Rule 4 of the North Carolina Rules of Civil Procedure. Refusal to accept the notice shall not relieve the Violator’s obligation to comply.

**(3) Meeting with the Director**

If the Violator makes a timely request for a meeting with the Director during the time period set forth in the notice, such meeting shall be scheduled at the agreed upon time prior to imposing any remedy or penalty. The Violator shall have the opportunity to present any information relevant to the Violation or proposed remedy or penalty at the meeting, both orally and/or in writing.

**(c) Civil Penalties**



- (1) Any person who violates, or allows to be violated, either directly or indirectly a provision of this Ordinance is subject to a civil penalty. A civil penalty may be assessed for the time period from the date the Violation first occurs until the date that the Violation ceases as verified by the Director.
- (2) The maximum civil penalty for each Violation of this Ordinance is \$10,000.00 per Day. Each Day of Violation shall constitute a separate Violation.
- (3) Except in emergencies, as described in Sub-Section 8(k), no penalty shall be assessed until the Violator has been served written notice of the Violation as described in Sub-Section 8(b). Refusal to accept the notice shall not relieve the Violator of the obligation to pay such penalty.
- (4) Penalties may be assessed concurrently with a notice of Violation for any of the following:
  - (i) Obstructing, hampering or interfering with the Director who is in the process of carrying out official duties under this Ordinance;
  - (ii) A repeated or continuing Violation for which a notice of Violation was previously served to the Violator; or
  - (iii) Willful or intentional Violation.
- (5) In determining the amount of civil penalty, the Director shall consider any relevant and aggravating and mitigating factors including, but not limited to the following:
  - (i) Degree and extent of harm caused by the Violation;
  - (ii) Whether money was or could have been saved by non-compliance;
  - (iii) Whether the Violation was committed willfully or intentionally;
  - (iv) Prior Violations;
  - (v) Cost of rectifying the damage;
  - (vi) Whether the Violator took reasonable measures to comply with the Ordinance;
  - (vii) Knowledge of the requirements by the Violator and/or reasonable opportunity or obligation to obtain such knowledge;
  - (viii) Whether the Violator voluntarily took reasonable measures to restore any areas damaged by the Violation;
  - (ix) Whether the Violator reported the Violation to Mecklenburg County or other appropriate authorities; and
  - (x) Technical and economic reasonableness of reducing or eliminating the Violation.
- (6) The Director shall determine the amount of the civil penalty, including administration costs, to be assessed under this Section and shall make written demand for payment upon the Violator. Notice of said civil penalty assessment shall be issued pursuant to Sub-Section 8(b)-2. If a Violator does not pay an assessed penalty within 30 days after it is due or does not request a hearing pursuant to Section 9 of this Ordinance, the Director may request the County Attorney to institute a civil action to recover the amount of the civil penalty. The civil action shall be brought in Mecklenburg County Superior Court or in any other court of competent jurisdiction. Such civil actions must be filed within three years of the date the notice of civil penalty assessment was served on the Violator.

- (7) A civil penalty assessment that is not contested is due within 30 days from the date the Violator is served with a notice of the penalty assessment. A civil penalty assessment that is unsuccessfully contested is due at the conclusion of the administrative and judicial review.
- (8) Civil penalties collected pursuant to this Ordinance, less County administration costs, shall be remitted to the Charlotte-Mecklenburg School System.
- (9) In no case shall the maximum civil penalty per Day exceed the amount as specified in Sub-Section 8(c)-2.
- (10) A Violation of this Ordinance shall not constitute a misdemeanor or infraction punishable under NCGS § 14-4.

**(d) Cost Recovery**

The Town or County may also recover from the Violator:

- (1) Costs to restore damaged property based on restoration costs incurred by the Town or County, which include, but are not limited to, cleanup costs, permanent devaluation of the property, value of animal and plant life damaged, and Town/County administrative costs.
- (2) Compensation for damage to or destruction of the Stormwater System.

**(e) Compliance Agreement**

The Director may enter into compliance agreements, assurances of voluntary compliance, or other similar documents establishing an agreement with the Violator. Such agreements will include specific actions to be taken by the Violator. Compliance agreements shall have the same force and effect as compliance orders issued pursuant to Sub-Section 8(f) below.

**(f) Compliance Order**

When the Director finds that a Violator continues to violate any Section of this Ordinance, an order may be issued to the Violator directing that they do one, or a combination of the following:

- (1) Comply with the Sections of this Ordinance in accordance with a time schedule set forth in the order;
- (2) Take appropriate remedial or preventative actions for a continuing or threatened Violation of any Section of the Ordinance, including installation and proper operation of adequate structures/devices and/or implementation of procedures and management practices; and
- (3) Pay a civil penalty for violating any Section of this Ordinance.

**(g) Cease and Desist Order**

Cease and desist orders may be issued as follows:

- (1) If the Director finds that any Person has violated or continues to violate any Section of this Ordinance, an order issued pursuant to this Ordinance, or any other provision of applicable law, the Director may issue an order requiring such Person to cease and desist all such Violations and direct such Person to perform any one or more of the following:
  - (i) Comply immediately with all Sections of this Ordinance, an order issued pursuant to this Ordinance, or other applicable law; and
  - (ii) Take appropriate remedial and preventative actions for a continuing or threatened Violation of any Section of this Ordinance, a compliance agreement issued pursuant to this Ordinance, an order issued pursuant to this Ordinance, or any other provision of applicable law.
- (2) The Director may include in such order the payment of a civil penalty for violating any Section of this Ordinance, or for violating a compliance agreement or order issued pursuant to this Ordinance.

**(h) Withholding of Inspections, Permits, or Other Approvals**

The Director may withhold or condition upon compliance with this Ordinance, building inspections; permits for development or other improvements; and requests for plan approval for zoning, subdivision, other development or construction until a Violator with ownership or management of the property for which permits or approvals are sought has fully complied with this Ordinance and all actions taken pursuant to the Ordinance.

**(i) Restoration of Areas Affected by Failure to Comply**

The Director may require a Violator to restore all areas affected by the Violation to their pre-Violation condition in order to minimize the detrimental effects of the resulting impacts. This authority is in addition to any other enforcement remedies authorized by this Ordinance.

**(j) Abatement by the Town or County**

If a Violation has not been corrected pursuant to the requirements set forth in the notice of Violation, or in emergency situations as described in Sub-Section 8(k), or by other allowable remedies, or in the event of an appeal pursuant to Section 9 of this Ordinance, within 10 days of the decision of the Stormwater Advisory Committee to uphold the decision of the Director, then the County, the Town, or a contractor designated by the County or Town may enter upon the subject premises and is authorized to take any and all measures necessary to abate the Violation and/or restore impacted areas to their pre-Violation condition in order to minimize the detrimental effects of the resulting impacts. It shall be unlawful for any Person in possession or control of any premises to refuse to allow the County, the Town, or its designated contractor to enter upon the premises for the purposes set forth above.

The Violator will be notified of the cost of abatement, including administrative costs. If the specified amount is not paid within 30 days of receipt of the notification, the Director may request the County and Town Attorney to institute a civil action to recover the specified amount. The civil action shall be brought in Mecklenburg County Superior Court or in any other court of competent jurisdiction. Such civil actions must be filed within three years of the date said notice was served on the Violator.

**(k) Emergencies**

If delay in correcting a Violation would seriously threaten the effective enforcement of this Ordinance or pose an immediate threat or danger to the public health, safety, or welfare, or to the environment, including but not limited to, the Waters of the State, then the Director may order the Violator to immediately cease and abate the Violation. Any Person ordered to cease such Violation or to abate such Violation shall do so immediately. The Director may seek immediate enforcement through any remedy or penalty authorized in this Ordinance or other applicable law, including but not limited to, abatement of the Violation as described in Section 8(j) of this Ordinance.

**(l) Injunctive Relief**

- (1) Whenever the Director has reasonable cause to believe that any Person is violating or threatening to violate this Ordinance, the Director may, either before or after the institution of any other action or proceeding authorized by this Ordinance, authorize the County or Town Attorney to institute a civil action in the name of the County or Town for injunctive relief to restrain the Violation or threatened Violation. The action shall be brought pursuant to NCGS 153A-123 in Mecklenburg County Superior Court.
- (2) Upon determination by a court that an alleged Violation is occurring or is threatened, the court shall enter such orders or judgments as are necessary to abate the Violation or to prevent the threatened Violation. The institution of an action for injunctive relief under this Sub-Section shall not relieve any party to such proceedings from any civil penalty prescribed for Violations of this Ordinance.

**Section 30-179. Appeal Process**

**(a) Public Hearing**

- (1) The issuance of a notice of Violation or notice of civil penalty assessment by the Director shall entitle the Violator (“Petitioner”) to a public hearing before the Storm Water Advisory Committee (“Committee”) if such Person submits written demand for a hearing to the Clerk of the Committee (“Clerk”) within 30 days of the receipt of the notice. The demand for a hearing filed with the Clerk shall be accompanied by a filing fee as established by the Committee. In the demand for a hearing on a civil penalty assessment, the Petitioner must state separately each reason why such penalty should not be assessed or, if the Petitioner contends that the civil penalty was assessed in an improper amount, each reason why the amount of the penalty is improper. Each assessment of a civil penalty that has been

included in a demand for a hearing in accordance with this Sub-Section is stayed and shall not take effect until the earliest occurrence of any one of the following circumstances: the assessment of the civil penalty is approved or is modified by the Committee; or the Petitioner and the Director agree on the assessment of the civil penalty. This Sub-Section shall not be construed to stay any Section of this Ordinance or other applicable law.

- (2) The issuance of a compliance order and/or cease and desist order by the Director shall entitle Petitioner to a public hearing before the Committee if such Petitioner submits written demand for a hearing to the Clerk within the following schedule:
  - (i) Within twenty (20) days of the receipt of a compliance order issued pursuant to Section 8(f) of this Ordinance;
  - (ii) Within ten (10) days of the receipt of a cease and desist order issued pursuant to Section 8(g) of this Ordinance.

The demand for a hearing filed with the Clerk shall be accompanied by a filing fee as established by the Committee. In the demand for a hearing on the issuance of such an order, the Petitioner must identify separately each provision of the order that is improper and every basis for such contention. Each provision of an order that has been included in a demand for a hearing in accordance with this Sub-Section is stayed and shall not take effect until the earliest occurrence of any one of the following circumstances: such provision is approved or is modified by the Committee; or the Petitioner and the Director agree on the terms of the order. This Sub-Section shall not be construed to stay any Section of this Ordinance or other applicable law.

- (3) The Director, at their discretion, may grant an extension to the deadline for filing a demand for a hearing before the Committee.
- (4) Failure to timely file such demand(s) and fee(s) within the applicable deadline, including any extension granted by the Director shall constitute a waiver of any rights to appeal under this Ordinance and the Committee shall have no jurisdiction to hear the appeal.
- (5) Within five (5) days of receiving the Petitioner's demand for a hearing, the Clerk shall notify the Chairman of the Committee ("Chairman") of the request for hearing. As soon as possible after the receipt of said notice, the Chairman shall set a time and place for the hearing and notify the Petitioner by mail of the date, time and place of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the Committee from the submission of the notice, or as soon thereafter as practical, or at a special meeting. The hearing shall be conducted pursuant to the provisions of Sub-Section 9(b) of this Ordinance.
- (6) Any party aggrieved by the decision of the Committee with regard to the issuance of a notice of Violation, notice of assessment of a civil penalty, cease and desist order or compliance order shall have 30 Days from the receipt of the decision of the Committee to file a petition for review in the nature of certiorari in Superior Court with the Clerk of Mecklenburg County Superior Court.

**(b) Hearing Procedure**

The following provisions shall be applicable to any hearing conducted by the Committee pursuant to Sub-Section 9(a).

- (1) At the hearing, Petitioner and the Director shall have the right to be present and to be heard, to be represented by counsel, and to present evidence through witnesses and competent testimony relevant to the issue(s) before the Committee.
- (2) Rules of evidence shall not apply to a hearing conducted pursuant to this Ordinance and the Committee may give probative effect to competent, substantial and material evidence.
- (3) At least 7 days before the hearing, the parties shall exchange a list of witnesses expected to be called at the hearing and a copy of any documentary evidence intended to be presented. The parties shall submit a copy of this information to the Clerk. Additional witnesses or documentary evidence may not be presented except upon consent of both parties or upon a majority vote of the Committee.
- (4) Witnesses shall testify under oath or affirmation to be administered by the Court Reporter or another duly authorized official.
- (5) The procedure at the hearing shall be such as to permit and secure a full, fair and orderly hearing and to permit all relevant, competent, substantial and material evidence to be received therein. A full record shall be kept of all evidence taken or offered at such hearing. Both the representative for the Director and for the Petitioner shall have the right to examine and cross-examine witnesses.
- (6) At the conclusion of the hearing, the Committee shall render its decision on the evidence submitted and not otherwise.
  - (i) If, after considering the evidence presented at the hearing, the Committee concludes by a preponderance of the evidence that the grounds for the Director's actions (including the amount assessed as a civil penalty) with regard to either issuing a notice of Violation, assessing a civil penalty, issuing a cease and desist order or issuing a compliance order are true and substantiated, the Committee shall uphold the action on the part of the Director.
  - (ii) If, after considering the evidence presented at the hearing, the Committee concludes by a preponderance of the evidence that the grounds for the Director's actions (including the amount assessed as a civil penalty) are not true and substantiated, the Committee shall, as it sees fit, either reverse or modify any civil penalty assessment, order, requirement, decision or determination of the Director. The Committee Bylaws will determine the number of concurring votes needed to reverse or modify any order, requirement, decision or determination of the Director. If the Committee finds that the Violation has occurred, but that in setting the amount of a civil penalty or setting order directives the Director has not considered or given appropriate weight to either mitigating or aggravating factors, the Committee shall either decrease or increase the per Day civil penalty within the range allowed by this Ordinance, or modify order directives, as appropriate to the

case. Any decision of the Committee that modifies the amount of the civil penalty or an order directive shall include, as part of the findings of fact and conclusions of law, findings as to which mitigating or aggravating factors exist and the appropriate weight that should have been given to such factors by the Director in setting the amount of the civil penalty or in issuing orders.

- (7) The Committee shall keep minutes of its proceedings, showing the vote of each member upon each question and the absence or failure of any member to vote. The decision of the Committee shall be based on findings of fact and conclusions of law to support its decision.
- (8) The Committee shall send a copy of its findings and decision to the Applicant/Petitioner and the Director. If either party contemplates an appeal to a court of law, the party may request and obtain, at that party's own cost, a transcript of the proceedings.
- (9) The decision of the Committee shall constitute a final decision.

**Section 30-180. Severability**

If any Section(s) or Sub-Section(s) of this Ordinance is/are held to be invalid or unenforceable, any remaining Sections and Sub-Sections may be given full force and effect.

**Section 30-181. Effective Date**

This Ordinance shall be effective upon its adoption.

Adopted the 26<sup>th</sup> day of January 2021.

Approved as to Form

\_\_\_\_\_  
Town Attorney

\_\_\_\_\_  
Clerk to the Town Board