

PART II - CODE OF ORDINANCES

CHAPTER 23 - STORMWATER MANAGEMENT

Article III. - Stormwater Control

Division 1 – General Provisions

Sec. 23-20. Title, Purpose, Application.

- a. The provisions of this article shall constitute and be known as the "Stormwater Control Ordinance of Fayetteville, North Carolina".
- b. The purpose of this article is to protect, maintain, and enhance the public health, safety, and general welfare by establishing minimum requirements and procedures to control the adverse effects of the increase in stormwater quantity and the stormwater runoff quality associated with both future land development and consideration of existing developed land within the City of Fayetteville. Proper management of the quantity and quality of stormwater runoff will minimize damage to public and private property, prevent personal damage and bodily harm, ensure a functional drainage system, reduce the effects of development on land and stream channel erosion, promote the attainment and maintenance of water quality standards, enhance the local environment associated with the drainage system, reduce local flooding, and maintain as nearly as possible the predeveloped runoff characteristics of the area, and facilitate economic development while mitigating associated flooding and drainage impacts. Additionally, the purpose of this article is to comply with the post-construction stormwater requirements as per the city's NPDES stormwater discharge permit.
- c. 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 North Carolina Environmental Management Commission promulgated in response to federal Phase II requirements, compel certain urbanized areas, including this jurisdiction, to adopt minimum stormwater controls such as those included in this article.
- d. The application of this article and the provisions expressed herein, shall be the minimum stormwater management requirements and shall not be deemed a limitation or repeal of any other powers granted by state statute. In addition, if site characteristics indicate that complying with these minimum requirements will not provide adequate designs or protection for local property or residents, it is the designer's responsibility to exceed the minimum requirements as necessary. The city manager or designee shall be responsible for the coordination and enforcement of the provisions of this article.
- e. Compliance with all applicable local, state, and federal regulations and permits shall be the responsibility of the applicant. Other stormwater regulations to consider when complying with this article include, but are not limited to, the following:
 1. Water supply watershed regulations, Chapter 29 of this Code of Ordinances;
 2. Federal wetland permits;
 3. Water quality certifications; and
 4. Sediment and erosion control requirements.

Sec. 23-21. Scope of Article.

- a. No person shall develop any land without having provided for appropriate stormwater management measures that control or manage stormwater runoff, in compliance with this article, unless exempted as described in subsection (f) below.

- b. The provisions of this article shall apply throughout the incorporated areas in the City of Fayetteville, North Carolina.
- c. The city manager shall be responsible for the coordination and enforcement of the provisions of this article, and shall have the authority to enforce this article in accordance with the enforcement provisions.
- d. The application of this article and the provisions expressed herein shall be the minimum stormwater management requirements and shall not be deemed a limitation or repeal of any other local requirements authorized by state statute. Where other requirements are more stringent those shall apply. This article does not eliminate the necessity for obtaining other permits as may be required by other governmental entities.
- e. This article shall apply to both public and privately owned or maintained stormwater systems.
- f. *Exemptions.* The following development activities are exempt from the provisions of this article and the requirements of providing stormwater management measures. Even if exempt from this article, the following as well as all development activity is not allowed to divert water to adjacent property to cause a nuisance and/or property damage and should comply with the intent of this article.
 - 1. Construction or improvement of a single-family residence (single-family residence - separately built) or their accessory buildings that is separately built and not part of multiple construction or a subdivision development approved under this article and that cumulatively disturbs less than one acre. If included in a subdivision plan, all development activities must follow the stormwater management plan that has been approved for the subdivision.
 - 2. New developments that do not include more than 20,000 square feet of impervious area in total and that cumulatively disturb less than one acre.
 - 3. Redevelopment or new construction to existing development that does not include more than 5,000 square feet of new impervious area and that cumulatively disturbs less than one acre.
 - 4. Land disturbing activities for agricultural uses.
 - 5. Land disturbing activities undertaken on forest land for the production and harvesting of timber and timber products where all of the following occur:
 - i. The growing of trees;
 - ii. The harvesting of timber, leaves, or seeds;
 - iii. The regeneration of either timely replanting of trees or natural generation;
 - iv. The application of applicable "best management practices", including the N.C. Department of Environment and Natural Resources "Forest Practice Guidelines Related to Water Quality"—Title 15A North Carolina Administrative Code subchapter 11, sections 1.010—.0209 and all successor documents; and
 - v. A forest management plan is prepared or approved either by a professional forester registered in the State of North Carolina or by the Division of North Carolina Forest Resources. Copies of the forest management plan shall be provided to the city upon request.
- 6. Land disturbing activities for which a permit is required under the Mining Act of 1972; G.S. Ch. 74, Article 7
- 7. Projects which commenced prior to the application of this article, such as:
 - i. Approved subdivisions and site plans. However, if the approved subdivision or site plan is modified or changed after the effective date of this article, the proposed development would have to comply with all requirements of this article in its entirety.
 - ii. Projects which have an outstanding unexpired valid building permit in compliance with either G.S. 160A-422 or G.S. 153A-357 or have an outstanding unexpired valid soil erosion permit in compliance with G.S. 160A-458; provided that, upon application of any impervious surfaces, the exemption based on a valid soil erosion permit shall not apply.

- iii. Projects which have obtained a state permit, such as landfills and land application of residuals.
- iv. Projects which have continuing vested rights in compliance with G.S. 160A-385.1 or G.S. 153A-344.1.
- v. Phased developments do not constitute separate developments and the total area of all phases will be used to determine exemption requirements.
- g. *Map.* The provisions of this article shall apply within the areas designated on the map titled "Stormwater Map of Fayetteville, North Carolina", which is adopted simultaneously herewith. The stormwater map and all explanatory matter contained thereon accompanies and is hereby made a part of this article.
 - 1. The stormwater map shall be kept on file by the city manager and shall be updated to take into account changes in the land area covered by this article and the geographic location of all stormwater systems permitted under this article. In the event of a dispute, the applicability of this article to a particular area of land shall be determined by reference to the North Carolina Statutes, the North Carolina Administrative Code, and local zoning and jurisdictional boundary ordinances.

Sec. 23-22. Stormwater Administrative Manual.

- a. *Reference to Stormwater Administrative Manual.* The city manager shall compile relevant policies, criteria, and information related to stormwater management in a "Stormwater Administrative Manual," which shall be made available to the public. This manual shall include relevant application requirements, a submission schedule, a fee schedule, a copy of this article, technical specifications and standards, and information on how and where to obtain the latest version of the "Stormwater Design Manual" as provided by the North Carolina Department of Environmental Quality. Whenever reference is made in this article to "standards," "administrative manual," or "manual," it refers to the latest published edition of the Stormwater Administrative Manual.
- b. *Use of Stormwater Administrative Manual.* The city manager shall use the Stormwater Administrative Manual as the basis for decisions related to stormwater management, including but not limited to stormwater-related permits; the design, implementation, and performance of stormwater systems; and other stormwater-related functions contemplated in this article. Failure to construct stormwater systems in accordance with administrative manual requirements may subject the violator to enforcement action as described in division 7.
- c. *Relationship of administrative manual to other laws and regulations.* If the specifications or guidelines of the administrative manual are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the administrative manual.
- d. *Changes to standards and specifications.* Standards, specifications, guidelines, policies, criteria, or other information in the administrative manual in effect at the time of acceptance of a complete application shall control and shall be utilized in reviewing the application and in implementing this article with regard to the application.
- e. *Amendments to administrative manual.* The administrative manual may be updated and expanded from time to time, based on advancements in technology and engineering, improved knowledge of local conditions, or local monitoring or maintenance experience. Prior to amending or updating the administrative manual, proposed changes shall be generally publicized and made available for review, and an opportunity for comment by interested persons shall be provided.

Sec. 23-23. Relationship to Other Laws, Regulations, and Private Agreements.

- a. *Conflict of laws.* This article is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this article are in addition to the requirements of any other article, rule, regulation or other provision of law. Where any provision of this article imposes restrictions different from those imposed by any other ordinance, rule, regulation or other

provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare shall control.

- b. *Private agreements.* This article is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this article are more restrictive or impose higher standards or requirements than such an easement, covenant, or other private agreement, the requirements of this article shall govern. Nothing in this article shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this article. In no case shall the city be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

Sec. 23-24. Severability.

If any term, requirement, or provision of this article or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this article or the application of such terms, requirements and provisions to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term, requirement or provision of this article shall be valid and be enforced to the fullest extent permitted by law.

Sec. 23-25. Effective Date.

This article shall become effective on January 1, 2009.

Sec. 23-26. Definitions.

For the purpose of this article, the following terms, phrases, and words, and their derivatives, shall have the meaning given herein:

Built-upon area shall mean that portion of a development project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. Built-upon area does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

City shall mean the City of Fayetteville, North Carolina.

City Clerk shall mean the City Clerk of the City of Fayetteville, North Carolina, or his/her designee.

City Council shall mean the duly elected Governing Body of the City of Fayetteville, North Carolina.

City manager shall mean the City Manager of the City of Fayetteville, North Carolina, or his/her designee.

Commercial development shall mean any development that is not residential development as defined herein.

Conveyance shall mean a natural or manmade channel or pipe which is capable of conveying the runoff from the design storm events without flooding existing structures or causing property damage.

Cross-drain culvert shall mean a structure designed to convey a watercourse under a roadway, railway, pedestrian walk, or through an embankment.

Design report shall mean the report that accompanies the stormwater design plan and includes data used for engineering analysis, results of all analysis, design and analysis calculations (including results obtained from computer programs), and other engineering data that would assist the city manager in evaluating proposed stormwater systems.

Design storm events shall mean the frequency storm used for the design of stormwater systems.

Designer shall mean a registered professional who is permitted to prepare plans and studies required by this article.

Detention structure shall mean a permanent SCM whose primary purpose is to temporarily store stormwater runoff and release the stored runoff at controlled rates.

Developer shall mean a person who builds on land or alters the use of an existing building for some new purpose. Also, see the definition for Owner.

Developed land use conditions shall mean the land use conditions according to the current city land use map or proposed site plan. Also, the conditions which exist following the completion of the land disturbing activity in terms of topography, vegetation, land use and rate, quality, volume or direction of stormwater runoff.

Developer shall mean a person who builds on land or alters the use of an existing building for some new purpose. Also, see the definition for Owner.

Development shall (to the extent permitted by law) mean any of the following actions undertaken by a public or private individual or entity:

- a. All land altering activities associated with the division of a lot, tract, or parcel of land into two or more lots plots, sites, tracts, parcels or other divisions by plan or deed;
- b. The construction, installation, or alteration of a structure, impervious surface, or drainage facility;
- c. Any land change including, without limitation to, clearing, tree removal, grubbing, stripping, dredging, grading, excavating, transporting and filling of land; or
- d. Adding, removing, exposing, excavating, leveling, grading, digging, burrowing, dumping, piling, dredging, or otherwise disturbing the soil, vegetation, and mud, sand or rock of a site.

Drainage area shall mean that area of land that drains to a common point on a project site.

Easement shall mean a grant or reservation by the owner of land for the use of such land by others for a specific purpose or purposes, and which must be included in the conveyance of land affected by such easement.

Erosion shall mean the process by which ground surface is worn away by the action of wind and/or water.

Exemption shall mean those development activities that are not subject to the stormwater requirements contained in this article.

Existing land use condition shall mean the land use conditions existing at the time the design plans are submitted for approval.

FEMA-designated floodplain shall mean the 100-year floodplain shown on the most current FEMA flood insurance rate map or flood boundary and floodway map. This shall include both the detailed 100-year floodplain which shows a 100-year flood elevation and the approximate 100-year floodplain.

Floodplain shall mean the low, periodically-flooded lands adjacent to streams. For land use planning purposes, the regulatory floodplain is usually viewed as all lands that would be inundated by the Regulatory Flood.

Functional maintenance shall mean any action necessary to preserve SCMs in proper working condition, in order to serve the intended purposes set forth in this article, and to prevent structural failure of such

facilities. Functional maintenance shall not include actions taken solely for the purpose of enhancing the aesthetics aspects associated with SCMs.

Grading shall mean excavating, filling (including hydraulic fill), or stockpiling of earth material, or any combination thereof, including the land in its excavated or filled condition.

Impervious shall mean the condition of being impenetrable by water.

Imperviousness shall mean the degree to which a site is impervious.

Infiltration shall mean the passage or movement of water into the soil subsurface.

Interior culvert shall mean a culvert that is not located under a roadway, railway, or pedestrian walk.

Maintenance (as relates to SCMs). See "functional maintenance" or "routine maintenance".

100-year frequency storm shall mean a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in one 100 years. It also may be expressed as an exceedance probability with a one percent chance of being equaled or exceeded in any given year.

On-site stormwater management shall mean the design and construction of a facility necessary to control stormwater runoff within and for a single development.

One-year frequency storm shall mean a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in one year. It also may be expressed as an exceedance probability with a 100 percent chance of being equaled or exceeded in any given year.

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

Person(s) shall mean any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

Predevelopment conditions shall mean those which existed on the site at the time this article became effective.

Preliminary plat shall mean the preliminary plat of a subdivision submitted pursuant to the subdivision regulations of the city.

Pervious pavement shall mean concrete and asphalt paving materials that allow for infiltration of stormwater into a storage area with void spaces that provide temporary storage.

Record drawings shall mean a set of engineering or site drawings that delineate the specific permitted stormwater systems as actually constructed.

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

Regional stormwater management shall mean the design and construction of a facility necessary to control stormwater runoff for more than one development.

Regulated floodplain shall mean the floodplain area designated by FEMA regulations or designated by the city.

Residential development shall mean development containing dwelling units with open yards on at least two sides where land is sold with each dwelling unit.

Retention structures shall mean a SCM whose primary purpose is to permanently store a given volume of stormwater runoff. Release of the given volume is by infiltration and/or evaporation.

Routine maintenance shall mean any action to enhance the aesthetics aspects associated with SCMs. Routine maintenance shall include actions such as grass cutting, trash removal, and landscaping.

Setback shall mean a natural or vegetated area where built-upon area is prohibited. Viewed aerially, the stream setback width is measured horizontally on a line perpendicular to the surface water, landward from the top of the bank on each side of the stream. The top of the bank shall include the landward edge of the stream channel during high water or bankfull conditions at the point where the water begins to overflow onto the floodplain.

Site shall mean any lot, plot, parcel or tract of land.

Stormwater control measure (SCM) shall mean a permanent structural device that is designed, constructed, and maintained to remove pollutants from stormwater runoff by promoting settling or filtration; or to mimic the natural hydrologic cycle by promoting infiltration, evapo-transpiration, post-filtration discharge, reuse of stormwater, or a combination thereof.

Stormwater design plan shall mean the set of drawings and other documents that comprise all of the information and specifications for the drainage systems, structures, concepts and techniques that will be used to control stormwater as required by this article. Also included are the supporting engineering calculations and results of any computer analysis.

Stormwater management shall mean the collection, conveyance, storage, treatment and disposal of stormwater runoff in a manner to minimize accelerated channel erosion, increased flood damage, and/or degradation of water quality and in a manner to enhance and ensure the public health, safety, and general welfare which shall include a system of vegetative or structural measures, or both, that control the increased volume and rate of stormwater runoff caused by manmade changes to the land.

Stormwater system shall mean the system of natural and constructed conveyances for collecting and transporting stormwater, whether publicly or privately owned. It includes lakes, ponds, rivers, perennial and intermittent streams, connected wetlands, open ditches, catch basins and other inlets, pipes, sewers, drains, culverts, and, in addition, created SCMs that provide partial treatment by passive means such as wet detention ponds, detention basins, and stormwater wetlands.

Stormwater runoff shall mean the direct response of a watershed to precipitation and includes the surface and subsurface runoff that enters a ditch, stream, storm drain, or other concentrated flow during and following precipitation.

Subdivision shall mean that which is defined in Chapter 25, Subdivisions, of this Code of Ordinances; and G.S. 160A-376.

10-year frequency storm shall mean a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in ten years. It may also be expressed as an exceedance probability with a ten percent chance of being equaled or exceeded in any given year.

Thoroughfare shall mean all numbered routes and all roads with four or more travel lanes.

25-year frequency storm shall mean a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in 25 years. It may also be expressed as an exceedance probability with a four percent chance of being equaled or exceeded in any given year.

Variance shall mean the modification of the minimum stormwater management requirements for specific circumstances where strict adherence of the requirements would result in practical difficulties or undue hardship and not fulfill the intent of this article.

Water quality shall mean those characteristics of stormwater runoff that relate to the physical, chemical, biological, or radiological integrity of water.

Water quantity shall mean those characteristics of stormwater runoff that relate to the rate and volume of the stormwater runoff to downstream areas resulting from land disturbing activities.

Watershed shall mean the drainage area contributing stormwater runoff to a single point.

Wetland shall mean those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include swamps, marshes, bogs, and similar areas as determined by the U.S. Army Corps of Engineers.

Division 2 – Plans

Sec. 23-27. Stormwater Design Plans and Approval Process.

- a. *Plans required.* Unless granted an exemption from this article, a stormwater design plan (as part of the construction plans) for each development activity shall be submitted for review by the city manager for the entire development activity, or any portion thereof. If granted an exemption from this article, those development activities are still required to submit a stormwater design plan for review by the city manager to ensure that all other city minimum requirements have been satisfied.
- b. *Plan requirements.* Stormwater design plans submitted to the city shall comply with all requirements described in the administrative manual, including but not limited to hydrologic, land use, easements, watersheds, and wetlands requirements.
- c. *Plan preparation.* Stormwater design plans, reports, and calculations prepared to meet the requirements of this ordinance and the administrative manual must be prepared and stamped/sealed by a qualified registered professional engineer, using acceptable engineering standards and practices.
 1. Minor plan elements and adjustments may be performed by a qualified land surveyor or landscape architect without approval by a qualified registered professional engineer as described in the administrative manual.
- d. *Plan review and approval.* Stormwater design plans will be reviewed and approved by the city manager pursuant to this article and the administrative manual. Within thirty (30) calendar days from and after receipt of the plans, the city manager shall issue a decision approving, rejecting, or conditionally approving the plans with modifications. The review and approval time frames for all subsequent submittals on the same plans, if required, shall be fifteen (15) calendar days. No

decision by the city manager within the required timeframe shall constitute an approval. The applicant shall submit four (4) final copies of the approved plans.

- e. *Permit required.* An infrastructure permit is required for all development and redevelopment unless exempt pursuant to this article. A permit may only be issued subsequent to a properly submitted and reviewed permit application and associated stormwater design plans, pursuant to this article and the administrative manual.
- f. All preliminary plats of the development shall be consistent with the stormwater design plan required in subsection (a) of this section.
- g. A stormwater design plan shall not be considered approved without the inclusion of an approval stamp with a signature and date on the plans. The stamp of approval on the plans is solely an acknowledgement of satisfactory compliance with the requirements of these regulations. The approval stamp does not constitute a representation or warranty to the applicant or any other person concerning the safety, appropriateness, or effectiveness of any provision, or omission from the stormwater design plan.
- h. Following approval of stormwater design plans and the issuance of an infrastructure permit, an owner shall have a vested right to develop the property in accordance with the conditions of approval for two years. Extensions or renewals of the plan approvals may be granted by the city manager upon written request by the person responsible for the development activity.

Sec. 23-28.

Minimum Stormwater Quantity Control Requirements.

- a. Install SCMs to limit the one-year and ten-year developed peak discharge rates to predeveloped peak discharge rates or to the amount that can be accommodated by the receiving downstream drainage system, whichever is more restrictive.
- b. Watersheds that have well documented water quantity problems may have more stringent, or modified, design criteria [such as controlling the 25-year developed peak discharge rate to the predeveloped peak discharge rate] determined by the city manager that is responsive to the specific needs of that watershed.
- c. Natural swales and other natural runoff conduits shall be retained where practicable.
- d. Stormwater design plans can be rejected by the city manager if they incorporate structures and facilities that are not easily maintained.
- e. The stormwater system within the city (including both public and private portions) will be designed to the same engineering and technical criteria and standards. The design and construction must be sealed by a registered professional (as outlined in section 23-27) as meeting or exceeding public drainage system standards. The city manager's review will be the same whether the portion of the drainage system will be under public or private control or ownership.

Sec. 23-29. Minimum Stormwater Quality Control Requirements.

- a. *General standards.* All development and redevelopment to which this article applies shall comply with the standards of this section.
- b. *Development standards for low-density projects.* Low-density projects shall comply with each of the following standards:
 - 1. No more than two dwelling units per acre or 24 percent built-upon area.
 - 2. Stormwater runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable.
 - 3. Built-upon area shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters draining less than or equal to 640 acres. Built-upon area shall be at a minimum of 75 feet landward of all perennial and intermittent surface waters draining greater than 640 acres. This distance shall be measured from the top of bank on both sides of the perennial and intermittent surface waters. For all perennial and intermittent surface waters, constructed BMPs shall be located at a minimum of 30 feet landward. A perennial or intermittent surface water shall be deemed present if

the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233(3)(a) or similar site-specific determination made using division of water quality approved methodology.

4. The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.
 5. A project with an overall density at or below the low-density thresholds, but containing areas with a density greater than the overall project density, may be considered low density as long as the project meets or exceeds the post construction model practices for low-density projects and locates the higher density in upland areas and away from surface waters and drainageways to the maximum extent practicable.
- c. *Development standards for high-density projects.* A project not consistent with the requirements for a low-density project may be permitted as a high-density project and shall implement SCMs that comply with each of the following standards:
1. The facilities shall control and treat runoff from the first inch of rain. Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.
 2. High-density projects must discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one year, 24-hour storm.
 3. All structural stormwater treatment systems used to meet these requirements shall be designated as a Primary SCM (when 100% sized) or a Secondary SCM in series with a Primary SCM.
 4. For SCMs that require a separation from the seasonal high water table, the separation shall be provided by at least 12 inches of naturally occurring soil above the seasonal high water table.
 5. General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c).
 6. Built-upon area shall be at a minimum of 50 feet landward of all perennial and intermittent surface waters draining less than or equal to 640 acres. Built-upon area shall be at a minimum of 75 feet landward of all perennial and intermittent surface waters draining greater than 640 acres. This distance shall be measured from the top of bank on both sides of the perennial and intermittent surface waters. For all perennial and intermittent surface waters, constructed SCMs shall be located at a minimum of 30 feet landward. A perennial or intermittent surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a) or similar site-specific determination made using division of water quality approved methodology.
 7. The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.
- d. *Standards for SCMs.*

1. *Evaluation according to contents of administrative manual.* All SCMs required under this article shall be evaluated by the city manager according to the administrative manual. The city manager shall determine whether proposed SCMs will be adequate to meet the requirements of this article.
2. *Determination of adequacy; presumptions and alternatives.* SCMs that are designed, constructed, and maintained in accordance with the administrative manual will be presumed to meet the minimum water quality and quantity performance standards of this article. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the latest version of the administrative manual, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this article. The city manager may require the applicant to provide the documentation, calculations, and examples necessary for the city manager to determine whether such an affirmative showing is made.

Sec. 23-30. Final Approval Requirements.

- a. If an infrastructure permit is required under the scope of this Article, no final site plan or subdivision plan approval shall be issued or modified without the following items:
 1. An approved stormwater design plan;
 2. An executed operation and maintenance agreement, if required, in accordance with section 23-34
 3. The posting of an installation performance guarantee, if required, in accordance with section 23-35
 4. An approved erosion control plan, if applicable;
 5. Right of entry given to the city for city personnel to enter property for emergency maintenance if necessary; and
 6. Any off-site easements needed.
- b. No final certificate of occupancy permit shall be issued pursuant to Chapter 7 of this Code of Ordinances or final plat approved without the following:
 1. All final inspection requirements per section 23-31 are met;
 2. Receipt of approved record drawings as outlined in section 23-32;
 3. An executed and recorded operation and maintenance agreement, if required, in accordance with section 23-34;
 4. The posting of an installation performance guarantee, if required, in accordance with section 23-35; and
 5. A recorded maintenance easement for every SCM to allow sufficient access for adequate maintenance, in accordance with section 23-38.
- c. All items required for final site plan, subdivision plan, or certificate of occupancy approval must meet applicable requirements in this article and the administrative manual.
- d. All land clearing, construction, development and drainage shall be done in accordance with the approved stormwater design plan or previously approved revisions.
- e. Submittal and/or approval of stormwater design plans does not preclude the applicant from obtaining all other necessary permits and compliance with appropriate regulations including, but not limited to, the following:
 1. Water supply watershed regulations, Chapter 29 of this Code of Ordinances;
 2. Federal wetland permits;
 3. Water quality certifications; and
 4. Sediment and erosion control requirements.

Sec. 23-31. Professional registration requirements.

- a. (a) Stormwater design plans and design reports that are incidental to the overall or ongoing site design shall be prepared, and stamped/sealed by a qualified registered professional engineer, land

surveyor or landscape architect, using acceptable engineering standards and practices. All other stormwater design plans and design reports shall be prepared, and stamped/sealed by a qualified registered professional engineer, using acceptable engineering standards and practices.

- b.
- c. (b) The engineer, surveyor, or landscape architect shall perform services only in areas of his/her competence, and shall undertake to perform engineering or land surveying assignments only when qualified by education and/or experience in the specific technical field. In addition, the engineer, surveyor, or landscape architect must verify that the plans have been designed in accordance with this article and the standards and criteria stated or referred to in this article.

Division 3 – Construction

Sec. 23-32. Construction and Inspection.

- d. The owner or his representative shall notify the city manager 48 hours before commencing any work to implement the stormwater design plan, at key milestones noted during plan approval, and upon completion of the work.
- e. The city manager will notify the person responsible for the development activity in writing when violations are observed describing the following:
 - 1. Nature of the violation;
 - 2. Required corrective actions; and
 - 3. The time period for violation correction.
- f. Any portion of the construction which does not comply with the stormwater design plan shall be promptly corrected by the permittee.
- g. The permittee shall provide record drawings signed and sealed by a registered professional (as outlined in section 23-27) to be submitted upon completion of the stormwater systems included in the stormwater design plan. The record drawings shall be referenced to North Carolina State Plane Coordinates and shall be provided in hard copy form as well as a digital file which is compatible with the city's software. The registered professional shall state on the record drawings that:
 - 1. The systems have been constructed as shown on the record drawings;
 - 2. The systems meet the approved stormwater design plan and specifications; and
 - 3. The record drawings meet all applicable requirements of this article and the administrative manual.
- h. A final inspection shall be conducted by the city manager upon completion of the work included in the approved stormwater design plan to determine if the completed work is constructed in accordance with the plan.

Division 4 – Post-Construction

Sec. 23-33. Ownership and Maintenance of SCMs.

- a. All SCMs shall be privately owned and maintained unless the city accepts the facility for functional maintenance. The owner thereof shall grant to the city a right of entry which allows for inspection and emergency repair, in accordance with the terms of section 23-38, hereof.
- b. Single-family residential SCMs accepted for maintenance. The city shall accept functional maintenance responsibility of structural SCMs that are installed pursuant to this article following a warranty period of one year from the date of record-drawing certification described in section 23-32, or from the date the facility ceases to function as an erosion control measure and starts to function as a SCM, whichever is later, provided the SCM:
 - 1. Only serves a single-family detached residential development or townhomes all of which have public street frontage;
 - 2. Is satisfactorily maintained during the one-year warranty period by the owner or designee;
 - 3. Meets all the requirements of this article;
 - 4. Includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection, maintenance, repair, or reconstruction;

5. Prior to the release of the installation performance guarantee as outlined in section 23-35, the developer shall pay into a maintenance fund used to maintain such facilities in the future an amount equal to 20 percent of the initial construction cost of the SCMs constructed to meet the requirements of this article; and
 6. The city manager must receive an application for transfer of maintenance responsibilities for the structural SCM along with the stormwater design plan submittal.
- c. The person responsible for maintenance of any SCM installed pursuant to this article and not covered under subsection (b) above, shall submit to the city manager an inspection report from one of the following persons performing services only in their area of competence: a qualified registered North Carolina professional engineer, surveyor, landscape architect, soil scientist, aquatic biologist, or person certified by the North Carolina Cooperative Extension Service for stormwater treatment practice inspection and maintenance. 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 SCM;
 3. A statement that an inspection was made of all SCMs;
 4. The date the inspection was made; and
 5. A statement that all inspected SCMs are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this article.
- d. All inspection reports shall be on forms supplied by the city manager. An original inspection report shall be provided to the city manager beginning one year from the date of record-drawing certification and each year thereafter on or before the date of the record-drawing certification.

Sec. 23-34. Operation and Maintenance Agreement.

- a. *In general.* At the time record drawings are provided to the city manager as described in section 23-31 and prior to final approval of a project for compliance with this article, but in all cases prior to placing the SCMs into service, the applicant or owner of the site must execute an operation and maintenance agreement that shall be binding on all current and subsequent owners of the site, portions of the site, and lots or parcels served by the SCM.
- b. *Requirements.* All operation and maintenance agreements executed under this article shall comply with the requirements of this article and the administrative manual.
- c. *Recordation.* The applicable operations and maintenance agreement pertaining to every SCM shall be referenced on the final plat and shall be recorded with the Cumberland 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 Cumberland County Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles. For condominiums, the operations and maintenance agreement shall be recorded with the association documents.
- d. *Enforcement.* Failure to execute an operation and maintenance agreement within the timeframe specified by the city manager may result in assessment of penalties as specified in section 23-42.

Sec. 23-35. Performance Guarantee for Installation.

- a. *Commercial developments.*
 1. *Shall be required.* The city shall require the submittal of a performance guarantee or bond with surety, cash escrow, or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the SCMs are installed by the permit holder as required by the approved stormwater design plan.
 2. *Amount.* The amount of an installation performance guarantee shall be equal to at least 125 percent of the total estimated construction cost of the SCMs approved under the

permit. The installation performance guarantee shall remain in place until at least one year after final approval.

3. *Use of performance guarantee.*
 - i. *Forfeiture provisions.* The performance guarantee shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or owner in accordance with this article, approvals issued pursuant to this article, or an operation and maintenance agreement established pursuant to this article.
 - ii. *Default.* Upon default of the owner to construct, maintain, repair and, if necessary, reconstruct any SCM in accordance with the applicable permit or operation and maintenance agreement, the city manager shall obtain and use all or any portion of the guarantee to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the owner to comply with the permit or maintenance agreement.
 - iii. *Costs in excess of performance guarantee.* If the city takes action upon such failure by the applicant or owner, the city may collect from the applicant or owner the difference between the amount of the reasonable cost of such action and the amount of the guarantee held, in addition to any other penalties or damages due.
- b. *Single-family residential subdivisions.*
 1. *Shall be required.* The city shall require the submittal of a performance guarantee or bond with surety, cash escrow, or other acceptable legal arrangement prior to approval of a final plat in order to ensure that the SCMs are installed by the permit holder as required by the approved stormwater design plan.
 2. *Amount.* The amount of an installation performance guarantee shall be equal to at least 125 percent of the total remaining construction cost of the SCMs approved under the permit. The installation performance guarantee shall remain in place until at least one year after the facility starts to function as a SCM.
 3. *Use of performance guarantee.*
 - i. *Forfeiture provisions.* The performance guarantee shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or owner in accordance with this article, approvals issued pursuant to this article, or an operation and maintenance agreement established pursuant to this article.
 - ii. *Default.* Upon default of the owner to construct, maintain, repair and, if necessary, reconstruct any SCM in accordance with the applicable permit or operation and maintenance agreement, the city manager shall obtain and use all or any portion of the guarantee to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the owner to comply with the permit or maintenance agreement.
 - iii. *Costs in excess of performance guarantee.* If the city takes action upon such failure by the applicant or owner, the city may collect from the applicant or owner the difference between the amount of the reasonable cost of such action and the amount of the guarantee held, in addition to any other penalties or damages due.
- c. *Refund.* No sooner than one year after final approval as outlined in section 23-35, the applicant may petition the city to release the value of the performance guarantee. Upon receipt of such petition, the city manager shall inspect the SCM to determine whether the controls are performing as designed and intended.
 - i. If controls are performing as designed and intended, the city manager may approve the petition and release the installation performance guarantee upon execution by the applicant of an indemnification agreement in favor of the city which shall be a covenant upon the property and run with the land.

- ii. If controls are not performing as designed and intended, the city manager shall provide the applicant with instruction to correct any deficiencies and all steps necessary for the release of the installation performance guarantee.
- d. *Exemption.* Public entities are not required to obtain performance guarantees for the installation of water quality SCMs provided a letter signed by the manager or director of the project provides suitable assurances that the necessary improvements will be installed and maintained in accordance with ordinance requirements. Public entities shall include but not be limited to Cumberland County Schools, City of Fayetteville, Fayetteville Public Works Commission, Fayetteville Stormwater Services, Cumberland County, Fayetteville State University, and the State and Federal government.

Sec. 23-36. Inspection Program.

- a. Inspections and inspection programs by the city may be conducted or established on any reasonable basis, including, but not limited to, routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, and material or water in SCMs; and evaluating the condition of SCMs.
- b. If the owner or occupant of any property refuses to permit such inspection, the city manager shall proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2, or its successor. No person shall obstruct, hamper or interfere with the city manager while carrying out his or her official duties.

Sec. 23-37. Records of Installation and Maintenance Activities.

The owner of each SCM shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record of inspection and shall submit the same upon reasonable request to the city manager.

Sec. 23-38. Maintenance Easement.

Every SCM installed pursuant to this article shall be made accessible for adequate inspection, maintenance, reconstruction and repair by a maintenance easement, which will be shown and labeled on all plans and plats. The easement shall be established and recorded in accordance with the details provided in the administrative manual.

Division 5 – Variances and Appeals

Sec. 23-39. Variances from Requirements.

- a. The city council may grant a variance from the requirements of this article if:
 - 1. There are exceptional circumstances applicable to the site such that strict adherence to the provisions of this article will result in unnecessary hardship and not fulfill the intent of this article;
 - 2. The variance is in harmony with the general purpose and intent of this article; and
 - 3. In granting this variance, water quality has been protected, public safety and welfare has been assured, and substantial justice has been done.
- b. The owner of the affected property, an agent authorized in writing to act on the owner's behalf, or a person having written contractual interest in the affected property shall submit a written request for a variance to the city clerk as described in the administrative manual. This request shall state the specific variance sought and the reasons, with supporting data, for their granting. The request shall include descriptions, drawings, calculations and any other information that is necessary to evaluate the proposed variance.
- c. The city manager will conduct a review of the request for a variance and submit a report to the city council.

- d. Variance requests shall follow the process described in the administrative manual.

Sec. 23-40 Appeals.

- a) The disapproval or required modification of any proposed stormwater design plan, or the determination by the city of noncompliance or failure to maintain shall entitle the aggrieved person to appeal this decision or lack of action to the city council. Such appeal must be made in writing to the city clerk and the city manager within fifteen (15) days of written notice of disapproval or modification of a stormwater design plan, or determination of either noncompliance or failure to maintain or within thirty (30) days of the receipt of a notice of assessment of a civil penalty, made or rendered by the city manager in the enforcement of this article.
- b) Appeals shall follow the process described in the administrative manual.

Division 6 – Fees

Sec. 23-41. Fees.

The initial fees associated with the operation of this article shall be set annually by city council as part of the annual budget ordinance, or by an amendment thereto. If no amendment to the prior year's fees is proposed or adopted by city council as part of the budget ordinance, then the prior year's fees shall continue in full force and effect. A list of the fees proposed at the enactment of this article for plan review and other fees associated with this article may be obtained from the city manager.

Division 7 – Enforcement

Sec. 23-42. Enforcement.

- a. *General.*
 1. *Authority to enforce.* The provisions of this article shall be enforced by the city manager, his or her designee, or any authorized agent of the city. The city manager shall have the power to administer and enforce all regulations and procedures adopted to implement this article, including the right to maintain an action or procedure in any court of competent jurisdiction to compel compliance with or restrain any violation of this article, and to enforce the provisions of this article in accordance with its enforcement provisions. The city manager can:
 - i. Administer, coordinate, and oversee design, construction, and operation and maintenance of city stormwater facilities and conveyances;
 - ii. Implement or oversee implementation of development standards and guidelines;
 - iii. Determine the manner in which stormwater facilities should be operated;
 - iv. Inspect private systems which discharge to a public drainage system;
 - v. Require compliance with maintenance requirements;
 - vi. Advise the other city departments on issues related to stormwater;
 - vii. Protect facilities and properties controlled by the city and prescribe how they are used by others; and
 - viii. Require proposed developments, not exempt from this article, to comply with the terms of this article.
 2. *Violation unlawful.* Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by this article, or the terms or conditions of any permit or other development or redevelopment approval or authorization granted pursuant to this article, is unlawful and shall constitute a violation of this article.
 3. *Each day a separate offense.* Each day that a violation continues shall constitute a separate and distinct violation or offense.
 4. *Responsible persons/entities.* Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, practice, or condition in violation of this article shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section.

Persons subject to the remedies and penalties set forth herein, may include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this article, or fails to take appropriate action, so that a violation of this article results or persists; or an owner, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or development of the property on which the violation occurs. For the purposes of this section, responsible person(s) shall include, but not be limited to:

- i. Person maintaining condition resulting in or constituting violation. An architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this article, or fails to take appropriate action, so that a violation of this article results or persists.
 - ii. Responsibility for land or use of land. The owner of the land on which the violation occurs, any tenant or occupant of the property, any person who is responsible for SCMs or practices pursuant to a private agreement or public document, or any person, who has control over, or responsibility for, the use, development or redevelopment of the property.
 - b. *Remedies and penalties.* The remedies and penalties provided for violations of this article, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.
 1. *Remedies.*
 - i. *Withholding of certificate of occupancy.* The city manager or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein. This remedy shall not apply to buildings in a single-family residential subdivision.
 - ii. *Disapproval of subsequent permits and development approvals.* As long as a violation of this article continues and remains uncorrected, the city manager or other authorized agent may withhold, and the city council may disapprove, any request for permit or development approval or authorization provided for by this article or the zoning, subdivision, and/or building regulations, as appropriate, for the land on which the violation occurs.
 - iii. *Injunction, abatements, etc.* The city manager, with the written authorization of the city manager, may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this article. Any person violating this article shall be subject to the full range of equitable remedies provided in the general statutes or at common law.
 - iv. *Correction as public health nuisance, costs as lien, etc.* If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by G.S. 160A-193, the city manager, with the written authorization of the city manager, may cause the violation to be corrected and the costs to be assessed as a lien against the property.
 2. *Civil penalties.*
 - i. *Violations of article.* A violation of any of the provisions of this article or rules or other orders adopted or issued pursuant to this article may subject the violator to a civil penalty. A civil penalty may be assessed from the date the violation occurs. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation. Refusal to accept the notice or failure to notify the city manager of a change of address shall not relieve the violator's obligation to comply with this article or to pay such a penalty.

- ii. *Amount of penalty.* The civil penalty for each violation of this article may be up to the maximum allowed by law. Each day of continuing violation shall constitute a separate violation. In determining the amount of the civil penalty, the city manager shall consider any relevant mitigating and aggravating factors including, but not limited to, the effect, if any, of the violation; the degree and extent of harm caused by the violation; the cost of rectifying the damage; whether the violator saved money through noncompliance; whether the violator took reasonable measures to comply with this article; whether the violation was committed willfully; whether the violator reported the violation to the city manager; and the prior record of the violator in complying or failing to comply with this article or any other post construction article or law. The city manager is authorized to vary the amount of the per diem penalty based on criteria specified in the administrative manual and based on relevant mitigating factors. Civil penalties collected pursuant to this article shall be credited to the city's general fund as nontax revenue.
 - iii. *Notice of assessment of civil penalty.* The city manager shall determine the amount of the civil penalty and shall notify the violator of the amount of the penalty and the reason for assessing the penalty. This notice of assessment of civil penalty shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall direct the violator to either pay the assessment or file an appeal within 30 days of receipt of the notice as specified in subsection (2)v., below.
 - iv. *Failure to pay civil penalty assessment.* If a violator does not pay a civil penalty assessed by the city manager within 30 days after it is due, or does not request a hearing as provided in subsection (2)v., below, the city manager shall request the initiation of a civil action to recover the amount of the assessment. The civil action shall be brought in Cumberland County Superior Court or in any other court of competent jurisdiction. A civil action must be filed within three years of the date the assessment was due. An assessment that is appealed is due at the conclusion of the administrative and judicial review of the assessment.
 - v. *Appeal of remedy or penalty.* The issuance of a notice of assessment of a civil penalty by the city manager shall entitle the responsible party or entity to an appeal before the city council if such person submits written demand for an appeal hearing to the city clerk within 30 days of the receipt of a notice of assessment of a civil penalty. The demand for an appeal shall be accompanied by a filing fee as established by city council. The appeal of a notice of assessment of a civil penalty shall be conducted as described in section 23-40 of this article.
 3. *Criminal penalties.* A violation of this article may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.
- c. *Procedures.*
 1. *Authority to inspect.* The city manager shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this article, or rules or orders adopted or issued pursuant to this article, and to determine whether the activity is being conducted in accordance with this article and the approved stormwater design plan, and whether the measures required in the plan are effective. No person shall willfully resist, delay, or obstruct the city manager while the city manager is inspecting or attempting to inspect an activity under this article.
 2. *Notice of violation and order to correct.* When the city manager finds that any building, structure, or land is in violation of this article, the city manager shall notify in writing the responsible person/entity. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation occurred or is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. The notice shall, if required, specify a date by which the responsible person/entity must comply with this article, and advise that the

responsible person/entity is subject to remedies and/or penalties or that failure to correct the violation within the time specified will subject the responsible person/entity to remedies and/or penalties as described in this section of this article. In determining the measures required and the time for achieving compliance, the city manager shall take into consideration the technology and quantity of work required, and shall set reasonable and attainable time limits. The city manager may deliver the notice of violation and correction order personally, by the Fayetteville Police, by certified or registered mail, return receipt requested, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure. If a violation is not corrected within a reasonable period of time, as provided in the notification, the city manager may take appropriate action under this article to correct and abate the violation and to ensure compliance with this article.

3. *Extension of time.* A person who receives a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the city manager a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the city manager may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 60 days. The city manager may grant 30- day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this article. The city manager may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.
4. *Enforcement after time to correct.* After the time has expired to correct a violation, including any extension(s) if authorized by the city manager, the city manager shall determine if the violation is corrected. If the violation is not corrected, the city manager may act to impose one or more of the remedies and penalties authorized by this article.
5. *Emergency enforcement.* If delay in correcting a violation would seriously threaten the effective enforcement of this article or pose an immediate danger to the public health, safety, or welfare, then the city manager may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The city manager may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this article.

Sec. 23-43. Building Permit or Street Plan Approval Suspension and Revocation.

- a. The following conditions shall represent grounds for suspension and/or revocation for building permit(s) and/or street plan approval(s):
 1. Any violation(s) of the conditions of the stormwater design plan approval;
 2. Construction not in accordance with the approved plans;
 3. Approval of a stormwater design plan has not been obtained;
 4. Noncompliance with correction notice(s); or
 5. The existence of an immediate danger in a downstream area.
- b. If one or more of these conditions are found, a written notice of violation shall be served upon the owner or authorized representative and the time in which to correct the deficiencies shall be specified. The notice shall set forth the measures necessary to achieve compliance with the plan. Correction of these violations must be started immediately or the owner shall be deemed in violation of this article.
- c. If appropriate remedial actions as outlined in the written notice are not completed within the specified time period, a building permit or street plan approval will be suspended or revoked within

seven days. The suspension or revocation will then be in force until the development is in compliance with this article.

- d. If a violation of this article is occurring that will cause significant damage to downstream property or structures, the city manager can issue an immediate suspension or revocation.