

## **TC-14-09 Stormwater Replacement Funds**

Amends the City Code to allow the City to assess property owners for the maintenance or replacement of private stormwater devices shared by multiple lots in lieu of the current replacement (escrow) account annual payments.

9/25/09

**ORDINANCE NO. (2009)**

**TC**

**TC-14-09**

**AN ORDINANCE TO ASSESS PROPERTY OWNERS FOR THE REPLACEMENT OF PRIVATE STORMWATER DEVICES SHARED BY MULTIPLE LOTS**

**WHEREAS**, The Raleigh City Council finds that the current system of insuring the replacement of shared stormwater devices is inequitable; and

**WHEREAS**, recent changes during the last state legislative session has authorized the city to assess private property owners for private stormwater control facilities.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RALEIGH, NORTH CAROLINA that:**

**Section 1.** Amend the first paragraph of Section 10- 5006(a)(11)d to replace the second provision to read “2. For off-site stormwater control facilities and for all other stormwater control facilities which serve more than one (1) lot that are not accepted for maintenance by a governmental agency all the provisions set forth in 10-9027(b) and (c) must be followed.”

**Section 2.** Amend the second paragraph of Section 10-5007(c)5 to replace the existing text with the following “For off-site stormwater control facilities and for all other stormwater control facilities which serve more than one (1) lot that are not accepted for maintenance by a governmental agency all the provisions set forth in 10-9027(b) and (c) must be followed.”

**Section 3.** Remove Section 10-5007(c)6 and renumber accordingly

**Section 4.** Amend Section 10-9027 (a) to add the following at the end of the paragraph: The landowner or person in possession or control of the land will be subject to individual assessment for failed stormwater control facilities that were required to be constructed or implemented by the provisions of Chapter 9. Any assessment made pursuant to this ordinance shall have the same priority and be collected in the same manner as special assessments governed by G.S. 160A-233(c).

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**Section 5.** Amend Section 10-9027(b)2 to replace the words “funds required to be contributed to the recorded Stormwater Replacement Protection Easement and Access Maintenance Agreement with the *City* in accordance” with the word “complies”. Replace the words “or any escrow agreement required by” with the word “and”. Remove the last two words of the section “if any”.

**Section 6.** Amend Section 10-9027(b) to add a new number 3, “Granting to the City a right of entry to inspect, monitor, maintain, repair, and reconstruct stormwater control facilities” and renumber the remaining Sections accordingly.

**Section 7.** Amend the title of Section 10-9027(c) to be “Replacement of Stormwater Devices”

**Section 8.** Amend the first paragraph of Section 10-9027(c) to replace the words “and the association shall enter into an agreement with the City. The agreement shall contain all of the following provisions:” with the following; “shall contribute 20% to the City to be placed into a general replacement fund account to be used by the city in the event the property owner’s association does not replace the stormwater control facilities as needed. Funds in the general replacement account may be spent by the association for structural; biological; or vegetative replacement of the stormwater control facilities, major repair and replacement repair of the stormwater control facilities, and other cost exceeding one-third ( 1/3) the initial construction cost of the stormwater control facilities; provided that, the City shall first consent to the expenditure. Each lot owner in the property owner’s association will be subject to individual assessment for failed stormwater control facilities that were required to be constructed or implemented by the provisions of Chapter 9. Any assessment made pursuant to this ordinance shall have the same priority and be collected in the same manner as special assessments governed by G.S. 160A-233(c).”

**Section 9.** Amend Section 10-9027(c) to remove subsections 1-9

**Section 10.** All laws and clauses of laws in conflict herewith are hereby repealed to the extent of said conflict.

**Section 11.** If this ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given separate effect and to the end the provisions of this ordinance are declared to be severable.

**Section 12.** This ordinance has been adopted following a duly advertised joint public hearing of the Raleigh City Council and the City Planning Commission following a recommendation of the Planning Commission.

**Section 13.** This ordinance has been provided to the North Carolina Capital Commission as required by law.

**Section 14.** This ordinance shall be enforced by law as provided in N.C.G.S. 160A-175 or as provided in the Raleigh City Code. All criminal sanctions shall be the maximum allowed by law notwithstanding the fifty dollar limit in G.S. 14-4(a) or similar limitations.

**Section 15.** This ordinance shall become effective five (5) days following its adoption.

**ADOPTED:**

**EFFECTIVE:**

**DISTRIBUTION:**

## 10-5006(a)(11)d

### d. Maintenance of stormwater control measures.

When retention devices, detention devices, or wet ponds serve more than one (1) lot and are located on private property, there *shall* be recorded a maintenance agreement which complies with §10-5007(c) for sharing the maintenance costs. There *shall* also be recorded, after approval by the *City*, in the Wake County Registry, a map showing the location of the retention device, detention device, or wet pond on the lot; said map *shall* bear the *following* note:

"The devices and ponds which control stormwater located on this lot are required to be maintained by the *property owner* in accordance with the requirements of the Raleigh *City Code*."

No retention device, detention device, or wet pond *shall* be installed except in accordance with the requirements of the Raleigh *City Code*. In addition to any other required maintenance agreement, *any person* who elects to install any stormwater measure set forth in subsection c. above *shall* enter into an agreement with the *City*. The agreement *shall* contain the *following* provisions:

1. Acknowledgment that the *owner shall* continuously operate and maintain the stormwater control measure.
2. **For off-site stormwater control facilities and for all other stormwater control facilities which serve more than one (1) lot that are not accepted for maintenance by a governmental agency all the provisions set forth in 10-9027(b) and (c) must be followed.** Establishment of an escrow account which can be spent solely for ~~sediment~~ removal, structural replacement, major repair, or reconstruction of the stormwater control measures of the particular ~~site~~ plan or subdivision. If control measures are not performing adequately or as intended or are not properly maintained, the *City*, in its sole discretion, *may* remedy the situation, and in such instances the *City shall* be fully reimbursed from the escrow account. Escrowed funds *may* be spent by the *owner* of the stormwater control measure for ~~sediment~~ removal, structural replacement, major repair, and reconstruction of the stormwater control measure; provided that, the *City shall* first consent to the expenditure. The escrow account *shall* be funded by both developer contribution and annual sinking funds. Prior to plat recordation or issuance of construction permits, whichever *shall* first occur, the developer *shall* pay into the escrow account an amount equal to fifteen (15) per cent of the initial construction cost of the control measure. As determined from the sinking fund budget set forth in §10-5007(c)(4), two thirds ( $\frac{2}{3}$ ) of the total amount of sinking fund budget *shall* be deposited into the escrow account within the first five (5) years and the full amount *shall* be deposited within ten (10) years following initial construction of the stormwater control measure. Moneys *shall* be deposited each year into the escrow account. If a *property owner's* association is established to maintain the stormwater control measures, then a portion of the annual assessments of the association *shall* include an allocation into the escrow account. Any funds drawn down from the escrow account *shall* be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget. The per cent of developer contribution and lengths of time to fund the escrow account *may* be varied by the *City* depending on the design and materials of the stormwater control measures.
3. Granting to the *City* a right of entry to inspect, monitor, maintain, repair, and reconstruct the stormwater control measures.
4. Allowing the *City* to recover from the *owner* any and all costs the *City* expends to maintain or repair the stormwater control measure or to correct any operational deficiencies. Failure to pay to the *City* all of its expended costs, after forty-five days *written* notice, *shall* constitute a breach of the agreement. The *City shall* thereafter be entitled to bring an action against the *owner* personally obligated to pay, or foreclose upon the lien herein authorized by the agreement against the *property*, or both in the case of a deficiency. Interest, collection costs, and attorney fees *shall* be added to the recovery.
5. A statement that this agreement *shall* not obligate the *City* to maintain or repair any stormwater control measure, and that the *City shall* not be liable to any private *person* for the condition or operation of the stormwater control measure.
6. A statement that this agreement *shall* not in any way diminish, limit, or restrict the right of the *City* to enforce any of its ordinances as authorized by law.

## 10-5007(c)

(c) Whenever an impoundment, or retention, or detention device serves more than one (1) lot, prior to the recording of any lot served by the device, a maintenance covenant, *shall* be recorded in the Wake County Registry.

All maintenance agreements *shall* contain without limitation the *following* provisions:

(1) A description of the *property* on which the device is located and all easements from the *site* to the device;

(2) Size and configuration of the device;

(3) A statement that *properties* which will be served by the device are granted rights to construct, use, inspect, replace, reconstruct, repair, maintain, access to the device and to transport, store, and discharge stormwater to and from the device;

(4) A statement that each lot served by the device is jointly or severally responsible for repairs and maintenance of the device and any unpaid ad valorem taxes, public assessments for improvements and unsafe building and public nuisance abatement liens charged against the device, including all interest charges together with attorney fees, cost and expenses of collection. A right of contribution in favor of each owner *shall* be included in the maintenance agreement. That failure to maintain stormwater control measures is a violation of the *City Code* potentially subjecting each *lot owner* subject to this legal document to significant daily civil penalties and other enforcement actions.

(5) For off-site stormwater control facilities and for all other stormwater control facilities which serve more than one (1) lot that are not accepted for maintenance by a governmental agency all the provisions set forth in 10-9027(b) and (c) must be followed.

~~(5) If an association is delegated these responsibilities, then membership into the association *shall* be mandatory for each parcel served by the device and any successive owner, the association *shall* have the power to levy assessments for these obligations, and that all unpaid assessments levied by the association *shall* become a lien on the individual parcel. Common expenses include maintenance of stormwater control measures, premiums for liability insurance in an amount of not less than one million dollars (\$1,000,000.00) of coverage, and funds required to be contributed to either the recorded Stormwater Replacement Protection Easement and access Maintenance Agreement with the *City* in accordance with §10-9027(c) or any escrow agreement required by §10-5006(b)(11)d., if any.~~

~~(6) An operation and maintenance *plan* or manual, together with a budget, *shall* be provided by the initial developer. The *plan* or manual *shall* indicate what operation and maintenance actions are needed, and what specific quantitative criteria will be used to determine when those actions are to be undertaken. The *plan* or manual must indicate the steps that will be taken to restore a stormwater system to design specifications if a failure occurs. The budget *shall* include both annual costs such as routine maintenance, periodic sediment removal and replenishment of rip-rap, insurance premiums, taxes, mowing and reseeding, required inspections, and a sinking fund for structural, biological, or vegetative replacement of the stormwater control facilities, major repair and replacement repair of the stormwater control facilities, and other cost exceeding one-third (1/3) the initial construction cost of the stormwater control facilities. These required documents *shall* be attached to the property association declaration as an exhibit; and~~

(7) A statement that stormwater control measures *shall* be maintained in accordance with the attached stormwater operations and maintenance manual and budget, and at all times the stormwater control measures *shall* comply with all applicable laws, ordinances, regulations, rules and directives of governmental authorities, and that the stormwater control measures *shall* perform as designed.

Sec. 10-9027. MAINTENANCE OF STORMWATER CONTROL MEASURES AND DEVICES.

(a) General.

The landowner or person in possession or control of the land shall maintain all stormwater control measures and devices and all open space areas required by the approved stormwater control plan unless those measures, devices, and open space areas are accepted for maintenance by a governmental agency. The landowner or person in possession or control of the land will be subject to individual assessment for failed stormwater control facilities that were required to be constructed or implemented by the provisions of Chapter 9. Any assessment made pursuant to this ordinance shall have the same priority and be collected in the same manner as special assessments governed by G.S. 160A-233(c).

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(b) Maintenance covenant.

For off-site stormwater control facilities and for all other stormwater control facilities which serve more than one (1) lot that are not accepted for maintenance by a governmental agency, a maintenance covenant containing the following contents is required:

(1) The provisions set forth in ~~subsections (1) through (7) of §10-5007(c).~~

That stormwater control measures shall be maintained by the homeowners' association, property owners' association, or designated commercial lot owner in accordance with the stormwater operations and maintenance manual and budget approved by the Conservation Engineer in the Engineering Department, which manual shall be attached to the maintenance covenant as an exhibit, and at all times the stormwater control measures shall comply with all applicable laws, ordinances, regulations, rules and directives of governmental authorities, and that the stormwater control measures shall perform as designed."

(2) That common expenses include maintenance of stormwater control measures, premiums for liability insurance in an amount of not less than one million dollars (\$1,000,000.00) of coverage, and ~~complies funds required to be contributed to the recorded Stormwater Replacement Protection Easement and Access Maintenance Agreement with the City in accordance with §10-9027(c) and or any escrow agreement required by §10-5006(b)(11)d., if any.~~

(3) Granting to the City a right of entry to inspect, monitor, maintain, repair, and reconstruct stormwater control facilities

~~(34)~~ A statement that within permanently protected undisturbed open space areas no land-disturbing activity, placement of impervious surface, removal of vegetation, encroachment, construction or erection of any structure shall occur except in accordance with a watercourse buffer permit first being issued by the City of Raleigh.

~~(45)~~ A warning statement stating that the stormwater control measures are required to comply with the Raleigh City Code and that failure to maintain stormwater control measures is a violation of the City Code potentially subjecting each lot owner subject to this legal document to significant daily civil penalties and other enforcement actions. Prior to recording the maintenance covenant, the attorney who prepared the maintenance covenant shall certify in writing to the City that the maintenance covenant was prepared on a City form that contains all the contents required by Raleigh City Code §10-9027(b). Certifications shall be on forms approved by the City and shall include a City form maintenance covenant.

The maintenance covenant shall be recorded with the local county register of deeds prior to the recording of any new lot served by the stormwater control facility or prior to the issuance of any development permit for any existing lot except for improvements made pursuant to Part 10, Chapter 3 of this Code. The maintenance covenant shall be binding on all subsequent owners of land served by the stormwater control facilities. A recorded copy of the maintenance covenant shall be given to the Stormwater Utility Division of the City within fourteen (14) days following the recordation of the maintenance covenant, but no building permit shall be issued for the property until a recorded copy of the maintenance covenant is provided to Department of Inspections. The maintenance covenant shall be recorded with the local county register of deeds prior to the recording of any new lot served by the stormwater control facility or prior to the

issuance of any *development* permit for any existing lot except for improvements made pursuant to Part 10, Chapter 3 of this *Code* . The maintenance covenant *shall* be binding on all subsequent *owners* of land served by the *stormwater control facilities* . A recorded copy of the maintenance covenant *shall* be given to the Stormwater Utility Division of the *City* within fourteen (14) days *following* the recordation of the maintenance covenant, but no building permit *shall* be issued for the *property* until a recorded copy of the maintenance covenant is provided to Department of Inspections

(c) ~~Stormwater contribution replacement agreement.~~ **Replacement of Stormwater Devices**

For all *stormwater control facilities* which are to be or are owned and *maintained* by a *property owner's* association or similar entity, in addition to the required maintenance covenant, the developer ~~and the association shall enter into an agreement with the City . The agreement shall contain all of the following provisions:~~ shall contribute 20% to the City to be placed into a general replacement fund account to be used by the city in the event the property owner's association does not replace the stormwater control facilities as needed. Funds in the general replacement account may be spent by the association for structural; biological; or vegetative replacement of the stormwater control facilities, major repair and replacement repair of the stormwater control facilities, and other cost exceeding one-third ( 1/3) the initial construction cost of the stormwater control facilities; provided that, the City shall first consent to the expenditure. Each lot owner in the property owner's association will be subject to individual assessment for failed stormwater control facilities that were required to be constructed or implemented by the provisions of Chapter 9. Any assessment made pursuant to this ordinance shall have the same priority and be collected in the same manner as special assessments governed by G.S. 160A-233(c).

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- ~~(1) Acknowledgment that the associations shall continuously operate and maintain the stormwater control facilities.~~
- ~~(2) Establishment of a general replacement account which can be spent solely for structural; biological; or vegetative replacement of the stormwater control facilities, major repair and replacement repair of the stormwater control facilities, and other cost exceeding one third ( 1/3) the initial construction cost of the stormwater control facilities . If stormwater control facilities are not performing adequately or as intended or are not properly maintained, the City , in its sole discretion, may remedy the situation, and in such instances the City shall be fully reimbursed from the general replacement account. Funds in the general replacement account may be spent by the association for structural; biological; or vegetative replacement of the stormwater control facilities, major repair and replacement repair of the stormwater control facilities, and other cost exceeding one third ( 1/3) the initial construction cost of the stormwater control facilities; provided that, the City shall first consent to the expenditure, and in no event shall the funds paid to the association exceed the amount of funds paid into the general replacement fund by the subject development.~~
- ~~(3) Both developer contribution and annual sinking fund shall fund the general replacement account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the general replacement account an amount equal to fifteen (15) per cent of the initial construction cost of the stormwater control facilities . As determined from the sinking fund budget set forth in §10-5007(c)(6), two thirds ( 2/3) of the total amount of sinking fund budget shall be deposited into the general replacement account within the first five (5) years and the full amount shall be deposited within ten (10) years following initial construction of the stormwater control measure or device. Moneys shall be deposited each year into the general replacement account. A portion of the annual assessments of the property owners association shall include an allocation into the general replacement account. Any funds drawn down from the general replacement account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.~~

- ~~(4) The per cent of developer contribution and lengths of time to fund the general replacement account may be varied by the City depending on the design and materials of the stormwater control facility.~~
- ~~(5) The amount deposited annually in the replacement fund shall be reduced by fifteen (15) percent if the stormwater control facility is designed for detention only, is located underground and is constructed of materials having a design life greater than fifty (50) years. Proper installation of this stormwater control facility shall be inspected by a third party and verified to ensure that no failures could be attributed to poor installation.~~
- ~~(6) Granting to the City a right of entry to inspect, monitor, maintain, repair, and reconstruct stormwater control facilities .~~
- ~~(7) Allowing the City to recover from the association and its members any and all costs the City expends to maintain or repair the stormwater control facility or to correct any operational deficiencies. Failure to pay to the City all of its expended costs, after forty five (45) days written notice, shall constitute a breach of the agreement. The City shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien herein authorized by the agreement against the property, or both in the case of a deficiency. Interest, collection costs, and attorney fees shall be added to the recovery.~~
- ~~(8) A statement that this agreement shall not obligate the City to maintain or repair any stormwater control measure or device, and that the City shall not be liable to any person for the condition or operation of stormwater control facilities .~~
- ~~(9) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the City to enforce any of its ordinances as authorized by law.~~