



City of Raleigh *North Carolina*

To: Ruffin Hall, City Manager
Jim Greene, Assistant City Manager
Ken Bowers, Planning Director

From: Travis R. Crane, Planning and Zoning Administrator

Date: 23 January 2015

Re: UDO Text Change/TC-5-14

At the January 20, 2015 meeting, City Council directed staff to schedule a public hearing for TC-5-14. This text change would alter two sections of the UDO related to the City Code covenant. This memorandum is a summary of the text change request. Attached to this memo are the Planning Commission certified recommendation and the ordinance. The Planning Commission unanimously recommends approval of this text change. A full presentation will be provided at the public hearing on February 3, 2015.

Proposed Text Change

The text change would modify sections 1.1.9 and 9.2.2 of the UDO. These sections contain provisions related to the long-term maintenance and control of shared facilities required by the UDO. When a developer creates a device to be shared among multiple property owners, a legal document known as the City Code covenant is required. An example of a shared facility is a stormwater device.

The proposed change would alter the text to permit an alternate legal instrument only when the shared device is owned, developed or maintained by a unit of government. The benefactors of the facility would still be required to maintain the shared device. As written, the UDO would require the units of government to record a covenant and maintenance easement with the Register of Deeds. As proposed, the units of government could enter into an alternative instrument, such as a license agreement. This license agreement would provide the same level of protection and responsibility.

Why change the UDO?

This text change could be utilized when development includes any one unit of government: local, county, state and federal. As development becomes more collaborative between units of government, long term partnerships will be necessary to maintain common elements associated with the development. The City Code covenant is a form template that uses a "one-size fits all" approach. While the template assists in the ease of administration from the staff perspective, it is not flexible enough to handle more complex development agreements typically

present when units of government act as developer. Additionally, the license agreement allows for potentially more stringent controls when units of government are involved in development.

Recommendation

Once the public hearing has closed, the City Council can adopt the text change. The ordinance would be effective five days from the approval date.



Certified Recommendation

Raleigh Planning Commission

CR# 11604

Case Information: TC-5-14 / City Code Covenant and Shared Stormwater Regulations

Comprehensive Plan Guidance

<i>Applicable Policy Statements</i>	Not applicable
<i>Action Items</i>	Not applicable

Summary of Text Change

<i>Summary</i>	Amends Section 1.1.9 Ownership and Management of Common Elements and Section 9.2.2 Active Stormwater Control Measures of the Part 10A Unified Development Ordinance to allow an alternate means of compliance to the City Code Covenant when a development contains a common element that is owned, maintained or installed to the benefit of a lot owned by a unit of government.
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Summary of Impacts

<i>Impacts Identified</i>	<p><u>Adoption of TC-5-14:</u></p> <ol style="list-style-type: none"> The adoption of the text change would allow an alternate means of compliance to the standard requirement to have a city code covenant and stormwater maintenance covenant when a site is developed with common, or shared, site elements that are owned, maintained or installed to the benefit of a lot owned by a unit of government. <p><u>No Action:</u></p> <ol style="list-style-type: none"> The code requirements are incompatible with the authority of units of government, state and local, to enter into obligations associated with real estate owned by those units of government. Legal prohibitions or the lack of adequate legal authority to enter into certain obligations limit the ability of government units to strictly adhere the current city code covenant and stormwater maintenance regulations.
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Public Meetings

<i>Submitted</i>	<i>Committee</i>		<i>Planning Commission</i>	
8-3-14			1-13-15	

Attachments

1. Staff report
2. Staff memo

Planning Commission Recommendation

<i>Recommendation</i>	Approval
<i>Findings & Reasons</i>	<ol style="list-style-type: none"> 1. The text change eliminates code requirements that are incompatible with the authority of units of government, state and local, to enter into obligations associated with real estate owned by those units of government. Legal prohibitions or the lack of adequate legal authority to enter into certain obligations limit the ability of government units to strictly adhere the current city code covenant and stormwater maintenance regulations. 2. A similar allowance is contained in the Code within the Planned Development District for land owned by units of government. This text change would permit a similar means of compliance for developments outside of the PD district. 3. Allowing alternate means of compliance to the standard requirement to have a city code covenant and stormwater maintenance covenant when a site is developed with common, or shared, site elements that are owned, maintained or installed to the benefit of a lot owned by a unit of government is an acceptable means of accomplishing the desired safeguards of the current ordinance.
<i>Motion and Vote</i>	<p>Motion: Braun Second: Buxton In Favor: Braun, Buxton, Fleming, Fluhrer, Lyle, Schuster, Sterling-Lewis, Swink, Terando and Whitsett</p>

This document is a true and accurate statement of the findings and recommendations of the Planning Commission. Approval of this document incorporates all of the findings of the attached Staff Report.

_____ Planning Director	_____ Date	_____ Planning Commission Chairperson	1/13/15 Date
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Staff Coordinator: Eric Hodge: eric.hodge@raleighnc.gov



Zoning Staff Report – TC-5-14

City Code Covenant and Shared Stormwater Regulations

Request

<i>Section Reference</i>	UDO Sec. 1.1.9 Ownership and Management of Common Elements & Sec. 9.2.2 Active Stormwater Control Measures
<i>Basic Information</i>	Amends the UDO to make it easier for units of government to enter into obligations associated with real estate owned by those units of government when a site is developed with common, or shared, site elements that are owned, maintained or installed to the benefit of a lot owned by a unit of government.
<i>PC Recommendation Deadline</i>	

Comprehensive Plan Guidance

<i>Applicable Policies</i>	Not applicable
<i>Action Items</i>	Not applicable

Contact Information

<i>Staff Coordinator</i>	Eric Hodge: eric.hodge@raleighnc.gov ; 919.996.2639
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History/Overview

This text change was initiated by the Planning and Development Staff and the City Attorney's Office as a result of a desire to partner with the State of North Carolina on a stormwater device that would benefit both parties and the impacts the Unified Development Ordinance's City Code Covenant and Shared Stormwater Management Covenant had on that process caused by legal prohibitions or the lack of adequate legal authority to enter into certain obligations on the part of units of government.

Purpose and Need

This text change would allow an alternative means of compliance with the City Code Covenant and Shared Stormwater Management Covenant requirements that aren't impeded by the lack of legal authority to enter into certain obligations on the part of units of government.

Alternatives Considered

No alternative other than the No Action approach was considered.

Scoping of Impacts

Potential adverse impacts of the proposed text change have been identified as follows:

None.

The adverse impacts of taking no action (retaining the existing regulations) have been identified as follows:

Units of government could be hindered from developing sites with common, or shared, site elements that are owned, maintained or installed to the benefit of a lot owned by a unit of government by the lack of legal authority to enter into certain obligations on the part of units of government.

Impacts Summary

Adoption of Proposed Text Change

The adoption of this text change would permit a similar means of compliance for developments to that already allowed for developments within the Planned Development District for land owned by units of government.

No action

Units of government could be hindered from developing sites with common, or shared, site elements that are owned, maintained or installed to the benefit of a lot owned by a unit of government by the lack of legal authority to enter into certain obligations on the part of units of government.

**ORDINANCE NO. (2015) 393 TC 362
TC-5-14**

**AN ORDINANCE TO REVISE THE UNIFIED DEVELOPMENT
ORDINANCE CITY CODE COVENANT AND SHARED
STORMWATER REGULATIONS**

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

Section 1. Section 1.1.9; Part 10A of the Raleigh Unified Development Ordinance, *Ownership and Management of Common Elements*, is hereby amended by the insertion of the following underlined provisions and deletion of the following strikethrough provisions.

Sec. 1.1.9. Ownership & Management of Common Elements

A. Applicability

1. This UDO requires common elements which are used for the benefit of multiple lots in a variety of its regulations, including, but not limited to:
 - a. Tree conservation areas for subdivisions 2 acres and greater in size (Sec. 9.1.4.);
 - b. Shared stormwater control measures and devices (Sec. 9.2.2.G.);
 - c. Common open space (Article 2.5., Article 4.6. and Article 4.7.;
 - d. Outdoor amenity area (Sec. 1.5.3.);
 - e. Townhouse party walls;
 - f. Objects or improvements for a subdivision located on, under, in, or over public property or public street right-of-way which is subject to an encroachment agreement with a governmental entity; and
 - g. City greenways and permanently protected undisturbed open space areas (Article 9.2.).

2. ~~Whenever any development contains a common element, whether named or not named in this section, a~~ A City Code Covenant is required for developments that contain a common element. When a development contains a common element that is owned, maintained or installed to the benefit of a lot owned by a unit of government, alternate compliance to the City Code Covenant may be allowed. This alternate compliance must be in the form of a written agreement and must, to the satisfaction of the City's Planning Director, address maintenance responsibilities,

cost sharing, and rights of access. The alternate compliance described herein shall not relieve any lot owner of any other applicable provisions of this UDO.

3. For the purposes of this section, it does not matter whether the common elements are owned by a homeowners' association or are governed by easements; in both instances, a City Code Covenant is required. An executed copy of the City Code Covenant shall be submitted to Planning and Development prior to the recording of the final subdivision plat or prior to the issuance of building permits whichever event first occurs.

B. City Code Covenant

The City Code Covenant is a form instrument that can be found on the City's web portal. The contents of the City Code Covenant are:

1. Establishment of a homeowners' association;
2. Mandatory membership in the association for owners;
3. Association responsibility for expenditures, including liability insurance, taxes on common areas, maintenance of common elements, payment of assessments, utility charges and management, enforcement and administrative expenses;
4. Association empowerment to levy assessments against lot owners;
5. Easements for access, parking and walkways granted to owners;
6. Limitations on conveying common space or elements;
7. Provisions for common party walls;
8. Perpetual access easements for immediately abutting buildings;
9. Maintenance of private streets (if any);
10. Perpetual rights of access for all common elements and private streets for governmental agencies;
11. Obligations for tree protection;
12. Limits on immunity and indemnification;
13. Restrictions on parking on private streets;
14. Limits within clear sight triangles;
15. Provisions for common ownership of water and sewer lines; and
16. Provisions regarding maintenance and planting in landscape easements.

Section 2. Section 9.2.2.G; Part 10A of the Raleigh Unified Development Ordinance, *Maintenance of Stormwater Control Measures and Devices*, is hereby amended by the insertion of the following underlined provisions and deletion of the following strikethrough provisions.

Section 9.2.2. Active Stormwater Control Measures

G. Maintenance of Stormwater Control Measures and Devices

1. General Requirements

- a. The land owner or person in possession or control of the land shall maintain all on-site stormwater control facilities and all open space areas required by the approved stormwater control plan unless those facilities and open space areas are accepted for maintenance by a governmental agency.
- b. The land owner entitled to the exclusive use of an off-site drainage easement for one or more stormwater control facilities not accepted for maintenance by a governmental agency shall maintain said stormwater control facilities.

2. Maintenance Covenant

For off-site stormwater control facilities and ~~for~~ all other stormwater control facilities which serve more than 1 lot that are not accepted for maintenance by a governmental agency, the developer shall execute and record with the local county register of deeds office a maintenance covenant. **The maintenance covenant shall be on an approved** using a City form, with the following contents **described below**.

When a stormwater control facility benefits a lot owned by a unit of government, alternate compliance to the Maintenance Covenant may be allowed. This alternate compliance must be in the form of a written agreement and must, to the satisfaction of the City's Director of Public Works, address maintenance responsibilities, cost sharing, the City's right to assess the property, and rights of access to the City. The alternate compliance described herein shall not relieve any lot owner of any other applicable provisions of this UDO.

- a. Location of Stormwater Control Facilities and Drainage Easements
 - i. A description of portions of property where stormwater control facilities are located as well as a description of the location of all private drainage easements conveying stormwater to and from the development to the facilities.
 - ii. A process for relocating private drainage easements, with any relocation to require the prior written consent of the City.

b. Easement Rights of Lot Owners

A statement that owners of properties that will be served by the stormwater control facilities are:

- a) i. Granted perpetual, irrevocable and non-exclusive easement rights and privileges to use, construct, install, inspect, replace, reconstruct, repair and maintain those stormwater control facilities including the right to access those stormwater control facilities, private drainage easements and other portions of the development as reasonably necessary to perform the granted easement rights; and
 - b) ii. The granting of perpetual, irrevocable and non-exclusive easement rights and privileges to transport, store and discharge stormwater to and from the stormwater control facilities.
- c. City Easement/Right of Entry/No City Responsibility
- i. A grant from the developer, the association (if any) and the lot owners to the City of a permanent non-exclusive irrevocable easement over the lots, stormwater control facilities and private drainage easements for inspection, maintenance, repair, construction, installation, reconstruction, replacement and other work on, in and over the stormwater control facilities.
 - ii. A grant from the developer, the association (if any) and the lot owners to the City of a permanent, irrevocable, nonexclusive right of ingress, egress and regress over and across all public or private easements on the property and through all access easements benefitting the developer, association (if any) and the lot owners through any adjacent properties, including but not limited to private roads, for inspection, maintenance, repair construction, installation, reconstruction, replacement and other work on the stormwater control facilities. The rights granted to the City shall include employees, agents and contractors of the City of Raleigh. The grant of these rights does not obligate the City to exercise them or to take any other action.
- d. Stormwater Operations and Maintenance Manual and Budget
- A stormwater operations and maintenance manual and budget conforming to *Sec. 9.2.2.D.2.* shall be attached to and incorporated into the maintenance covenant as an exhibit.
- e. Insurance

The party responsible for maintenance of the stormwater control facilities shall, as part of the routine costs and expenses of maintaining any stormwater control facility, procure and maintain in full force and effect liability insurance in an amount not less than \$1,000,000 of coverage.

f. Standards of Maintenance for Stormwater Control Facilities

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

g. Responsibility for Stormwater Control Maintenance

- i. A statement that the property owners' association or a designated commercial lot owner, shall be responsible for all stormwater control facilities in accordance with the attached stormwater operations and maintenance manual and budget.
- ii. A statement that the failure to maintain any stormwater control facility in accordance with the terms of the maintenance covenant and this UDO is a violation of the City Code, potentially subjecting each lot owner subject to the maintenance covenant to significant daily civil penalties and other enforcement actions.

h. Stormwater Control Facilities Maintained by an Association

- i. If a property owners' association is delegated maintenance responsibilities for the stormwater control facilities, then membership into the association shall be mandatory for the owner of each parcel served by the facility, such membership shall be appurtenant to the parcel and shall run with ownership of the parcel.
- ii. The property owners' association shall have the power to levy assessments for the operation and maintenance of the stormwater control facilities and all unpaid assessments levied by the association shall become a lien on the individual parcel.
- iii. The calculation of the assessment charge shall be set forth in a subsequent recorded document.

- iv. Any property owners' association responsible for maintenance of stormwater control facilities shall be established in accordance with N.C. Gen. Stat., Chapter 47C and Chapter 47F and the property owners' association declaration (or equivalent) shall conform to all applicable provisions of the City Code.
 - v. The common expenses of the property owners' association shall include, without limitation, costs and expenses for operation and maintenance of stormwater control facilities, all costs for insurance premiums and any other costs listed in the stormwater operations maintenance manual and budget.
- i. Stormwater Control Facilities Maintained by a Commercial Lot Owner
- i. If a commercial lot owner is responsible for the maintenance of the stormwater control facilities, said owner is responsible for making all repairs and replacements of the stormwater control facilities in accordance with the construction drawings approved by the City.
 - ii. Each owner of a parcel served by the stormwater control facility shall be subject to an assessment charge levied by the designated responsible lot owner.
 - iii. The assessment charge shall include, without limitation, the actual costs for repairing and maintaining the stormwater control facility, all costs for insurance premiums associated with the stormwater control facility, all costs of required inspections of the stormwater control facility and any other costs listed in the stormwater operations maintenance manual and budget.
 - iv. The calculation of the assessment charge shall be set forth in a subsequent recorded document.
 - v. Any assessment charge levied against a lot and remaining unpaid for a period of 30 days after the payment due date shall be delinquent and shall constitute a default of this covenant entitling the lot owner responsible for maintenance of the stormwater control facilities to bring an action at law against the defaulting party plus interest charges, together with all costs and expenses of collection incurred, including, without limitation, court costs and reasonable attorney fees actually incurred.
 - vi. Each parcel owner served by the stormwater control facility shall have the right to maintain, repair and replace

- the facility if, after 45 days written notice, the commercial lot owner responsible for maintenance, repair and replacement fails to faithfully discharge its responsibility.
- vii. The parcel owner performing any maintenance or repair of the facility shall have the same rights as the designated commercial lot owner to assess all other parcels served by the stormwater control facility.
 - viii. At any time, the commercial lot owner responsible for the maintenance of stormwater control facility may assign its responsibilities and rights to a property owners' association established in accordance with N.C. Gen. Stat., Chapter 47C and Chapter 47F. In such instance, the owners of the parcels served by the stormwater control facility shall be members of the property owners' association.
- j. City Right to Maintain and Repair Stormwater Control Facilities and City's Right of Reimbursement
- i. If the stormwater control facilities are not performing adequately or as intended or are not properly maintained or replaced, the City, in its sole discretion, may, after written notice sent to the lot owners and any association, enter the development and perform such construction, installation, repair, reconstruction, replacement and maintenance of the stormwater control facilities as is necessary to remedy the situation.
 - ii. If the City undertakes the activities listed above, the City shall be fully reimbursed for its costs of inspecting, monitoring, designing, constructing, repairing, reconstructing, replacing and/or installing the stormwater control facility or facilities. Such costs shall include the City's costs of administration, overhead, contracting and public advertising.
 - iii. In addition to any other rights the City has to be reimbursed for its costs, the City may levy an assessment against each lot served by the noncompliant stormwater control facility. No assessment will be levied by the City without prior notice to affected lot owners. Any unpaid assessment levied by the City shall be, as allowed by law, a lien against the delinquent lot.
- k. City's Right To Private Assessments
- i. In addition to all of the remedies set forth herein, if the City has not been fully repaid for the work the City

performed on any stormwater control facility owned, in fee or easement, by either a property owners' association or a commercial lot owner with the power to assess lot owners for maintenance of the stormwater control facility, the property owners' association and the private commercial lot owner shall assign to the City their right to receive common expense assessments, including stormwater assessments.

- ii. The association and private commercial lot owner shall designate and appoint the City as attorney in fact for the expressed and limited purpose of assessing and pursuing collection of such unpaid reimbursement owed to the City.
- iii. No assignment of assessment rights shall become effective without 60 days prior written notice to the applicable private commercial lot owner, property owners' association and its members.

I. Action for Specific Performance

- i. That, recognizing the consequences to the City of noncompliance with the obligations of the maintenance covenant, the City shall have the right to seek, in any court of appropriate jurisdiction, judicial action for specific performance of any of the obligations and remedies established in this maintenance covenant.
- ii. The rights of the City within the maintenance covenant shall not limit any other remedies or enforcement options available to the City under the maintenance covenant, the City Code or State law.

m. No Public Adoption

- i. A statement that the City's exercise of its rights under this maintenance covenant, its abatement of public nuisance or its repair of unsafe structures shall not constitute adoption of any stormwater control facility by the City.
- ii. A statement that the legal authority of the City is not intended to impede or prohibit the property owners' association or lot owners from taking all necessary actions to inspect, maintain, repair, replace and reconstruct stormwater control facilities so that they function safely, perform the function for which they were created and comply with the provisions of this maintenance covenant and the City Code.

n. City's Right of Non-Action

A statement that the maintenance covenant shall not obligate the City to monitor, maintain, repair, reconstruct, install or replace any stormwater control facility or measure and that the City shall not be liable for the condition or operation of stormwater control facilities.

o. Governmental Functions; Superseding Regulations

- i. A statement that nothing contained in the maintenance covenant shall be deemed or construed to, in any way, stop, diminish, limit or impair the City from exercising or performing any regulatory, policing, legislative, governmental or other powers or functions.
- ii. A statement that the maintenance covenant shall not restrict or prevent the application of later adopted ordinances or other enactments which may supplement or supersede the provisions of the maintenance covenant.

p. Joint and Several Liability

- i. A statement that each lot owner served by one or more stormwater control facilities is jointly or severally responsible for repairs, replacement and maintenance of the stormwater control facilities, including payment of any unpaid ad valorem taxes, public assessments for improvements and unsafe building and public nuisance abatement liens charged against the stormwater control facility and/or the lots served by the facility, including all interest charges thereon, together with all cost and expenses of collection incurred, such as, without limitation, court costs and attorney's fees incurred.
- ii. The maintenance covenant shall establish a right of contribution in favor of each owner who pays more than the owner's pro rata share of costs and expenses against all other owners whose real property is served by the same stormwater control facility.
- iii. A statement that pro rata sharing may be established either by maintenance assessment provisions for stormwater control facilities in subsequently recorded documents or by dividing the acreage of such owner's portion of the real property served by the stormwater control facilities by the total acreage of the portion of the development served by the same stormwater control

facility when no maintenance assessment covenants apply to the property.

- iv. A statement that failure to maintain the stormwater control facilities in accordance with the terms of the maintenance covenant and the City Code is a violation of the City Code potentially subjecting each parcel owner subject to the maintenance covenant to significant daily civil penalties and other enforcement actions.

q. Permanently Protected Undisturbed Open Space Areas

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

r. Severability

The sections, paragraphs, sentences, clauses and phrase of the maintenance covenant are severable and if any phrase, clause, sentence, paragraph or section of the maintenance covenant is declared invalid by a valid judgment, order or decree of any court of competent jurisdiction, such invalidity shall not affect the remaining phrases, clauses, sentences, paragraphs and sections of the maintenance covenant.

s. Completion and Recording of Maintenance Covenant Form

- i. The maintenance covenant shall be binding on all current and subsequent owners of property served by the stormwater control facilities. To protect the interests of the City and the public at large, any existing deed of trust, mortgage or lien encumbering the property, other than tax liens for the current tax year or governmental improvement assessments, must be subordinated to the maintenance covenant.
- ii. 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 Sec. 9.2.2.G.2. Certifications shall be on forms approved by the City and shall accompany the maintenance covenant forms.

- iii. The maintenance covenant shall be recorded with the local county register of deeds office immediately following the recording of any new lot served by the stormwater control facility or prior to the issuance of any building permit for any existing lot except for improvements made pursuant to *Chapter 8. Subdivision & Site Plan Standards*. The maintenance covenant must be the first encumbrance recorded subsequent to the recording of the subdivision plat.
 - iv. A recorded copy of the maintenance covenant shall be given to the Stormwater Utility Division of Public Works within one business day following recordation. No building permit shall be issued for the property subject to the maintenance covenant until a recorded copy of the maintenance covenant is provided to the ~~Office~~ **Department** of Development Services.
3. Payment to Stormwater Facility Replacement Fund
- a. At the time of either recording a subdivision plat or issuance of a building permit for a lot not established by subdivision, whichever event first occurs, the developer shall pay to the City a stormwater facility replacement fund payment, which payment shall equal 24% of the estimated cost of constructing all stormwater control facilities shown on applicable development plans.
 - b. The purpose of the stormwater replacement fund is to ensure that adequate funds are available to the City for the maintenance, repair replacement and reconstruction of stormwater control facilities required by this UDO. Funds expended from the stormwater facility replacement fund shall be used only for the repair, maintenance, reconstruction and/or replacement of stormwater control facilities, together with the costs incurred by the City associated with any work and/or redesign of the facilities.
 - c. No funds from the stormwater facility replacement fund shall be used for administration of this fee program. Monies collected from the stormwater replacement fund may be spent for maintenance, repair, reconstruction and replacement of any stormwater control facility required by this UDO and located within the City limits or its extraterritorial jurisdiction.
 - d. Payments collected by the City pursuant shall be kept separate from other revenues of the City. Any funds on deposit not

immediately necessary for expenditure shall be invested as allowed in N.C. Gen. Stat. §159-30; all income derived shall be deposited in the separate account and may only be used for repair, maintenance, reconstruction and replacement of stormwater control facilities together with the costs incurred by the City associated with any work or redesign of the facilities.

- e. Monies expended from the stormwater facility replacement fund, together with interest, may be recouped by the City from lot owners served by stormwater control facilities maintained, repaired, reconstructed and replaced by the City or its contractors. All recouped monies and interest shall be returned to the stormwater facility replacement fund.
- f. The payment of stormwater facility replacement fees is not intended as a substitute for security to ensure the construction of the facilities, which security may be required at such point in the development process as specified in City ordinances and policies.

H. Annual Inspections and Inspection Report Required

The responsible party for maintenance of the stormwater control measures or devices must submit an annual inspection report from a qualified registered North Carolina professional engineer, surveyor or landscape architect to the Stormwater Utility Division of the Public Works Department. The inspections report shall contain all of the following:

1. The name and address of the land owner;
2. The recorded book and page number of the lot of each required stormwater control facility and required open space area;
3. A statement that an inspection was made of all required stormwater control facilities and open space areas;
4. The date of the inspection;
5. A statement that all inspected stormwater control facilities and open space areas are performing properly and are in compliance with the approved stormwater control plan, the applicable maintenance manual required by Sec. 9.2.2.D.2. and the Raleigh Stormwater Control and Watercourse Buffer Manual. No sampling of pollutant loading is required as part of the inspection;
6. The original signature and seal of the engineer, surveyor or landscape architect; and
7. All inspection reports shall be on forms supplied by the City. An original inspection report shall be given to the Office of Development Services beginning from the date of the as-built was first certified under Sec.

9.2.2.D.3. and each year thereafter on the anniversary date of the certification.

Section 3. All laws and clauses of laws in conflict herewith are hereby repealed to the extent of said conflict.

Section 4. 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 5. 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 6. This ordinance has been provided to the North Carolina Capital Commission as required by law.

Section 7. 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 8. This ordinance shall become effective five (5) days following its adoption.

ADOPTED: February 3, 2015

EFFECTIVE: February 8, 2015

DISTRIBUTION: Planning – Bowers, Crane, Hodge
City Attorney – Botvinick, Hargrove
Department Heads
Transcription Svcs – Taylor