

**AN ORDINANCE AMENDING CHAPTER 18, ARTICLE III, OF THE CHARLOTTE CITY CODE ENTITLED “STORMWATER POLLUTION”**

**ORDINANCE NO. 9802**

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

Section 1: Chapter 18, Article III Stormwater Pollution, of the Charlotte City Code is hereby amended to read as shown in the attached Exhibit A, which is incorporated and made a part of this ordinance.

Section 2: This ordinance shall become effective as of July 1<sup>st</sup>, 2020, with the exception of Section 18-80(f) “Use of High PAH Pavement Products Prohibited” which shall become effective as of January 1<sup>st</sup>, 2021.

Adopted by City Council, May 26, 2020.

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## EXHIBIT A

### ARTICLE III. – STORMWATER POLLUTION

#### **Sec. 18-76. Statutory and general authorization.**

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

As a result, the City of Charlotte (“City”) implements, administers, and enforces the provisions of the Charlotte Stormwater Pollution Control Ordinance. The Director of the City of Charlotte department that is responsible for management of the City’s NPDES MS4 Stormwater permit is charged with the implementation, administration, and enforcement of this article. The Director shall determine the authorized representatives(s), policies, procedures, and guidelines necessary for the effective implementation, administration, and enforcement of this article.

#### **Sec. 18-77. Definitions.**

The following words, terms and phrases, whether shown in uppercase or lowercase, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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

*City* means the City of Charlotte, North Carolina.

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

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

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

*Discharge or Discharged* means the addition, release, or disposal of Non-Stormwater or any Pollutant, whether in solid, liquid, or gaseous form, either directly or indirectly to the Stormwater System or the Waters of the State.

*EPA* means the United States Environmental Protection Agency or other duly authorized official of the Agency, including its successors.

*High PAH Pavement Product* means a product, material or substance that contains greater than 0.1% (1000 ppm) PAH by weight and is intended for use on an asphalt or concrete surface. High

PAH pavement product may contain coal tar, coal tar pitch volatiles, RT-12, refined tar, steam-cracked petroleum residues, heavy pyrolysis oil, steam-cracked asphalt, pyrolysis fuel oil, heavy fuel oil, ethylene tar, ethylene cracker residue, or a variation of those substances assigned the chemical abstracts service (CAS) numbers 65996-92-1, 65996-93-2, 65996-89-6, 8007-45-2, 64742-90-1, or 69013-21-4.

*Illicit Connection* means any physical connection, actual or potential flow Discharge, or other condition that could allow Non-Stormwater or a Pollutant to enter the Stormwater System or the Waters of the State. Examples of Illicit Connection include, but are not limited to: Wastewater lines such as those from washing machines or sanitary sewers; and pipes, drains, hoses, ditches, troughs, etc. carrying Wastewater, Washwater or any other Non-Stormwater or Pollutant from a facility, dwelling, building, vehicle, operation, or property, except as allowed pursuant to Section 18-81 of this article.

*Illicit Discharge* means any Discharge not composed entirely of Stormwater that may directly or indirectly enter the Stormwater System or the Waters of the State, except as allowed pursuant to Section 18-81 of this article. Examples of Illicit Discharge include, but are not limited to: oil; grease; household and industrial chemical waste; sanitary sewage; Wastewater; paint; paint Washwater; garbage; yard waste; animal waste; food waste; cooking oil/grease, swimming pool/hot tub/spa water containing Pollutants; concrete; concrete equipment Washwater; commercial vehicle Washwater; heated water; soaps/detergents; sediment/silt or any other discarded or abandoned substances or waste materials.

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

*MS4* means municipal separate storm sewer system.

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

*Non-Stormwater* means any flow that is not from a form of natural precipitation.

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

*PAH* means polycyclic aromatic hydrocarbons.

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

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

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

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

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

*Storm Water Advisory Committee* means the Charlotte-Mecklenburg Storm Water Advisory Committee as established by the joint resolution of the City of Charlotte Council and the Board of Mecklenburg County Commissioners, together with any amendments thereto.

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

*Uncontaminated* means not containing any Pollutants.

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

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

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

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

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

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

### **Sec. 18-78. Purpose.**

The purpose of this article is to meet the requirements of the City's NPDES MS4 Stormwater permit and to support the protection of surface water quality resources within the City's

jurisdiction by controlling the Discharge of Pollutants to the Stormwater System and making it illegal for Non-Stormwater or Pollutants to be Discharged to the Stormwater System or the Waters of the State. This article is supplemental to and in no way replaces regulations, rules, statutes, and laws administered by the State or federal government.

The objectives of this article are:

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

**Sec. 18-79. Jurisdiction.**

The provisions of this article shall apply to the area encompassed within the City of Charlotte corporate limits.

**Sec. 18-80. Prohibitions.**

***a. Illicit Discharge(s).***

No Person shall cause or allow the Discharge of Non-Stormwater or any Pollutant, either directly or indirectly, to the Stormwater System, the Waters of the State, or upon the land in a manner or amount that is likely to reach the Stormwater System or the Waters of the State except as allowed pursuant to Section 18-81 of this article. Upon discovery, the Violator shall immediately: collect and remove the Non-Stormwater or Pollutant(s); restore all affected areas to their pre-Discharge condition; and implement actions to prevent further Discharges of Non-Stormwater or Pollutants.

***b. Illicit Connection(s).***

No Person shall install, maintain or use any connection to the Stormwater System or the Waters of the State for the Discharge of Non-Stormwater or a Pollutant; or shall cause Non-Stormwater or a Pollutant to be Discharged or conveyed through any connection to the Stormwater System or the Waters of the State unless the Discharge is an allowable Discharge pursuant to Section 18-81 of this article. Upon discovery of the Illicit Connection, the Violator shall immediately remove the connection and restore all affected areas to their pre-connection condition in a manner to prevent any Discharges of Non-Stormwater or a Pollutant to the Stormwater System.

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

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

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

***d. Improper Storage, Handling, or Processing of Materials.***

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

***e. Failure to Comply.***

Failure to comply with any requirements or corrective actions set forth in a Notice of Violation, Notice of Civil Penalty Assessment, Compliance Order, or any other notice or order issued pursuant to Section 18-83 of this article, shall be a Violation of this article. Said Violation may be enforced against the Violator as a discrete Violation of this article or as a factor in conjunction with other enforcement remedies and penalties.

***f. Use of High PAH Pavement Products Prohibited.***

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

***g. Obstruction.***

No Person shall obstruct, hamper, or interfere with the Director while carrying out official duties authorized by this article. Upon presentation of credentials, necessary arrangements shall be made to allow the Director immediate access onto premises or into an area protected by security measures. Any obstruction to the safe and easy access to property, a facility, equipment, or enclosure on property, or to monitoring devices shall immediately be removed. Denial of access or unreasonable delays in providing safe and reasonable access or removing obstructions shall be a Violation of this article. Said Violation may be enforced against the Violator as a discrete

Violation of this article or as a factor in conjunction with other enforcement remedies and penalties.

**Sec. 18-81. Allowable Incidental Discharges of Non-Stormwater.**

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

- (1) Water line flushing, provided the discharge does not cause an exceedance of surface water quality standards;
- (2) Landscape irrigation;
- (3) Diverted stream flows;
- (4) Uncontaminated groundwater infiltration (as defined at 40 CFR §35.2005(20));
- (5) Uncontaminated, pumped groundwater;
- (6) Rising groundwaters;
- (7) Discharges from Uncontaminated Potable Water sources;
- (8) Collected infiltrated Stormwater from foundation drains or footing drains;
- (9) Air conditioning condensate from residential or commercial units;
- (10) Irrigation water (does not include reclaimed water as described in 15A NCAC 2H .0200);
- (11) Uncontaminated springs;
- (12) Uncontaminated, collected groundwater and infiltrated Stormwater from basement or crawl space pumps;
- (13) Lawn watering;
- (14) Swimming pool and hot tub/spa Discharges, provided that the Discharge does not contain chlorine, bromine, salt, or any other treatment chemicals. These Discharges do not include swimming pool or hot tub/spa filter backwash Discharge or saltwater pool Discharge, which are expressly prohibited;
- (15) Street Washwater only when Unmodified Potable Water is used;
- (16) Flows from emergency fire and rescue operations other than those resulting from negligence on the part of the Person who owned or controlled the Pollutant. This allowance does not include discharge flows from fire and rescue training operations.
- (17) Single-family residential and Charity Vehicle Washing (\*see note below);
- (18) Flows from riparian habitats and wetlands;
- (19) NPDES permitted discharges authorized by NCDEQ, EPA, or delegated local authority, provided said discharges are in compliance with the requirements, conditions and discharge limitations of the permit;
- (20) Dye testing, using suitable dyes, for verifying cross-connections, tracing plumbing lines, determining flow direction or rate and for similar purposes, provided that verbal notification by non-governmental entities is provided to the Director prior to testing;
- (21) Water used for removal of Stormwater System blockages only when Unmodified Potable Water is used; and
- (22) Splash pad (spray ground) water from a Potable Water source only; refer to Sec. 18-81(14) if the water is treated with chemicals used similarly for a swimming pool or hot tub/spa.

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

## **Sec. 18-82. Powers and Authority for Inspection.**

### ***a. Authority to inspect and monitor.***

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

### ***b. Search warrants.***

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

### ***c. Confidential information.***

- (1) To the extent permitted by applicable law and except as otherwise provided in this section, information and data on a Person obtained from reports, questionnaires, permit applications, permits, monitoring programs and inspections shall be available to the public or other government agencies without restriction, unless the Person specifically requests, and is able to demonstrate to the satisfaction of the Director, that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the Person. Any such request must be asserted at the time of submission of the information or data.
- (2) To the extent permitted by applicable law, when requested by a Person furnishing a report, the portions of a report that might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available upon request to governmental agencies for uses related to this article provided, however, that such portions of a report shall be available for use by the State or any State agency in judicial review or enforcement proceedings involving the Person furnishing the report.
- (3) Documents that are not public records and the information set forth therein may be withheld and released only as provided by applicable law.

## **Sec. 18-83. Enforcement remedies and penalties.**



***a. Remedies not limited.***

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

***b. Notice of Violation.***

Any Person who conducts an act or action, allows directly or indirectly, acts in concert, participates, directs, or assists directly or indirectly in the creation of a Violation of this article is subject to the issuance of a written Notice of Violation.

*(1) Content of notice.*

Except in emergencies, as described in subsection 18-83(k), upon the Director's determination that a Violation has occurred, the Director shall provide to each Person against whom remedial action or penalties may be pursued, written notice that describes: a) the location of the Violation; b) the nature of the Violation; c) a general description of the remedies and penalties that may be incurred; d) the action(s) needed to correct the Violation, which shall include, as applicable, requirements to: 1) immediately cease any Discharge contributing to the Violation; 2) collect, remove, and properly dispose of the discharge material; 3) restore areas affected by the Violator's Discharge(s) to their pre-Violation condition; and, 4) take appropriate corrective and/or preventive actions to prevent further illegal discharges; e) a deadline, if required, by which corrective actions must occur; f) how to provide explanatory or additional information to the Director g) a contact Person with whom the Violation can be discussed; and h) how to request a meeting with the Director for certain Violations as described in subsection 18-83(b)(3).

When deemed necessary by the Director, the notice may also require the Violator to provide a written response explaining the actions taken to correct the Violation, restore affected areas, and to prevent future Violations. Only one such notice shall be required to each Violator, regardless of the number of remedies or penalties that are pursued or the timing of their institution. In addition, no time period or deadline for compliance need be given for obstructing, hampering or interfering with an authorized representative(s) while in the process of carrying out official duties under this article.

Said notice shall further advise the Violator that should the Violator fail to remediate or restore the affected area(s) within the established deadline, the restoration work may be done by the City or a contractor designated by the City pursuant to subsection 18-83(j), and the expense thereof shall be charged to the Violator.

*(2) Service.*

The notice may be served by United States Postal Service certified mail, United States Postal Service regular mail, special service delivery, hand delivery, or by any means authorized under

NCGS § 1A-1, Rule 4 of the North Carolina Rules of Civil Procedure. Refusal to accept the notice shall not relieve the Violator's obligation to comply with this article.

*(3) Meeting with the Director.*

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

***c. Civil penalties.***

(1) Any Person who conducts an act or action, allows directly or indirectly, acts in concert with, participates, directs, or assists directly or indirectly in the creation of a Violation of this article is subject to a civil penalty. A civil penalty may be assessed for the time period from the date the Violation first occurs until the date that the Violation ceases, as verified by the Director.

(2) The maximum civil penalty for each Violation of this article is \$10,000.00 per Day. Each Day of Violation shall constitute a separate Violation.

(3) Except in emergencies, as described in subsection 18-83(k), no penalty shall be assessed until the Person alleged to be in Violation has been served written Notice of the Violation as described in subsection 18-83(b). Refusal to accept the notice shall not relieve the Violator of the obligation to pay such penalty.

(4) Penalties may be assessed concurrently with a Notice of Violation for any of the following:

- (i) Obstructing, hampering or interfering with the Director who is in the process of carrying out official duties under this article;
- (ii) A repeated or continuing Violation for which a Notice of Violation was previously served to the Person responsible for the Violation; or
- (iii) Willful or intentional Violation of this article.

(5) In determining the amount of a civil penalty, the Director shall consider any relevant aggravating and mitigating factors including, but not limited to the following:

- (i) Degree and extent of harm caused by the Violation;
- (ii) Whether money was or could have been saved by non-compliance;
- (iii) Whether the Violation was committed willfully or intentionally;
- (iv) Prior record of the Violator in complying or failing to comply with this article or any other water pollution control ordinance or regulation;
- (v) Cost of rectifying the damage;
- (vi) Whether the Violator took reasonable measures to comply with this article;
- (vii) Knowledge of the requirements by the Violator and/or reasonable opportunity or obligation to obtain such knowledge;
- (viii) Whether the Violator voluntarily took reasonable measures to restore any areas damaged by the Violation;

- (ix) Whether the Violator reported the Violation to the Director or other appropriate authority; and
- (x) Technical and economic reasonableness of reducing or eliminating the Violation.

(6) The Director shall determine the amount of the civil penalty, including City administration costs, to be assessed under this section and shall make written demand for payment upon the Person in Violation and shall set forth a description of the Violation for which the penalty was imposed. Notice of said civil penalty assessment shall be issued pursuant to subsection 18-83(b)(2) of this article. If a Violator does not pay a civil penalty assessed by the Director within 30 days after it is due, or does not request a hearing as provided pursuant to Section 18-84 of this article, the Director may request the City Attorney to institute a civil action to recover the amount of the civil penalty. The civil action shall be brought in Mecklenburg County Superior Court or in any other court of competent jurisdiction. Such civil actions must be filed within three years of the date the notice of civil penalty assessment was served on the Violator.

(7) A civil penalty assessment that is not contested is due within 30 days from when the Violator is served with a notice of civil penalty assessment. A civil penalty assessment that is contested is due at the conclusion of the administrative and judicial review of the civil penalty assessment.

(8) Civil penalties collected pursuant to this article, less City administration costs, shall be remitted to the Charlotte-Mecklenburg School System.

(9) In no case shall the maximum civil penalty per day exceed the amount as specified in subsection 18-83(c)(2).

(10) A Violation of this article shall not constitute a misdemeanor or infraction punishable under NCGS § 14-4, but instead shall be subject to the civil penalties fixed by this section.

***d. Cost recovery.***

The Director may also recover from the Violator:

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

***e. Compliance agreement.***

The Director may enter into compliance agreements, assurances of voluntary compliance, or other similar documents establishing an agreement with the Person responsible for the Violation. Such agreements will include specific actions to be taken by the Person in Violation to correct the non-compliance within a time period specified by the agreement. Compliance agreements shall have the same force and effect as compliance orders issued pursuant to subsection 18-83(f).

***f. Compliance order.***

When the Director finds that any Person has violated or continues to violate any section of this article, an order may be issued to the Violator directing that they do one, or a combination, of the following:

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

***g. Cease and desist order.***

Cease and desist orders may be issued as follows:

(1) If the Director finds that any Person has violated or continues to violate any section of this article, an order issued pursuant to this article, or any other provision of applicable law, the Director may issue an order requiring such Person to cease and desist all such Violations and direct such Person to perform any one or more of the following:

- (i) Comply immediately with all sections of this article, an order issued pursuant to this article, or other applicable law; and
- (ii) Take appropriate remedial and preventive actions for a continuing or threatened Violation of any section of this article, a compliance agreement issued pursuant to this article, an order issued pursuant to this article, or any other provision of applicable law.

(2) The Director may include in such order the payment of a civil penalty for violating any section of this article, or for violating a compliance agreement or order issued pursuant to this article.

***h. Withholding of inspections, permits or other approvals.***

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

***i. Restoration of areas affected by failure to comply.***

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

***j. Abatement by the City.***

If a Violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or in emergency situations as described in subsection 18-83(k), or by other allowable

remedies, or in the event of an appeal pursuant to Section 18-84 of this article, within 10 days of the decision of the Storm Water Advisory Committee to uphold the decision of the Director, then the City or a contractor designated by the City may enter upon the subject premises and is authorized to take any and all measures necessary to abate the Violation and/or restore impacted areas to their pre-Violation condition in order to minimize the detrimental effects of the resulting impacts. It shall be unlawful for any Person in possession or control of any premises to refuse to allow the City or its designated contractor to enter upon the premises for the purposes set forth above.

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

***k. Emergencies.***

If delay in correcting a Violation would seriously threaten the effective enforcement of this article or pose an immediate threat or danger to the public health, safety, or welfare, or to the environment, including but not limited to, the Waters of the State, then the Director may order the Violator to immediately cease and abate the Violation. Any Person ordered to cease such Violation or to abate such Violation shall do so immediately. The Director may seek immediate enforcement through any remedy or penalty authorized in this article or other applicable law, including but not limited to, abatement of the Violation pursuant to Section 18-83(j) of this article.

***l. Injunctive relief.***

(1) Whenever the Director has reasonable cause to believe that any Person is violating or threatening to violate this article, the Director may, either before or after the institution of any other action or proceeding authorized by this article, authorize the City Attorney to institute a civil action in the name of the City for injunctive relief to restrain the Violation or threatened Violation. The action shall be brought pursuant to NCGS § 160A-175 in Mecklenburg County Superior Court.

(2) Upon determination by a court that an alleged Violation is occurring or is threatened, the court shall enter such orders or judgments as are necessary to abate the Violation or to prevent the threatened Violation. The institution of an action for injunctive relief under this subsection shall not relieve any party to such proceedings from any civil penalty prescribed for Violations of this article.

**Sec. 18-84. Appeal Process.**

***a. Issuance of a notice of Violation, assessment of a civil penalty, cease and desist order and/or compliance order.***

(1) The issuance of a Notice of Violation and/or notice of civil penalty assessment by the Director shall entitle the Person responsible for the Violation of the article ("Petitioner") to a public hearing before the Storm Water Advisory Committee ("Committee") if such Person submits written demand for a hearing to the Clerk of the Committee ("Clerk") within 30 days of the receipt of the notice. The demand for a hearing filed with the Clerk shall be accompanied by a filing fee as established by the Committee. In the demand for a hearing on a civil penalty assessment, the Petitioner must state separately each reason why such penalty should not be assessed or, if the Petitioner contends that the civil penalty was assessed in an improper amount, each reason why the amount of the penalty is improper. Each assessment of a civil penalty that has been included in a demand for a hearing in accordance with this subsection is stayed and shall not take effect until the earliest occurrence of any one of the following circumstances: the assessment of the civil penalty is approved or is modified by the Committee; or the Petitioner and the Director agree on the assessment of the civil penalty. This subsection shall not be construed to stay any section of this article or other applicable law.

(2) The issuance of a compliance order and/or cease and desist order by the Director shall entitle Petitioner to a public hearing before the Committee if such Petitioner submits written demand for a hearing to the Clerk within the following schedule:

- (i) within twenty (20) days of the receipt of a compliance order issued pursuant to Section 18-83(f) of this article;
- (ii) within ten (10) days of the receipt of a cease and desist order issued pursuant to Section 18-83(g) of this article.

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

(3) The Director, at their discretion, may grant an extension to the deadline for filing a demand for a hearing before the Committee.

(4) Failure to timely file such demand(s) and fee(s) within the applicable deadline, including any extension granted by the Director, shall constitute a waiver of any rights to appeal under this article and the Committee shall have no jurisdiction to hear the appeal.

(5) Within five (5) days of receiving the Petitioner's demand for a hearing, the Clerk shall notify the Chairman of the Committee ("Chairman") of the request for hearing. As soon as possible after the receipt of said notice, the Chairman shall set a time and place for the hearing and notify the Petitioner by mail of the date, time and place of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the Committee from the submission of the notice, or as soon thereafter as practical, or at a special meeting. The hearing shall be conducted pursuant to the provisions of subsection 18-84(b) of this article.

(6) Any party aggrieved by the decision of the Committee with regard to the issuance of a notice of Violation, notice of assessment of a civil penalty, cease and desist order or compliance order

shall have 30 days from the receipt of the decision of the Committee to file a petition for review in the nature of certiorari in Superior Court with the Clerk of Mecklenburg County Superior Court.

***b. Hearing procedure.***

The following provisions shall be applicable to any hearing conducted by the Committee pursuant to subsection 18-84(a).

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

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

(7) The Committee shall keep minutes of its proceedings, showing the vote of each member upon each question and the absence or failure of any member to vote. The decision of the Committee shall be based on findings of fact and conclusions of law to support its decision.

(8) The Committee shall send a copy of its findings and decision to the Applicant/Petitioner and the Director. If either party contemplates an appeal to a court of law, the party may request and obtain, at that party's own cost, a transcript of the proceedings.

(9) The decision of the Committee shall constitute a final decision.

### **Sec. 18-85. Severability**

If any section(s) or subsection(s) of this article is/are held to be invalid or unenforceable, all other sections and subsections shall nevertheless continue in full force and effect.