

AN ORDINANCE AMENDING CHAPTER 18 OF THE CHARLOTTE CITY CODE ENTITLED “STORMWATER POLLUTION CONTROL ORDINANCE”

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

Section 1: Sections 18-76 through 18-88 of the City Code are amended to read as follows:

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

The State legislature has, in G.S. 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 Ordinance (“Ordinance”). Charlotte-Mecklenburg Storm Water Services (“CMSWS”) is a duly authorized representative of the City in the administration, implementation and enforcement of the Charlotte Stormwater Ordinance and is thereby entitled to all the rights granted to the City.

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

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning: *Business Day* means any day that CMSWS is open to the public to conduct business.

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

*Charlotte-Mecklenburg Storm Water Services or CMSWS* means staff of the City of Charlotte and Mecklenburg County Stormwater Services, both of which work to improve water quality and manage water quantity for all residents of Mecklenburg County.

*City* means the City of Charlotte.

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

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

*Discharge* means the addition of any Pollutant either directly or indirectly to the Stormwater System or Waters of the State.

*EPA* means the U.S. Environmental Protection Agency or other duly authorized official of the agency.

*Illicit Connection* means any physical connection, actual or potential flow discharge, or other condition that could allow Non-Stormwater to enter the Stormwater System.

*Illicit Discharge* means any discharge not composed entirely of Stormwater that may directly or indirectly enter the Stormwater System or Waters of the State, except as exempted in Section 18-81 of this article.

*Illicit Disposal* means the same as Illicit Discharge.

*Improper Disposal* means the releasing of matter or fluids other than atmospheric precipitation at a location where the matter or fluid can enter the Stormwater System.

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

*Industrial* means a business engaged in industrial production or service, that is, a business characterized by manufacturing or productive enterprise or a related service business.

*Manager* means the person designated by the City to manage Stormwater Services and who is charged with certain duties and responsibilities by this article, or that person's duly authorized representative.

*NC DENR* means the North Carolina Department of Environment and Natural Resources.

*NCGS* means North Carolina General Statute.

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

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

*Person* means any individual, partnership, firm, association, company, trust, estate, corporation, commission, institution, utility, governmental entity or other legal entity or their legal representatives, agents or assigns.

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

*Pollution and Polluted* mean containing Pollutants.

*Receiving Stream* means the body of water, stream or watercourse receiving the discharge waters from the Stormwater System, or formed by the water discharged from the Stormwater System.

*Riparian* means relating to or living or located on the bank of a natural watercourse or waterbody.

*Runoff* means the excess portion of precipitation that does not infiltrate the ground, but flows over the ground and into a conveyance or watercourse.

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

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

*Storm Water Advisory Committee ("SWAC")* means the Charlotte-Mecklenburg Stormwater 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, pipes, ditches, swales, ponds, detention and retention basins, streams, and other natural or manmade facilities and appurtenances that serve to collect and convey Stormwater through and from a given drainage area.

*Uncontaminated* means not containing any Pollutants.

*Unmodified Potable Water* means tap water that has not had detergents, acids, degreasers, surfactants or other agents added to or mixed with it, regardless of whether the added agent is labeled as or generally considered to be biodegradable.

*Wash Water* 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 from a facility after use. Examples include water used for washing, flushing, cleaning, or in a manufacturing process.

*Waters of the State*, as defined in NCGS §143-212(6), means any intermittent or perennial stream, river, brook, swamp, lake, sound, tidal estuary, bay, creek, reservoir, waterway, or other body or accumulation of water, whether surface or underground, public or private, or natural or artificial, that is contained in, flows through, or borders upon any portion of this State, including any portion of the Atlantic Ocean over which the State has jurisdiction.

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

The purpose of this article is to protect water quality by controlling the level of Pollutants in the Stormwater System and making it illegal for certain Pollutants to enter the Stormwater System. This article is supplemental to and in no way replaces regulations administered by the State or federal government.

The objectives of this article are:

- (1) To regulate the contribution of Pollutants to the municipal Stormwater System;
  - (2) To prohibit Illicit Connections and Illicit Discharges to the municipal Stormwater System;
- and
- (3) To establish legal authority to carry out all 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) and Disposal(s).***

No Person shall cause or allow the discharge or disposal of Non-Stormwater, either directly or indirectly, to the Storm Water System, Waters of the State, or upon the land in a manner or amount that is likely to reach the Stormwater System or Waters of the State except as described below in Section 18-81. Examples of Illicit Discharges and Illicit Disposals include, but are not limited to: oil; grease; household and Industrial chemical waste; paint; paint Wash Water; garbage; yard waste; animal waste; food waste; chlorinated swimming pool water; concrete; concrete equipment Wash Water; Commercial vehicle Wash Water; heated water; soaps/detergents; sediment/silt or any other discarded or abandoned substances or waste materials.

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

No Person shall install, maintain or use any connection to the municipal Stormwater System or Waters of the State for the discharge of Non-Stormwater or shall cause Non-Stormwater to be

discharged or conveyed through a connection to the Stormwater System or Waters of the State unless the discharge is a permitted discharge listed in Section 18-81.

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

Examples of Illicit Connections include, but are not limited to:

- (1) Wastewater lines such as those from washing machines or sanitary sewers; and
- (2) Pipes or drains carrying Wastewater or Wash Water from a building, operation or property.

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

If an accidental discharge to the municipal Stormwater System occurs, the responsible Person shall immediately begin to collect and remove the discharge and restore all affected areas to their pre-discharge condition. The responsible Person shall immediately notify CMSWS, and other 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 taken. Such notification shall not relieve the responsible Person of any of the expenses related to restoration, loss, damages or any other liability that may be incurred as a result; nor shall such notification relieve the responsible party from other liability that may be imposed by this article or other applicable law.

***d. Obstruction a Violation.***

Obstruction, as outlined in Section 18-82(d) of this article, shall be a violation. 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. Permitted Incidental Non-Stormwater Flows.**

Stormwater is the only discharge permitted in the Stormwater System with exception of Incidental Non-Stormwater flows that do not negatively impact the quality of the receiving stream. Incidental Non-Stormwater flows include:

- (1) Water line flushing, except super-chlorinated water line flushing;
- (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) Dechlorinated swimming pool discharge;
- (15) Street Wash Water 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;
- (17) Residential and Charity Vehicle Washing (\*see note below);
- (18) Flows from Riparian habitats and wetlands;
- (19) NPDES permitted discharges authorized by the EPA or NC DENR;
- (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 CMSWS prior to testing; and
- (21) Removal of Stormwater System blockages with Unmodified Potable Water.

\* Designated vehicle wash areas at multi-family residential complexes are not allowed if they connect, directly or indirectly, to the Stormwater System or surface waters. 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.***

CMSWS personnel, bearing proper identification, may enter 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 CMSWS ready access at all times to all parts of the premises to perform inspection, monitoring, records examination, copying, photography, video recording or other duties. CMSWS shall have the right to set up on the 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, personnel from CMSWS will be permitted to enter and perform their specific responsibilities without delay. Denial of CMSWS' access to the Person's premises or portions thereof shall be a violation of this article. Denial of access may also occur if a Person fails to provide, without unreasonable delay, such facilities, equipment, or devices as are reasonably necessary to permit CMSWS personnel to perform their duties in a safe manner. Unreasonable delays may constitute denial of access. Any delay of more than five minutes may be considered unreasonable.

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

To the extent permitted by law, CMSWS may seek the issuance of a search warrant to 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 CMSWS, 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.

***d. Obstruction.***

No person shall obstruct, hamper, or interfere with CMSWS while carrying out official duties. Upon presentation of credentials by CMSWS, necessary arrangements shall be made to allow immediate access onto premises or into an area protected by security measures. Any obstruction to the safe and easy access to property, a facility or enclosure on property, or to monitoring devices shall immediately be removed. Unreasonable delays in providing safe and reasonable access or removing obstructions shall be a violation of this article.

**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 and meeting with CMSWS.***

***(1) Content of notice.***

Except in emergencies, as described in Section 18-83(k), upon CMSWS's determination that a violation has occurred, CMSWS shall provide to each Person against whom remedial action or penalties may be pursued, notice that describes: a) the location of the property and the nature of the violation; b) a general description of the remedies and penalties that may be incurred; c) the action(s) needed to correct the violation, which shall include a requirement to restore areas affected by the violator's discharge(s) to the pre-violation condition; d) the time limit, if required, by which corrective actions must occur; e) how to provide explanatory or additional information to CMSWS and a contact Person with whom the violation can be discussed; and f) how to request a meeting with CMSWS for certain violations as described in Section 18-83(b)(3)

below. The notice shall also require the violator to provide written notification explaining actions taken to correct the violation 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 for compliance need be given for obstructing, hampering or interfering with an authorized representative while in the process of carrying out 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 CMSWS or a contractor designated by CMSWS pursuant to Section 18-83(j), and the expense thereof shall be charged to the violator.

*(2) Service.*

The notice may be served by mail, hand delivery, verbally, or by any means authorized under N.C.G.S. 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 CMSWS.*

If the violator makes a timely request for a meeting with CMSWS during the time period set forth in the notice, such meeting shall be scheduled at a time determined in the discretion of CMSWS prior to imposing a civil penalty, compliance order, or cease and desist order; or prior to withholding an inspection, permit, certificate of occupancy or other approval. The violator shall have the opportunity to present any information relevant to the violation or proposed remedy or penalty at the meeting, in writing or orally.

***c. Civil penalties.***

(1) Any Person who allows, acts in concert, 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 from the date the violation first occurs.

(2) The maximum civil penalty for each violation of this article is \$5,000.00. Each Day of violation shall constitute a separate violation.

(3) No penalty shall be assessed until the Person alleged to be in violation has been served notice of the violation as described in Section 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 an authorized CMSWS representative who is in the process of carrying out official duties under this article;
- (ii) A repeated violation for which a notice of violation was previously given to the Person responsible for the violation; or
- (iii) Willful violation of this article.

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

- (i) Degree and extent of harm caused by the violation;

- (ii) Cost of rectifying the damage;
- (iii) Amount of money saved through non-compliance;
- (iv) Whether the violator took reasonable measures to comply with this article;
- (v) Knowledge of the requirements by the violator and/or reasonable opportunity or obligation to obtain such knowledge;
- (vi) Whether the violator voluntarily took reasonable measures to restore any areas damaged by the violation;
- (vii) Whether the violation was committed willfully;
- (viii) Whether the violator reported the violation to an appropriate authority;
- (ix) Technical and economic reasonableness of reducing or eliminating the discharge; and
- (x) Prior record of the violator in complying or failing to comply with this article or any other water Pollution control ordinance or regulation.

(6) CMSWS shall determine the amount of the civil penalty to be assessed under this section and shall make written demand for payment upon the Person in violation and shall set forth in detail a description of the violation for which the penalty was imposed. Notice of said assessment shall be by registered or certified mail or other means reasonably calculated to give adequate notice. If a violator does not pay a civil penalty assessed by CMSWS within 30 days after it is due, or does not request a hearing as provided in Section 18-84, CMSWS shall request the City Attorney to institute a civil action to recover the amount of the assessment. 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 assessment was served on the violator.

(7) An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

(8) Civil penalties collected pursuant to this article shall be credited to the City's general fund as a nontax revenue.

(9) A violation of this article shall not constitute a misdemeanor or infraction punishable under G.S. 14-4, but instead shall be subject to the civil penalties fixed by this section.

***d. Cost recovery.***

CMSWS may also recover from the violator:

- (i) Costs to restore damaged property based on restoration costs, which include, but are not limited to, cleanup costs, 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.

In no case shall the maximum penalty per Day exceed the amount as specified in Section 18-83(c)(2).

***e. Compliance agreement.***

CMSWS may enter into compliance agreements, assurances of voluntary compliance, or other similar documents establishing an agreement with the Person responsible for the non-

compliance. 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 Section 18-83(f) below.

***f. Compliance order.***

When CMSWS 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;
- (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 CMSWS 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, CMSWS 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;
- (ii) Take appropriate remedial or 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) CMSWS 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, certificate of occupancy or other approvals.***

Building inspections; permits for development or other improvements; requests for plan approval for zoning, subdivision, other development or construction; and certificates of occupancy may be withheld or conditioned upon compliance with this article 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.***

CMSWS 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 actions authorized under this article.

***j. Abatement by CMSWS.***

If the violation has not been corrected pursuant to the requirements set forth in the notice of violation or by other allowable remedies, or, in the event of an appeal under Section 18-84, within 10 Days of the decision of the Stormwater Advisory Committee to uphold the decision of CMSWS, then CMSWS or a contractor designated by CMSWS 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 CMSWS 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 after it is due, CMSWS shall 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 danger to the public health, safety, or welfare, or the environment, including but not limited to Waters of the State, then CMSWS may order the immediate cessation of the violation. Any Person ordered to cease such violation or to remedy such violation shall do so immediately. CMSWS may seek immediate enforcement through any remedy or penalty authorized in this article or other applicable law.

***l. Injunctive relief.***

(1) Whenever CMSWS has reasonable cause to believe that any Person is violating or threatening to violate this article, CMSWS 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 CMSWS for injunctive relief to restrain the violation or threatened violation. The action shall be brought pursuant to G.S. 153A-123 in Mecklenburg County Superior Court.

(2) Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter such orders or judgments as are necessary to abate the violation or to prevent the threatened violation. The institution of an action for injunctive relief under this section 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 or notice of assessment of a civil penalty by CMSWS 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 section is stayed and shall not take effect until the earliest occurrence of any one of the following circumstances: the assessment of the civil penalty is approved or is modified by the Committee; or the Petitioner and CMSWS agree on the assessment of the civil penalty. Failure to timely file such demand and fee shall constitute a waiver of any rights to appeal under this article and the Committee shall have no jurisdiction to hear the appeal.

(2) The issuance of a cease and desist order and/or compliance order by CMSWS 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 ten days of the receipt of a cease and desist order issued pursuant to Section 18-83(g);
- (ii) within twenty days of the receipt of a compliance order issued pursuant to Section 18-83(f).

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 section is stayed and shall not take effect until the earliest occurrence of any one of the following circumstances: such provision is approved or is modified by the Committee; or the Petitioner and CMSWS agree on the terms of the order. This subsection shall not be construed to stay any section of this article or other applicable law.

The demand for a hearing filed with the Clerk shall be accompanied by a filing fee as established by the Committee. Failure to timely file such demand and fee shall constitute a waiver of any rights to appeal under this article and the Committee shall have no jurisdiction to hear the appeal.

(3) Within 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 Section 18-84(b) of this article.

(4) 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 Section 18-84(a).

- (1) At the hearing, Petitioner and CMSWS 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 CMSWS 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 CMSWS' 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 CMSWS.
  - (ii) If, after considering the evidence presented at the hearing, the Committee concludes by a preponderance of the evidence that the grounds for CMSWS' 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 order, requirement, decision or determination of CMSWS. The Committee Bylaws will determine the number of concurring votes needed to reverse or modify any order, requirement, decision or determination of CMSWS. If the Committee finds that the violation has occurred, but that in setting the amount of a penalty or setting order directives CMSWS 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 CMSWS 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 CMSWS. 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 or sections of this article is/are held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.