

ORDINANCE NO. _____

**AN ORDINANCE AMENDING THE TEXT OF THE
TOWN OF WAYNESVILLE LAND DEVELOPMENT STANDARDS**

WHEREAS, the Town of Waynesville has the authority, pursuant to Article 7 of Chapter 160D of the North Carolina General Statutes, to adopt land development regulations, clarify such regulations, and may amend said regulations from time to time in the interest of the public health, safety, and welfare; and

WHEREAS, the Town of Waynesville must comply with its National Pollutant Discharge Elimination System Permit issued by the North Carolina Department of Environmental Quality on August 19, 2021 and maintain legal authority to enforce the stormwater program through up-to-date ordinances.

WHEREAS, the Town of Waynesville Planning Board has reviewed the proposed text amendments to the Stormwater Ordinance 12.5 of the Land Development Standards (LDS) and recommends that they are consistent with the 2035 Comprehensive Plan and that they are reasonable and in the public interest because:

- The Town of Waynesville will continue to “promote smart growth in land use planning and zoning;” (Goal #1);
- It will “protect and enhance Waynesville’s natural resources,” (Goal #3);
- It will keep the Town in compliance with the NC DEQ permit requirements.

WHEREAS, the Planning Board has reviewed and recommends the proposed text amendments for enactment by the Board of Aldermen; and

WHEREAS, the Board of Aldermen find this Ordinance is consistent with the Town’s 2035 Comprehensive Plan and that it is reasonable and in the public interest to “make decisions about resources and land use in accordance with North Carolina General Statutes.” and

WHEREAS, after notice duly given, a public hearing was held on February 21, 2022 at the regularly scheduled meeting of the Waynesville Planning Board, and on _____, 2022 at the regularly scheduled meeting of the Board of Aldermen;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE TOWN OF WAYNESVILLE, MEETING IN REGULAR SESSION ON _____ AND WITH A MAJORITY OF THE BOARD MEMBERS VOTING IN THE AFFIRMATIVE, THE FOLLOWING:

That the Land Development Standards be amended as follows:

1. Amend the section 12.5- Stormwater Management as follows:

~~12.5- Stormwater Management.~~ Stormwater Ordinance.

It is hereby determined that:

- This section shall be officially known as "the stormwater ordinance." It is referred to herein as "this section."
- Development and redevelopment alter (...)

2. Amend the fourth bullet point in section 12.5.1 Purpose as follows:

- Establish design and review criteria for the construction, function, and use of structural stormwater BMPs (also called stormwater control measures, or SCMs) that may be used to meet the minimum post-development stormwater management standards.

3. Amend the section 12.5.2 Applicability as follows:

~~C. Minimum Development Thresholds: The standards in this section shall apply to all new development projects and all redevelopment projects that cumulatively disturb one (1) acre or more, and to projects of less than one acre that are part of a larger common plan of development or sale, or that have a proposed increased impervious surface on completion of greater than 24,000 square feet provided that all new development directs stormwater runoff to landscaped areas and other pervious surfaces to the maximum possible extent as determined by the Administrator.~~

C. Minimum Development Thresholds: The standards of this section shall apply to all new development and redevelopment projects that:

- a) Cumulatively disturb one (1) acre or more.
- b) Projects of less than one acre and that are a part of a larger common plan of development or sale, even though multiple, separate, or distinct activities take place at different times on different schedules.
- c) Projects of less than one acre and that have a proposed increased impervious surface on completion of greater than 24,000 square feet.

All development and redevelopment shall direct stormwater runoff to landscaped areas and other pervious surfaces to the maximum extent possible. All built-upon areas shall be designed and located to minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas.

D (...)

4. Add a bullet point to the end of section 12.5.3 Exemptions as follows:

The following development applications are exempt from the standards of this section:

- (...)
- Activities that are exempt from permit requirements of Section 404 of the Federal Clean Water Act as specified in 40 CFR 232 (primarily ongoing farming and forestry activities) are exempt from the provisions of this section.
- **Redevelopment that results in no net increase in built-upon area and provides equal or greater stormwater control than the previous development is exempt from the provisions of this ordinance.**

5. Amend the section 12.5.4 Administration as follows:

Delegation of Authority: Any act authorized by this ordinance shall be carried out by the Development Services Director and may be carried out by his or her designee as a Stormwater Administrator. For the purpose of this section, the Stormwater Administrator shall mean any Development Services employee designated in this function.

The Administrator shall have the following powers and duties under this section:

- Review, approve or disapprove (...)
- (...)
- Take necessary actions to administer the provisions of this section.

Map: The Stormwater Map shall be kept on file by the Development Services Department and shall be updated to take into account changes in the land area covered by this ordinance and the geographic location of all structural stormwater control measures permitted under this ordinance. In the event of a dispute, the applicability of this ordinance to a particular area of land shall be determined by reference to the North Carolina Statutes, the North Carolina Administrative Code, and local zoning and jurisdictional boundary ordinances.

Conformance to Stormwater Plans: The latest versions of the Town of Waynesville Stormwater Management Plan and Illicit Discharge Detection and Elimination Plan are herein incorporated by reference. Conformance to them is required in addition to the standards of this ordinance.

Conflict of Laws: This section is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this section are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law. Where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare shall control.

Other Permits: No certificate of compliance or occupancy shall be issued by the Town of Waynesville Development Services without final as-built plans and a final inspection and approval by the Stormwater Administrator, except where multiple units are served by the stormwater practice or facilities, in which case the Development Services may elect to withhold a percentage of permits or certificates of occupancy until as-built plans are submitted and final inspection and approval have occurred.

6. Amend the section 12.5.6 Design Manual as follows:

12.5.6 Design Manual.

~~A. The Town of Waynesville shall utilize the latest edition of the North Carolina Department of Environment and Natural Resources (DENR) Division of Water Quality (DWQ) Stormwater Best Management Practices Design Manual as the Stormwater Design Manual.~~

A. **Reference to Design Manual:** The Town of Waynesville shall use the policy, criteria, and information, including technical specifications and standards, in the *North Carolina Department of Environmental Quality (NC DEQ) Stormwater Design Manual* as the basis for decisions about stormwater plans and about the design, implementation, and performance of structural and non-structural stormwater control measures.

The Design Manual includes a list of acceptable stormwater treatment practices, including specific design criteria for each stormwater practice. Stormwater treatment practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the Phase II and other applicable stormwater laws.

B. **Right to Consult:** Stormwater management practices that are designed, constructed, or maintained (...)

C. **Relationship of Design Manual to Other Laws and Regulations:** If the specifications or guidelines of the Design Manual are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the Design Manual.

D. **Changes to Standards and Specifications.** If the standards, specifications, guidelines, policies, criteria, or other information in the Design Manual are amended subsequent to the submittal of an application for approval pursuant to this ordinance but prior to approval, then Section 15.16.1-Permit Choice will apply.

7. Amend the section 12.5.7 Standards as follows:

A. General Requirements:

~~1. A stormwater drainage and management plan and a permit shall be required will all development applications to which this section applies.~~ A Stormwater Management System Concept Plan is required for all development and redevelopment projects to which this section applies. This plan shall be prepared (...).

(...)

B. Water Quality Design Requirements:

(...)

C. Standards for Stormwater Control Measures:

Owners of property subject to this ordinance and required to install structural stormwater control measures shall implement those measures in compliance with each of the following standards:

~~6.~~ 1. All structural stormwater ~~management- control~~ measures shall control and treat the runoff from the 1-year 1-hour storm event as determined by NOAA data for the Town of Waynesville.

~~7.~~ 2. (...)

~~8.~~ 3.

~~9.~~ 4.

~~10.~~ 5.

~~11.~~ 6.

~~12.~~ 7.

~~13.~~ For areas of redevelopment, the following shall apply:

- ~~— a. provide a 20% reduction in impervious surface area; or~~
- ~~— b. provide water quality measures for 20% of the impervious area; or~~
- ~~— c. provide a combination of impervious area reduction and water quality measures equivalent to a 20% reduction in impervious surface area; and~~
- ~~— d. provide water quality for any increase in impervious surface area.~~

~~13.~~ 8. All stormwater control measures and stormwater treatment practices required under this ordinance shall be evaluated by the Stormwater Administrator according to the policies, criteria, and information, including technical specifications, standards, and the specific design criteria for each stormwater practice, in the Design Manual. The Stormwater Administrator shall determine whether proposed SCMs/BMPs will be adequate to meet the requirements of this ordinance.

~~C.~~ **D. Water Quantity Design Requirements:**

(...)

~~D.~~ **E. Stormwater Conveyance Systems Design Requirements:**

(...)

~~E.~~ **F. Uniform Watershed Analysis:**

(...)

8. Amend the section 12.5.9 Illicit Discharges and Connections as follows:

A. Illicit Discharges: No person shall cause or allow the discharge, emission, disposal, pouring, or pumping directly or indirectly to any stormwater conveyance, the waters of the State, or upon the land in manner or amount that the substance is likely to reach a stormwater conveyance or the waters of the State unless permitted by an NPDES permit. **Prohibited instances include but are not limited to: anti-freeze, chemicals,**

animal waste, paints, garbage, and litter. However, non-stormwater discharges associated with the following activities are allowed provided that they do not significantly impact water quality:

- ~~Filter backwash and draining associated with swimming pools.~~ Dechlorinated swimming pool discharges.
- Landscape irrigation and lawn watering.
- Springs, diverted stream flows, rising ground waters, and flows from riparian habitats and wetlands.
- Filter backwash and draining associated with raw water intake screening and (...)
- (...)
- ~~Prohibited instances include but are not limited to: anti-freeze, chemicals, animal waste, paints, garbage, and litter.~~

9. Amend the section 12.5.11 Inspections as follows:

C. Annual Maintenance Inspections and Report: (...) The person responsible for maintenance of any structural BMP installed pursuant to this section shall submit to the Stormwater Administrator an inspection report from one of the following persons performing services only in the area of competence: a qualified registered North Carolina professional engineer, landscape architect, **soil scientist, aquatic biologist**, or person certified by the North Carolina Cooperative Extension Service for stormwater treatment (...).

D. Records of Installation and Maintenance Activities: The owner of each structural BMP shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record and shall submit the same upon reasonable request to the Stormwater Administrator.

E. Nuisance: The owner of each stormwater BMP, whether structural or non-structural BMP, shall maintain it so as not to create or result in a nuisance condition.

10. Add the section 12.5.13 Additional Standards for Special Situations as follows:

12.5.13 Additional Standards for Special Situations.

A. Trout Waters: In addition to the standards for handling stormwater set out in the Design Manual, development and redevelopment that drains in whole or part to class TR waters shall design and implement the best stormwater practices that do not result in a sustained increase in receiving water temperature, while still meeting the other requirements of this ordinance.

B. Pet Waste: Pet waste can pollute rivers, streams, and lakes. Stormwater runoff carries pet waste into drainage ditches and storm drains where it is then dumped, untreated, into the nearest waterway. Dog waste contains bacteria, viruses, and parasites that can harm humans and affect water quality. Once in a waterway, pet waste can travel long distances and pollute a large area. Therefore:

- It shall be unlawful for the owner or custodian of any dog to take it off the owner's own property limits without the means to properly remove and dispose of the dog's feces from any public or private property.
- It is the responsibility of a dog's owner or custodian to clean up the dog's feces from any public or private property outside of the dog's owner's own property limits. Such property includes, but is not limited to, parks, rights-of-way, paths, and public access areas.

- “Means to properly remove and dispose of feces” shall consist of having on or near one’s person a device such as a plastic bag, or other suitable plastic or paper container, that can be used to clean up and contain dog waste until it can be disposed of in an appropriate container.
- This provision shall not apply to handicapped persons assisted by trained guide or assistance dogs.

11. Add the section 12.5.14 Interpretation as follows:

12.5.14 Interpretation.

- A. **Meaning and Intent:** All provisions, terms, phrases, and expressions contained in this ordinance shall be construed according to the general and specific purposes set forth in section 12.5.1, Purpose. If a different or more specific meaning is given for a term defined elsewhere in the Town of Waynesville Code of Ordinances, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.
- B. **Text Controls in Event of Conflict:** In the event of a conflict or inconsistency between the text of this ordinance and any heading, caption, figure, illustration, table, or map, the text shall control.
- C. **Authority for Interpretation:** The Stormwater Administrator or a Development Services employee designated to carry out the duties of a Stormwater Administrator has authority to determine the interpretation of this ordinance. Any person may request an interpretation by submitting a written request to the Stormwater Administrator, who shall respond in writing within 30 days. The stormwater administrator shall keep on file a record of all written interpretations of this ordinance.
- D. **References to Statutes, Regulations, and Documents:** Whenever reference is made to a resolution, ordinance, statute, regulation, manual (including the Design Manual), or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.
- E. **Computation of Time:** The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the Town of Waynesville, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by the Town of Waynesville. References to days are calendar days unless otherwise stated.

12. Amend the section 15.4.1 Environmental Survey as follows:

15.4.1 Environmental Survey.

An environmental survey is intended to identify natural features, environmentally sensitive areas, forest stands, ~~or trees of a uniform size and species; specimen trees of varying sizes and species, particularly free standing or open grown or field grown trees; a distinctive tree line or forest edge;~~ existing watercourses, and previously documented endangered species habitats, identification of existing trees, understory vegetation, wetlands, perennial streams, floodplains, and topographical features on a site prior to the advanced preparation of development plans. The survey enables the reasonable and practical planned preservation of existing and environmentally sensitive areas. ~~This requirement provides the Town and the applicant the ability to evaluate the proposed development in order to preserve vegetation, to improve the appearance of the development proposed and to encourage the use of the existing forest and tree canopy,~~

~~specimen trees, and significant vegetation to satisfy the requirements of this Ordinance. It is the expectation requirement that readily available spatial data, including GIS information, floodplain and floodway designation, wetlands delineation, and topography, be provided in addition to identified natural features. will be sufficient for the survey~~

Environmental Survey **must** include **Natural Resources Inventory**, which is:

A written or graphic inventory of natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description must include a discussion of soil conditions and soil types, forest cover, geologic features, topography, delineated wetlands, perennial and intermittent streams, native vegetative areas on the site, boundaries of existing predominant vegetation, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc.). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development and stormwater management.

13. Amend the section 15.4.4 Construction Documents/Preliminary Plat as follows:

(...) All streets, utilities, and stormwater, and other infrastructure systems shall be designed and constructed in accordance with the adopted Manual of Specifications.

If a project falls under the Town of Waynesville Stormwater Ordinance, the **Stormwater Management System Concept Plan** is required. The Plan can be a written or graphic concept plan of the proposed post-development stormwater management system including: preliminary selection and location of proposed structural stormwater controls; low-impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of any proposed stream channel modifications, such as bridge or culvert crossings.

14. Amend the section 15.7.3 Stormwater Permits as follows:

To ~~insure~~ ensure that development in the town does not result in increased stormwater runoff which adversely impacts adjacent property, no development to which this ordinance applies, shall be commenced without the issuance of a Stormwater Permit ~~by the Administrator~~, which is a part of the building permit, unless specified otherwise by the Administrator.

(...)

C. Required Application Information: Environmental Survey, which **must** include **Natural Resources Inventory** (15.4.1), and Construction Documents that **must** include **Stormwater Management System Concept Plan** (15.4.4) (may be waived by Administrator as appropriate).

D. Determination of Conformity: If the Stormwater Administrator finds that the application complies with the standards of this ordinance, the Administrator shall approve the application. The Administrator may impose conditions of approval as needed to ensure compliance with ~~this section~~ the **Stormwater Ordinance and this section**. The conditions shall be included as part of the approval. If the Administrator finds that the application fails to comply with the standards of this section, the Administrator shall notify the applicant in writing, and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application. A complete revised application shall be reviewed by the

Administrator after its re-submittal and shall be approved, approved with conditions, or disapproved. If a revised application is not re-submitted within thirty (30) calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required. ~~along with the appropriate fee for a new submittal. One re-submittal of a revised application may be submitted without payment of an additional permit review fee. Any re-submittal after the first re-submittal shall be accompanied by a permit review fee additional fee, as established pursuant to this section.~~

E. As-Built Plans and Final Approval: Upon completion of a project and before a certificate of occupancy is granted, the applicant shall certify that the completed project is in accordance with the approved stormwater management plans and designs and shall submit actual “as built” plans for all stormwater management facilities or practices after final construction is completed. The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. The designer of the stormwater management measures and plans shall certify, under seal, that the as-built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this ordinance. A final inspection and approval by the Stormwater Administrator shall occur before the release of any performance securities.

E. F. Public Notification: (...)

F. G. Appeals: (...)

G. H. Permit Validity: (...)

H. I. Permit Extension: (...)

15. Amend the section 16.2.2 Civil Penalties as follows:

C. Enforcement and Violations of the Stormwater Ordinance.

The following remedies and penalties provided for violations of the Chapter 12.5- Stormwater Ordinance, shall be cumulative and in addition to any other remedy provided by law, Town Ordinance, and may be exercised in any order.

1. **Authority to enforce.** The provisions of the Stormwater Ordinance shall be enforced by the Stormwater Administrator, his or her designee, or any authorized agent of the Town. Whenever this section refers to the Stormwater Administrator, it includes his or her designee as well as any authorized agent of the Town.

2. **Violation unlawful.** Any failure to comply with applicable requirements, prohibitions, standards, or limitations imposed by the Stormwater Ordinance, or the terms or conditions of any permit, maintenance agreement, or other development or redevelopment approval or authorization granted pursuant to this ordinance, is unlawful and shall constitute a violation of this ordinance and is subject to a civil penalty of not more than \$500 per day. Each day that a violation continues shall constitute a separate and distinct violation or offense.

3. **Responsible persons/entities.** Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair, or maintain any structure, BMP, practice, or condition in violation of the ordinance shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section. Persons subject to the remedies and penalties set forth herein may

include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this ordinance, or fails to take an appropriate action, so that a violation of this ordinance results or persists; or an owner, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or development of the property on which the violation occurs.

For the purposes of this article, responsible person(s) shall include but not be limited to: Person maintaining condition resulting in or constituting a violation. An architect, engineer, builder, contractor, developer, agency, the owner of the land on which a violation occurs, any tenant or occupant of the property, any person responsible for stormwater controls pursuant to a private or public document, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this ordinance, or fails to take an appropriate action, so that a violation of this ordinance results or persists.

4. Notice of Violation and Order to Correct. When the Stormwater Administrator finds that any building, structure, or land is in violation of the ordinance, the Stormwater Administrator shall notify, in writing, the property owner or other person violating the ordinance. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation.

The Stormwater Administrator may deliver the notice of violation and correction order personally, by the law enforcement, or by certified or registered mail, return receipt requested.

A person who receives a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the Stormwater Administrator a written request for an extension of time for correction of the violation.

5. Withholding of Certificate of Occupancy. The Stormwater Administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

6. Disapproval of subsequent permits and development approval. As long as a violation of the ordinance continues and remains uncorrected, the Stormwater Administrator or other authorized agent may withhold, and the approving body may disapprove, any request for permit or development approval or authorization provided for by this ordinance or the zoning, and/or subdivision regulations, as appropriate for the land on which the violation occurs.

7. Injunction, abatements, etc. The stormwater administrator may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of the ordinance. Any person violating the ordinance shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.

8. Correction as public health nuisance, costs as lien, etc.: If the violation is deemed dangerous to the public health or public safety and is within the geographic limits prescribed by G.S. 160D, the Stormwater Administrator may cause the action to be corrected and the costs to be assessed as a lien against the property.

16. Add the following definition to the section 17.4 Definitions, General as follows:

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

Watershed. The entire land area contributing surface drainage to a specific point or alternatively, the geographic region within which water drains to a particular river, stream, or body of water.

17. Add the following definition to the section 17.5 Definitions, Floodplain Damage Prevention as follows:

Watershed. The entire land area contributing surface drainage to a specific point or alternatively, the geographic region within which water drains to a particular river, stream, or body of water.

ADOPTED this _____ Day of _____, 2022.

TOWN OF WAYNESVILLE

J. Gary Caldwell, Mayor

ATTEST:

Eddie Ward, Town Clerk

APPROVED AS TO FORM:

Martha Bradley, Town Attorney