



ORDINANCE NO. 02-521
Replacing Chapter 12 Article V Stormwater Management and Drainage
Which is under Planning and Zoning
In its entirety to Utilities Chapter 16 Article IV 16-171

- Section 16-171 - In General**
- Section 16-180 - Stormwater Discharge Permits**
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Section 16-171
IN GENERAL

Sec. 16-171, Short title.

This chapter shall be known as “ The Stormwater Management Ordinance of the Town of Carolina Beach, North Carolina”.

Sec. 16-172, Purpose.

The purpose of this chapter is to protect and promote the public health, safety and general welfare, and to safeguard the natural resources of the Town by regulating stormwater runoff. This is accomplished by requiring permits for and imposing conditions and requirements upon development activities, and by establishing procedures upon development activities, and by establishing procedures by which these requirements and conditions are to be administered and enforced.

The impacts of stormwater cannot be addressed solely through management practices on individual properties. The Town has a role in management of stormwater through the planning, construction, operation and maintenance of facilities to reduce the adverse effects of stormwater and satisfy state and federal statutes and regulations.

Sec. 16-173, Policy.

It is the policy of the Town that all developed land within the Town have sufficient stormwater management controls so as to ensure the adequate protection of life and property. To this end, as a minimum, developed land within the Town shall be provided with management of post development run-off from a ten-year frequency storm, so that the on-site and off-site effects of development are the same or better than the pre-development state. In order to provide an effective and long-term approach to stormwater management, adequate funding must be provided for the planning, construction, operation and maintenance

of a public stormwater management program and system. The requirements of this chapter shall be construed consistently with the requirements of the State of North Carolina for controlling stormwater quality. When the requirements of this chapter conflict with the rules and regulations of the State of North Carolina, the more stringent or higher requirement shall govern.

Sec. 16-174, Applicability of this chapter.

(a) Except as otherwise provided herein, the provisions of this chapter shall apply to each of the following:

- (1) Any development activity that creates five hundred (500) square feet or more of impervious surface area.
- (2) All new major subdivisions as defined in Chapter 12 of the Town Code. Article III, Sec. 12-37.

(b) In applying the provisions of this chapter, the cumulative area of the proposed development activity and all development activity on a site within a two year period immediately preceding the date of application for a stormwater discharge permit shall be considered together.

(c) Whenever a site is redeveloped as set forth in section 16-175 of this section, stormwater management shall be provided in accordance with the provisions of this chapter for the entire site, even if the redevelopment activity results in less impervious area than previously existed on the site. When a building on a site is redeveloped as defined in this chapter, or completely replaced, then the new impervious area shall include the total impervious area after redevelopment and shall not be reduced by any parking lots or other impervious areas left on the site.

(d) Whenever a site is expanded, as forth in subsection (a) of this section, the expanded portion of the facilities shall comply with this article. Whenever the expansion equals or exceeds fifty percent of the existing development, the entire project shall be required to comply with this article.

Sec. 16-175, Definitions.

For the purpose of this chapter, and any rules or regulations established hereunder, certain words and terms used herein are defined as follows:

Applicant: An owner or developer of a site who executes the forms required for the obtaining of a stormwater discharge permit pursuant to this chapter.

Authorized registered professional: A professional engineer, registered land surveyor, landscape architect or other professional registered, licensed or certified pursuant to the North Carolina General Statutes and authorized by law to prepare the plans and specifications and provide the certifications required by the various provisions of this chapter.

Best management practice(BMP): A structural or nonstructural management based practice used singularly or in combination to reduce non-point source inputs to receiving waters in order to achieve water quality protection goals.

Clearing: Any activity, which removes the vegetative ground cover.

Deed of conveyance: The transfer of an easement interest or fee simple title in a stormwater management facility to the Town of Carolina Beach.

Detention: The collection and storage of storm water runoff with subsequent discharge to surface waters.

Developed land: Parcels altered from a natural state by construction or installation of impervious surfaces. For new construction, parcels shall be considered Developed upon final approval of the site improvements by the Town.

Developer: A person undertaking any or all the activities covered by this chapter, or for whose benefit such activities are commenced or carried on. General contractors or subcontractors, or both, without a proprietary interest in a project are not included within this definition.

Director of Stormwater Management: The authorized representative for the Town Manager, to direct and administer the provisions of this ordinance.

Equivalent residential unit (ERU): Five hundred (500) square feet of impervious surface.

Erosion: The process by which the ground surface is worn by the action of wind, water, ice or gravity.

Erosion and sediment control measures: A system of structural and vegetative measures that minimize soil erosion and off-site sedimentation. The term, where appropriate, shall include stormwater management measures.

Excavation: Any act, or the conditions resulting there from, by which soil, earth, sand, gravel, rock, or similar material is cut into, dug, quarried, uncovered, removed, displaced or relocated.

Expansion of site: The addition of new building(s), structures, parking lot(s), or any other new impervious surface to the site. Construction of any new impervious surface on an area previously pervious which does not meet the definition of redevelopment as defined in this section shall be considered as expansion.

Facility: Shall mean a stormwater management facility, and shall include all land, materials, and appurtenances used in construction and operation of said facility. Facilities include , but are not necessarily limited to, retention ponds, detention ponds, open and closed systems, etc.

Fill: Any act, or the conditions resulting there from, by which soil, earth, sand, gravel, rock or any similar material is deposited, placed, pushed, pulled or transported.

Flood plain: Any land susceptible to being inundated by water from any source.

Grading: Any act causing disturbance of the earth. This shall include but not limited to any excavating, filling, stockpiling of earth materials, grubbing, root mat or topsoil disturbance, or any combination of such.

Illicit discharge: Any discharge to a Town separate storm sewer that is not composed entirely of storm water except discharge pursuant to a NPDES permit (other than the NPDES permit for discharge from the Town separate storm sewer) and discharges resulting from firefighter activities.

Impervious: The condition of being impenetrable by water. Impervious surface area shall include but is not limited to roofs, covered decks, driveways, patios, sidewalks, parking areas, tennis courts, concrete or asphalt streets, crushed stone and gravel surfaces.

Imperviousness: The degree to which the site is impervious.

Land disturbing activity: Any earth movement and land use changes which may result in soil erosion

Marshland: Shall mean all land subject to tidal action which is comprised of general unstable soil material commonly known as hard or silt marsh, which in its natural state is vegetated with marsh grass, reeds, and similar growth, and is usually characterized by poor load-bearing capacity.

National Pollutant Discharge Elimination System (NPDES): A permitting system established by Section 402 of the Clean Water Act. NPDES permits are issued by the State of North Carolina for discharges directly to the surface waters of the State.

Natural ground surface: The ground surface in its original state before any land disturbing activity.

Non-single family residential use: Any land use other than single family residential, except for undeveloped land.

Off-site facility: With respect to any particular property, shall mean a stormwater management facility serving said property but not located on said property.

On-site facility: With respect to any particular property, shall mean a stormwater management facility serving the subject property and located thereon.

Owner: The owner or owners of a site on which land disturbing activity is, will, or has been done.

Permit: Either a stormwater discharge, building, erosion and sedimentation control, or subdivision development construction permit, as may be appropriate within the context of the specific provision of this chapter.

Permittee: Any person to whom a stormwater discharge, building, or subdivision development construction permit is issued pursuant to this chapter.

Person: Any individual, corporation, partnership, joint venture, agency, unincorporated association, municipal corporation, county, state, or federal agency or any combination thereof.

Pervious: Ground that permits penetration of water, opposite of impervious.

Pre-development state: A site in its natural condition prior to any development activity.

Primary drainage channels: Shall mean all drainage channels which drain an area of one hundred (100) acres or more.

Private facility: Any stormwater management facility not owned and operated by the Town of Carolina Beach.

Public facility: Any stormwater management facility owned and operated by the Town of Carolina Beach, the State of North Carolina, or Federal land.

Redevelopment: The substantial modification of existing developed areas, not to include interior remodeling or interior modifications which do not include substantial structural modifications to the facility. When fifty (50) percent of the site is being redeveloped, the entire site shall be considered as being redeveloped.

Retention: The collection and storage of storm water runoff without subsequent discharge to surface waters.

Secondary drainage channels: Shall mean all drainage channels which drain an area of less than one hundred (100) acres and the primary benefit is to the development.

Sediment: Soil transported or deposited by the action of erosion or artificial means.

Sediment control permit: The sediment control permit issued by the Town of Carolina Beach or the State of North Carolina authorizing land disturbing activities in accordance with applicable ordinances and regulations.

Single family residential use: One structure on one parcel containing only one house unit, to include attached garages, and any other structures that may be on the lot to include sheds, car ports, slabs of concretes, etc.

Stormwater discharge permit: The stormwater discharge permit issued by the Town of Carolina Beach authorizing stormwater discharge activities in accordance with this chapter and applicable ordinances and regulations.

Stormwater management plan: A plan designed to minimize erosion, prevent off-site sedimentation and control stormwater, submitted as a prerequisite to obtaining a stormwater discharge permit. The plan shall be prepared and designed in accordance with this chapter, Town regulations, and applicable state law and regulation, including applicable standards and specifications.

Stormwater system: All manmade structures or natural features within the Town of Carolina Beach that serve to provide for conveyance of runoff water resulting from natural storm events. Components of the stormwater system include but are not limited to swales, ditches, pipes, channels, creeks, ponds, weirs, culverts, manholes, inlet structures, and tidal gates.

Site: That portion of land, lot or parcel of land, or combination of contiguous lots or parcels of land upon which grading or other land disturbing activity is to be performed.

Soil: Any earth, sand, gravel, rock or other similar material.

Standards and specifications: Those standards and specifications relating to stormwater management that may now or hereafter be established .

Stormwater management: (1) For quantitative control, a system of vegetative and structural measures which control the increased volume and rate of surface runoff caused by manmade changes to the land and have the effect of maintaining the predevelopment patterns of flood magnitude and frequency, (2) for qualitative control, a system of vegetative, structural, and other measures which control or treat pollutants carried by surface runoff.

Ten-year frequency storm: The storm of an intensity expected to occur on the average, once in ten (10) years, and of a duration which will produce the peak rate of runoff for the watershed of interest.

Town Attorney: The Town Attorney or any assistant Town Attorney for the Town of Carolina Beach.

Town Manager: The Town Manager of the Town of Carolina Beach or the Town Manager's authorized representative.

Undeveloped land: Land that does not meet the definition of developed land.

Water course or drainage way: Any natural or artificial water course, including, but not limited to: streams, rivers, creeks, ponds, lakes, ditches, channels, canals, conduits, culverts, drains, waterways, gullies, ravines, or washes in which waters flow in a definite direction or course, either continuously or intermittently; and including any area adjacent thereto which is subject to inundation by reason of overflow or flood water.

Wetlands (404 Wetlands): Wetlands means those areas defined by the U.S. Army Corps of Engineers as jurisdictional 404 wetlands.

Sec. 16-176, Interpretation.

- (a) In interpreting and applying this chapter the requirements contained herein are declared to be minimum requirements which are imposed and are to be conformed to, and are in addition to, and not in lieu of, all other legal requirements, and shall be liberally construed to accomplish the purposes set forth herein.
- (b) This chapter shall not be deemed to interfere with or abrogate or annul or otherwise affect in any manner whatsoever any ordinance, rules, regulations, or permits or easements, covenants, or other agreements between parties; provided, however, that where this chapter imposes greater restrictions and controls with respect to stormwater management than are imposed or required by other ordinances, rules, regulations, or permits, or by easements, covenants, or agreement between parties, the provisions of this chapter shall prevail.

Sec. 16-177, Administration.

- (a) The Director of Stormwater Management is hereby authorized and directed to administer the provisions of this chapter, and shall have such other powers and perform such other duties as are set forth in other sections of this chapter and as may be conferred or imposed from time to time.
- (b) The Director of Stormwater Management is hereby authorized to establish regulations and guidelines, by whatever title, for the implementation of the provisions of this chapter, including but not limited to establishing specific requirements and standards which shall govern land disturbing activities and the utilization and implementation of stormwater management measures, inspections and enforcement. Said regulations shall become effective upon their approval by the Town council.

Sec. 16-178/179 Reserved.

**Section 16-180
STORMWATER DISCHARGE PERMITS**

Sec. 16-181, Stormwater discharge permit required.

No owner or developer of a site shall commence any of the development activities described in section 16-175 above without obtaining a stormwater discharge permit pursuant to the provisions of this chapter.

Sec. 16-182, Application.

- (a) An application for a stormwater discharge permit shall be made by, or on behalf of, the owner(s) or developer(s) of the site for which a permit is sought. A separate application shall be required for each permit, but a permit and application therefore may cover any number of contiguous lots being developed as a single project. The application shall be filed with the Town on a form supplied by the Town, and signed by the applicant, or by the applicant's agent or representative.
- (b) Each application for a stormwater discharge permit shall include the following:
 - (1) The name, address and telephone number of the applicant(s) and of the person signing the application, if different than the applicant.
 - (2) A complete and detailed stormwater management plan, including detailed design plans and construction specifications, (refer to the Town of Carolina Beach Storm Water Specifications and

Standards), for stormwater management facilities; the exact location of any on-site stormwater management facility and the easement(s) for said facility; and the exact location of any access easement(s);

- (3) The specifics of any off-site stormwater management facilities to be utilized, including the amount and proof of any contribution thereto;
- (4) All necessary easements and stormwater management maintenance agreements; and
- (5) The appropriate stormwater discharge permit application fee as set forth in the fee schedules.

Sec. 16-183, Issuance.

No stormwater discharge permit shall be issued until the following conditions are met:

- (1) Approval of a stormwater management plan by the Director of Stormwater Management.
- (2) Submission and approval of any required easements and stormwater management inspection and maintenance agreements or other documents as required by this chapter. All documents required by this section shall be fully executed prior to the recordation of the final subdivision plat or issuance of the certificate of occupancy.
- (3) Payment of stormwater management contribution where off-site stormwater management is applicable.
- (4) Payment of all required application fees.
- (5) Compliance with all applicable laws, ordinances, regulations, standards and specifications.

Sec. 16-184, Issuance, non-transferability.

Stormwater discharge permits shall be issued in the name of the applicant(s) and no permit shall be transferred or assigned without the written consent of the Town.

Sec. 16-185, Conditions of approval.

All stormwater discharge permits are conditioned on compliance with the approved plan and with all relevant laws, ordinances, regulations and standards of any state or local government or agency, including any standards established by the Town relating to stormwater management. Permits are also conditioned on the agreement and obligation of the applicant to save harmless the Town, its officers and employees, from any expense incurred through the failure of the applicant, or the applicant's agents to complete any required stormwater management measures, or from any damages growing out of the negligence of the applicant or the applicant's agents in connection with stormwater management measures.

Sec. 16-186, Denial of stormwater discharge permit.

- (a) No stormwater discharge permit shall be issued if it is found that the work proposed by the applicant will endanger any property or public way or pollute any water in violation of any federal or state standard or this chapter. Factors to be considered shall include, but not be limited to, possible saturation by rains, earth movement, surface water runoff, soil erosion, sedimentation, siltation, and subsurface conditions such as the nature and type of soil and rock.

- (b) No stormwater discharge permit shall be issued for activities within the 100-year flood plain of any stream or water course, until a determination has been made that said activity is in compliance with the Town's flood plain regulations.
- (c) The Town may deny the issuance of any permit to an applicant when it determines that the applicant is not in compliance with the provisions of an approved stormwater management plan for any project within the jurisdiction of the Town.
- (d) Failure of the Director of Stormwater Management to observe or recognize hazardous conditions or failure to deny the stormwater discharge permit shall not relieve the permittee from responsibility for the conditions or damages resulting there from and shall not result in the Town, its officers or employees, being responsible for the damages resulting there from.

Sec. 16-187, Expiration, renewal.

- (a) When a stormwater discharge permit is issued in association with a project requiring a building permit, the stormwater discharge permit shall expire upon the expiration or revocation of the building permit.
- (b) When a stormwater discharge permit is issued in association with a subdivision construction permit, the permit shall expire upon expiration of preliminary plat approval.
- (c) If the stormwater discharge permit expires, the permittee shall make application for a new permit in accordance with this article.

Sec. 16-188, Authority to revoke or suspend.

The Director of Stormwater Management shall have the authority to suspend or revoke any stormwater discharge permit and to issue a stop work order for any violation of this chapter, applicable technical standards, stormwater discharge permit, any state, federal or local law applicable to the work or changes in site characteristics upon which plan approval and permit issuance was based.

Sec. 16-189/190, Reserved.

**Section 16-191
STORMWATER MANAGEMENT PLANS**

Sec. 16-192, Plan and specification requirements.

An approved stormwater management plan and construction specifications are required for all activities requiring a stormwater discharge permit, and shall be available on-site at all times. The plan and specifications shall be prepared and sealed by an authorized registered professional. The plan and specifications shall meet the regulations and requirements of this chapter, and the criteria contained in any applicable standards and specifications adopted by the Town council.

Sec. 16-193, Required approvals.

- (a) Plans and specifications for stormwater management require the approval of the Town, and appropriate state and federal agencies.
- (b) The various approving departments and agencies may request additions, deletions and modifications to the plan as deemed necessary prior to approval. Said modifications shall be reflected on a revised plan prior to approval and issuance of the stormwater discharge permit.

Sec. 16-194, Modification of approved plan.

- (a) No modification of the approved plan shall be made until approved by the Town in accordance with its rules and regulations.
- (b) Requests for modifications to an approved plan shall be submitted in writing to the Director of Stormwater Management.
- (c) All modifications shall be made in accordance with the criteria contained in the Town of Carolina Beach Standards and Specifications manual and other applicable state law or regulation.

Secs. 16-195/196, Reserved.

**Section 16-197
ON-SITE STORMWATER MANAGEMENT**

Sec. 16-198, Design and construction of stormwater management measures.

- (a) General design requirements are such that all stormwater management plans shall provide, as a minimum, storage of runoff from a post-development ten-year frequency storm and release thereof from a site at a rate not to exceed the rate at which runoff from a pre-development ten-year frequency storm would be released.
- (b) The basic design criteria, methodologies, and construction specifications shall be those of the Town of Carolina Beach as found in the standards and specifications manual. The design criteria and specifications shall provide for managing the increase in peak discharge for the ten-year frequency storm event. In addition, the stormwater management plan shall comply with the requirements of the State of North Carolina for controlling stormwater quality.
- (c) In designing on-site stormwater management measures, those measures to be utilized shall be considered in the following order of preference:
 - (1) Flow attenuation by use of open vegetated swales and natural depressions, except that open vegetated swales as roadside ditches in lieu of curbs and gutters are not allowed;
 - (2) Infiltration;
 - (3) Retention (permanent pool) structures; and
 - (4) Detention (no permanent pool) structures.

The order of preference shall be modified where necessary, to accommodate requirements of the State of North Carolina for controlling stormwater quality.

Sec. 16-199, Other considerations in design preparation.

- (a) The pre-development peak discharge rate shall be computed assuming that all land uses in the tributary area are in a predevelopment state.
- (b) The developer shall give consideration to incorporating use of natural topography and land cover such as wetlands, ponds, natural swales, and depressions as they exist prior to development to the degree that they can accommodate the additional flow of water.
- (c) Where storm drainage systems convey off-site stormwater through property, computations reflecting the drainage area of land tributary to the site, and estimated runoff of the area served

by such systems, shall be provided. In addition, a complete ten-year event storm drainage study shall be submitted for the site. All storm drainage systems conveying off-site stormwater through property shall be public systems or private systems which shall be designed, constructed and maintained to at least the standards of a public storm drainage system as contained in the standards and specifications manual. The design and construction shall be certified by an authorized registered professional as a meeting or exceeding the requirements of this chapter and the stormwater management technical standards and specifications.

Sec. 16-200, Stormwater management requirements during and after construction.

- (a) The Town may require the relocation, reconstruction or encasement by the developer or owner of water or sewer facilities located or planned within the limits of proposed stormwater management facilities.
- (b) Precautions shall be taken to avoid contamination or infiltration of systems during construction.
- (c) Record(as built) drawings (reproducible Mylar) for all stormwater management facilities must be certified by an authorized registered professional and provided to the Town for permanent record.

Sec. 16-201/202, Reserved.

**Section 16-203
OFF-SITE STORMWATER MANAGEMENT**

Sec. 16-204, Off-site stormwater management requirement.

Where property is undergoing redevelopment or where a public stormwater management facility or other improvements to the Town's drainage system have been constructed, programmed, or identified for construction in the Town's capital improvements program or are reflected on the Town's master drainage improvement plan, which have or will have sufficient capacity to accommodate stormwater run-off generated by the development, the Town may require the applicant to pay to the Town a fee in lieu of construction of on-site stormwater management facilities in accordance with the following formula:

$[(0.10) (\text{Land value}) + (\text{Construction cost}) (\text{Site Acreage})] \% \text{ impervious.}$

For the purpose of the above formula, the variables shall have the following definitions:

- (1) *Land value* shall be the fair market value for the tract of land being developed or the assessed tax value, whichever is greater.
- (2) *Construction cost* shall mean the dollar amount per lot of constructing on-site stormwater management facilities based on historical data. On the date of this ordinance, such amount shall be four thousand eight hundred and thirty dollars (\$4,830.00). Such amount shall be adjusted annually on July 1, based on the construction cost index for the prior year. (This is the average cost at this time to build an onsite stormwater retention pond.)
- (3) *Site acreage* shall be the total area of the tract of land being developed and requiring stormwater management facilities in acres, rounded to the nearest tenth of an acre.
- (4) *Percent impervious* shall be the acreage on the site requiring stormwater management facilities that is impenetrable by water divided by the total site acreage, rounded to the nearest tenth of an acre.

Sec. 16-205, Combination of measures permitted.

Nothing in these regulations shall be construed to mean that stormwater management requirements cannot be satisfied by a combination of on-site and off-site facilities, payment of fees, grant of easement, dedication of land and/or stormwater management facility if so required by the Town.

Sec. 16-206, Additional requirements for fee alternative.

Fees approved and accepted by the Town for off-site stormwater management may be used by the Town for land acquisition (including easements and rights-of-way) and the study, engineering, design, purchase, construction, expansion, repair, maintenance, landscaping and inspection of public stormwater management facilities, either existing or contained in an approved capital improvements program or reflected on the Town's master drainage improvement plan. Fees collected from the development shall be applied to projects benefiting in the drainage basin from which the fee is collected.

Sec. 16-207/208, Reserved.

**Section 16-209
INSPECTIONS AND ENFORCEMENT**

Sec. 16-210, Inspections.

- (a) An approved stormwater management plan shall be available on site at all times.
- (b) Periodic inspection during construction of stormwater management facilities shall be conducted by the Town. If the work performed upon the site fails to comply with any ordinance, regulation, standard of condition of any permit, the owner and permittee shall be informed of the violation and the nature of the corrections required.
- (c) The Town may require the applicant to provide engineering inspection and testing during construction. Upon completion of construction, certification by an authorized registered professional that all work completed and construction materials used meet or exceed requirements of approved plans and specifications shall be provided.

Sec. 16-211, Inspection and maintenance plan for private stormwater management facilities.

Whenever an existing or future private on-site stormwater management facility is to serve the subject property, the following shall be provided to the Town prior to the issuance of any stormwater discharge, building, or subdivision development construction permit.

- (a) A written inspection and maintenance plan for the facility which shall bind the owner of the property served by the facility and all subsequent owners, successors and assigns and provide for the following:
 - (1) The maintenance of the facility. If a party other than the applicant assumes primary responsibility for the maintenance of the facility, the applicant shall guarantee the maintenance of the facility and assume ultimate responsibility therefore.
 - (2) Access to the facility at reasonable times for inspection by the Town and/or its agents or representatives.
 - (3) That if a Town Order directing the correction, repair, replacement, or maintenance of the facility or of any portion thereof is not satisfactorily complied with within a reasonable period of time, the Town may, after reasonable notice, enter the land and perform all necessary work to place the facility in proper working condition, and may

assess the owners of the subject property for the cost of said work which cost shall be a lien on such property and may be collected as provided in G.S. 160A-193. The owners of all property served by the facility shall be jointly and severally responsible to the Town for the maintenance of the facility and liable for any cost incurred by the Town pursuant to said agreement, and all such properties are jointly and severally subject to the imposition of liens for said costs.

- (4) Any other provisions as may be reasonably required to achieve the purposes of this chapter and such provisions as set forth in the Town's technical standards and specifications manual.
 - (5) Compliance with the inspection and maintenance plan shall be deemed to be a condition of the approval of any special use permit granted by the Town council, any variance granted by the board of adjustment, any final subdivision plat approved for recording in the New Hanover County Registry and any site plan approval. The Town may require the notation of such conditions to the owners or their successors and assigns, the inspection and maintenance plan may be recorded in the New Hanover County Registry, at the expense of the applicant.
- (b) Whenever a private stormwater management facility is designed to receive stormwater run-off from public streets or other public property, as a condition of the approval of the stormwater management plan, the owners of the facility and their successors and assigns shall release, indemnify and hold the Town of Carolina Beach, its officials and employees, harmless from any responsibility or liability for any and all damage or injury of any kind or nature whatever (including death resulting there from) to all persons, whether employees of the Town or otherwise, and to all property, caused by, resulting from, arising out of, or occurring in connection with the drainage, flow or run-off of surface water from public property over and into the stormwater facilities and from the stormwater facilities on to adjacent properties. As a further condition of the approval, the owner and its successors and assigns shall be deemed to have agreed that the Town of Carolina Beach shall have no responsibility or liability for the maintenance of the stormwater management facilities and the owner and its successors and assigns shall maintain the facilities so that they do not become a public or private nuisance or cause damage to adjacent property. These agreements shall be appurtenant to and run with the land benefited by the stormwater facilities and shall be binding on the owner and its successors and assigns and occupants thereof.
- (c) When deemed necessary by the Town, an easement in a form approved by the Town attorney, granting the Town and its agents and representatives adequate and perpetual access to the facility and sufficient area for inspection and maintenance, if necessary, by the Town, its agents and representatives. Said easement shall be filed in the New Hanover County Registry, at the expense of the applicant, and shall bind all subsequent owners and assigns of the facility and of the property on which the facility is located.

Sec. 16-212, Emergency authority.

If the Director of Stormwater Management determines that the condition of any stormwater management facility presents an immediate danger to the public health or safety because of an unsafe condition or improper maintenance, the Director of Stormwater Management shall take such actions as may be necessary to protect the public and make the facility safe. Any costs incurred by the as a result of the Director of Stormwater Management's action shall be assessed against any or all of the owners of property served by said facility who shall be jointly and severally liable for all said costs and whose property shall jointly and severally be subject to a lien for said costs which may be collected as provided in G.S. 160A-193.

Sec. 16-213, Violations, penalties and enforcement.

- (a) Any of the following violations shall subject the offender to a civil penalty of one hundred dollars (\$100.00) for the initial violation and a civil penalty of two hundred dollars (\$200.00) for each subsequent violation; Or imprisoned for not more than thirty (30) days, or both, at the discretion of the court. Each day that a violation continues after the offender has been notified of the violation shall constitute a separate and distinct offense.
- (1) The violation of any provision of this chapter or of any rule or regulation, by whatever name, issued or adopted pursuant to the provisions of this chapter.
 - (2) The failure to comply with the express or implied condition or term of any permit issued or agreement executed pursuant to the provisions of this chapter.
 - (3) The failure to comply with any order, notice, or directive of the Director of Stormwater Management to stop work or to take corrective action.
 - (4) The failure of the owner of, or any person responsible for the maintenance of, any property served by an existing private on-site stormwater management facility to maintain said facility in proper working order.

If the offender fails to pay this penalty within ten (10) days after being cited for a violation, the penalty may be recovered in a civil action in the nature of debt.

- (b) The Town may seek to enforce this chapter or to prevent, restrain, correct or abate violations of this chapter through any appropriate equitable action.
- (c) The Town may seek to enforce this chapter by using any one or any combination of the foregoing remedies.
- (d) No building permit shall be issued for any building without approval of the storm drainage facilities for the property and buildings by the Director of Stormwater Management.
- (e) In case of any violation of this ordinance, the Director or other appropriate official shall take action to put an end to such violation(s).

Secs. 16-214/215, Reserved.

**Section 16-216
STORMWATER SERVICE FEES**

Sec. 16-217, Authority.

Pursuant to Article 16 of Chapter 160A of the North Carolina General Statutes, the Town of Carolina Beach is authorized to create a stormwater utility and establish a schedule of stormwater fees for property in the corporate limits.

Sec. 16-218, Stormwater utility.

A stormwater utility is hereby established to provide stormwater management services, as authorized by state law. Stormwater service charges will be determined and modified from time to time so that the total revenues generated by said charges will be used to pay the principal of and interest on the debt incurred for stormwater purposes and such expenses as are reasonably necessary or convenient in the planning, construction, operation and maintenance of the stormwater system.

Sec. 16-219, Service charges, rates and fee schedule.

- (a) Stormwater service charges shall accrue beginning on October 1, 2002. Stormwater service charges shall apply to all property within the Town limits without regard to ownership, except as set forth in section 16-221. Such charges shall be based on the amount of impervious surface on each parcel as determined by the equivalent residential unit standard.
- (b) The Town council shall set a base rate for single-family residential uses and charges for non-single family residential uses shall be calculated utilizing the equivalent residential unit.
- (c) The schedule of rates shall be set forth in the Town of Carolina Beach Fee Schedule.

Sec. 16-220, Exemptions and credits.

Except as provided in this section, no public or private property shall be exempt from stormwater service charges or receive a credit against such charges.

- (1) Only undeveloped land shall be exempt from stormwater service fees.
- (2) Properties subject to stormwater service fees may be granted credits against the fees in accordance with a credit policy manual developed by the Director of Stormwater Management and referenced in the Town of Carolina Beach Fee Schedule. Any non-single family residential use that provides measures to mitigate the impacts of runoff on the stormwater system shall be eligible for a maximum credit of forty (40) percent of the service fee. The amount of the credit shall be proportional to the extent the measures address the impacts on peak discharge, total runoff volume and water quality as compared to applicable Town, state and federal standards. Water quantity and water quality measures shall each be eligible for twenty (20) percent maximum credit. Any credit allowance shall be conditional on continuing compliance with applicable standards, including requirements for operation and maintenance. Subject to approval in accordance with the credit policy, any credits shall be effective on the date of application therefore.

Sec. 16-221, Billing method, responsible parties.

- (a) Bills for stormwater service fees shall be sent at regular, periodic intervals. Stormwater service fees may be billed on a combined utility bill that also contains charges for water, sewer and/or refuse service. Stormwater service fees that are shown on a combined utility bill may be for a different service period than that used for water, sewer and/or refuse service.
- (b) Stormwater service bills for a property that receives water, sewer and/or refuse service may be sent to the customer receiving such service. However, where multiple water and sewer accounts exist for a single parcel, the stormwater service bill will be sent to the property owner unless the property qualifies for per account billing as set forth in subsection (c).
- (c) Where multiple water and sewer accounts exist for a single parcel, the property owner may apply for per account billing by completing a form provided by the Town. The application shall include the proposed division of the stormwater service fee between the water and sewer accounts on the property. The applicant shall provide notice of the application to each affected utility customer. The Town shall approve the per account billing for the parcel unless the billing plan (1) will result in a charge of less than one ERU for one or more accounts, and/or (2) does not equitably allocate the fees between accounts.
- (d) Townhouse and condominium developments and other similar properties containing impervious surface in common ownership shall be charged for the total impervious surface of all commonly-owned and individually-owned property within the development. The stormwater

service bill shall be sent to the homeowners' association or, upon official request of the association reflecting a vote in accordance with the association's bylaws, may be billed on a per account basis in compliance with subsection (c).

- (e) The property owner is ultimately responsible for payment of the stormwater service fee for property for which the party billed has not paid the service charge. The approval of per account billing pursuant to subsection (c) does not relieve the owner from liability for stormwater service fees if they are not paid by the party billed.
- (f) Stormwater fees shall be due and payable simultaneously with any other fees included on the bill. In the event that any user fails to pay the amount due for water, sewer and/or refuse, in accordance with Chapters 10 and 12 of this Code, and for stormwater service, in accordance with this chapter, then the Town shall have the right to discontinue water, sewer and/or refuse.
- (g) Payments received by the Town will be applied to a customer's bill in the following order: delinquent fees for stormwater, refuse, water, and sewer; and current fees for stormwater, refuse, water, and sewer.

Sec. 16-222, Back billing.

Failure to receive a bill is not justification for nonpayment. The owner of each parcel of developed land shall be ultimately obligated to pay such fee. If a customer is under-billed or if no bill is sent for developed land, the Town may back bill up to two years.

Sec. 16-223, Complaints regarding a bill.

- (a) A customer having a grievance or complaint that a bill is excessive must file written or verbal notice with the Town of Carolina Beach's Billing and Collections Office. If it is determined that the bill is in error, an adjustment will be made accordingly.
- (b) No adjustment will be made for more than a two-year period.

Sec. 16-224, Appeal.

Any customer who believes the provisions of this article have been applied in error may appeal in the following manner:

- (1) An appeal must be filed in writing with the Director of Stormwater Management or his designee. At the discretion of the Director of Stormwater Management, the appeal shall include information that shows the total property area, the impervious surface area, and any other features or conditions which influence the hydrologic response of the property to rainfall events.
- (2) A technical review shall be performed to determine the accuracy of the information in the Town's impervious surface database. The manager may adjust the fee or credit as long as the adjustment is in conformance with the intent of this article. At the conclusion of the review the manager shall issue a written determination stating whether an adjustment to the service rate is appropriate, and if so the amount of such adjustment.
- (3) All decisions of the manager shall be served on the customer personally or by registered or certified mail. Service shall be based upon the billing address of the customer.
- (4) The manager may make no adjustment to a customer's bill for more than the two-year period immediately preceding the date that the customer's appeal is received by the manager.

Sec. 16-225, Limitations of responsibility.

- (a) The Town shall be responsible only for the portions of the drainage system which are in Town maintained street rights-of-way and permanent storm drainage easements conveyed to and accepted by the Town. Repairs and improvements to the drainage system shall be in accordance with established standards, policies, and schedules.
- (b) The Town's acquisition of storm drainage easements and/or the construction or repair by the Town of drainage facilities does not constitute a warranty against stormwater hazards, including, but not limited to, erosion, or standing water.

Sec. 16-225/226, Reserved

**Section 16-227
Landscaping and Vegetation Preservation**

Sec. 16-228, Purpose.

This section is established for the purpose of regulating , controlling, preserving and setting forth methods of continued maintenance assurance of all regulated vegetation located within the municipal limits of the Town of Carolina Beach and, furthermore, establishes authority to regulate and control the degree of impervious surfaces constructed on properties and the placement and configuration of fill soil and material on properties located within such municipality.

Sec. 16-229, Functions.

Landscaping and the regulation of placement and arrangement of impervious and fill material accomplishes the following functions:

1. Maintains the visual character of the community.
2. Screens objectionable views within and between uses.
3. Defines functional exterior spaces.
4. Reduces glare into and from the site.
5. Reduces dust and other pollutants suspended in the air.
6. Controls noise and provide acoustical modification into and from the site.
7. Influences wind patterns and their effects upon uses.
8. Contains odors and minimizes their passage into and from a site.
9. Controls the direction and velocity of surface water runoff.
10. Minimizes soil erosions.
11. Moderates interior and exterior temperature by controlling solar radiation on structures and impervious surfaces.
12. Controls the quantity of impervious surface within a site interior, thus enhancing ground absorption capabilities and controls the placement of fill soil and materials and reduces the use of public monies for control of increased surface runoff.

13. Maintains the aesthetic quality of property and enhances its value.
14. Offers protection of adjacent properties from increased water runoff and erosion sedimentation infiltration, and
15. Offer protection to adjacent natural resources.

Sec. 16-230, Debris, Vegetation Waste

Debris from vegetation may be placed in the right-of-away for pick-up, though sand, dirt or grass clippings may not be blown into the streets, which may impede or eventually restrict and or hamper the flow of storm water run off. Grass clippings that are blown into the street are a violation of this ordinance. Homeowners and landscaping contractors that are in violation of placing and or blown vegetation debris into Town Streets maybe fined in accordance to Section 16-213. It is the responsibility of that homeowner, or contractor to remove the vegetation waste properly.

Sec. 16-231, Permit

Permit required from the Director of Stormwater Management for removal of vegetation, pouring or placement of impervious materials, fill soil or other materials.

The removal of vegetation, the pouring or placement of impervious materials, fill soil or other materials in or upon lands located within the jurisdictional limits of the Town shall be prohibited unless and until a valid permit has been issued by the Director of Stormwater Management. The fees for such permit shall be that designated in Section 4-81 of the Town Codes for such activity. No permits shall be issued by the Building Inspector unless and until the Director of Stormwater Management determines that the proposed activity complies with all applicable Town, State and Federal Regulations relative to surface and subsurface drainage and runoff and removal of vegetation, the pouring or placement of impervious materials, fill soil, or materials and issues preliminary or final approval certification as applicable. The certification of approval shall ensure that the vegetation removal, the pouring or placement of materials, soil, or other materials shall not increase drainage on runoff into public streets, cause erosion or sedimentation or infiltration into adjacent properties, drainage ways, wetlands, or water and which do not violate Town, State, and Federal Regulations.

ADOPTED THIS 26TH DAY OF SEPTEMBER 2002.



Melinda N. Prusa
Melinda N. Prusa, Town Clerk

Ray R. Rothrock
Ray R. Rothrock, Mayor