

## City of Raleigh Code of Ordinances

### **Sec. 10-5007. RESPONSIBILITY FOR PROVISION OF MAINTENANCE OF GROUND COVER AND ADEQUATE EROSION CONTROL MEASURES.**

(c) Whenever an impoundment, or retention, or detention device serves more than one (1) lot, prior to the recording of any lot served by the device, a maintenance covenant, *shall* be recorded in the Wake County Registry.

All maintenance agreements *shall* contain without limitation the *following* provisions:

- (1) A description of the *property* on which the device is located and all easements from the *site* to the device;
- (2) Size and configuration of the device;
- (3) A statement that *properties* which will be served by the device are granted rights to construct, use, inspect, replace, reconstruct, repair, maintain, access to the device and to transport, store, and discharge stormwater to and from the device;
- (4) A statement that each lot served by the device is jointly or severally responsible for repairs and maintenance of the device and any unpaid ad valorem taxes, public assessments for improvements and unsafe building and public nuisance abatement liens charged against the device, including all interest charges together with attorney fees, cost and expenses of collection. A right of contribution in favor of each owner *shall* be included in the maintenance agreement. That failure to maintain stormwater control measures is a violation of the *City Code* potentially subjecting each *lot owner* subject to this legal document to significant daily civil penalties and other enforcement actions.
- (5) If an association is delegated these responsibilities, then membership into the association *shall* be mandatory for each parcel served by the device and any successive owner, the association *shall* have the power to levy assessments for these obligations, and that all unpaid assessments levied by the association *shall* become a lien on the individual parcel. Common expenses include maintenance of stormwater control measures, premiums for liability insurance in an amount of not less than one million dollars (\$1,000,000.00) of coverage, and funds required to be contributed to either the recorded Stormwater Replacement Protection Easement and access Maintenance Agreement with the *City* in accordance with §10-9027(c) or any escrow agreement required by §10-5006(b)(11)d., if any.
- (6) An operation and maintenance *plan* or manual, together with a budget, *shall* be provided by the initial developer. The *plan* or manual *shall* indicate what operation and maintenance actions are needed, and what specific quantitative criteria will be used to determine when those actions are to be undertaken. The *plan* or manual must indicate the steps that will be taken to restore a stormwater system to design specifications if a failure occurs. The budget *shall* include both annual costs such as routine maintenance, periodic sediment removal and replenishment of rip-rap, insurance premiums, taxes, mowing and reseeding, required inspections, and a sinking fund for structural; biological; or vegetative replacement of the stormwater control facilities , major repair and replacement repair of the stormwater control facilities, and other cost exceeding one-third ( 1/3) the initial construction cost of the stormwater control facilities. These required documents *shall* be attached to the property association declaration as an exhibit; and

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

(Ord. No. 1979-247-TC-108, §1, 11-6-79; Ord. No. 1985-511-TC-232, §29, 3-5-85; Ord. No. 1987-950-TC-287, §24, 4-7-87; Ord. No. 1993-218-TC-60, §25, TC-10-93, 6-15-93; Ord. No. 1999-647-TC-185, §15, TC-7-99, 10-6-99; Ord. No. 2000-746-TC-191, TC-4-00, §9, 3-7-00; Ord. No. 2003-432, §§30--33, TC-1-03, 4-15-03)

### **Sec. 10-9027. MAINTENANCE OF STORMWATER CONTROL MEASURES AND DEVICES.**

(b) Maintenance covenant.

For off-site *stormwater control facilities* and for all other *stormwater control facilities* which serve more than one (1) lot that are not accepted for maintenance by a governmental agency, a maintenance covenant containing the *following* contents is required:

(1) The provisions set forth in subsections (1) through (7) of §10-5007(c).

That stormwater control measures *shall* be maintained by the homeowners' association, *property* owners' association, or designated commercial lot *owner* in accordance with the stormwater operations and maintenance manual and budget approved by the Conservation Engineer in the Engineering Department, which manual *shall* be attached to the maintenance covenant as an exhibit, and at all times the stormwater control measures *shall* comply with all applicable laws, ordinances, regulations, rules and directives of governmental authorities, and that the stormwater control measures *shall* perform as designed."

(2) That common expenses include maintenance of stormwater control measures, premiums for liability insurance in an amount of not less than one million dollars (\$1,000,000.00) of coverage, and funds required to be contributed to the recorded Stormwater Replacement Protection Easement and Access Maintenance Agreement with the *City* in accordance with §10-9027(c) or any escrow agreement required by §10-5006(b)(11)d., if any.

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

(4) A warning statement stating that the stormwater control measures are required to comply with the Raleigh *City* Code and that failure to maintain stormwater control measures is a violation of the *City* Code potentially subjecting each lot *owner* subject to this legal document to significant daily civil penalties and other enforcement actions.

Prior to recording the maintenance covenant, the attorney who prepared the maintenance covenant *shall* certify in *writing* to the Raleigh *City* Attorney that the maintenance covenant contains all the contents required by Raleigh *City* Code §10-9027(b) and the conditions of approval of the *development*.

Certifications *shall* be on forms approved by the Raleigh City Attorney and *may* include, at the discretion of the Raleigh City Attorney, provisions to be attached to and made a part of the maintenance covenant.

The maintenance covenant *shall* be recorded with the local county register of deeds prior to the recording of any new lot served by the stormwater control facility or prior to the issuance of any *development* permit for any existing lot except for improvements made pursuant to Part 10, Chapter 3 of this *Code* . The maintenance covenant *shall* be binding on all subsequent *owners* of land served by the *stormwater control facilities* . A recorded copy of the maintenance covenant *shall* be given to the Central Engineering Department of the *City* within fourteen (14) days *following* the recordation of the maintenance covenant, but no building permit *shall* be issued for the *property* until a recorded copy of the maintenance covenant is provided to Department of Inspections

(c) Stormwater contribution replacement agreement.

For all *stormwater control facilities* which are to be or are owned and *maintained* by a *property owner's* association or similar entity, in addition to the required maintenance covenant, the developer and the association *shall* enter into an agreement with the *City* . The agreement *shall* contain all of the *following* provisions:

(1) Acknowledgment that the association *shall* continuously operate and *maintain* the *stormwater control facilities*.

(2) Establishment of a general replacement account which can be spent solely for structural; biological; or vegetative replacement of the *stormwater control facilities*, major repair and replacement repair of the *stormwater control facilities*, and other cost exceeding one-third ( 1/3) the initial construction cost of the *stormwater control facilities*. If *stormwater control facilities* are not performing adequately or as intended or are not properly *maintained* , the *City* , in its sole discretion, *may* remedy the situation, and in such instances the *City* *shall* be fully reimbursed from the general replacement account. Funds in the general replacement account *may* be spent by the association for structural; biological; or vegetative replacement of the *stormwater control facilities*, major repair and replacement repair of the *stormwater control facilities*, and other cost exceeding one-third ( 1/3) the initial construction cost of the *stormwater control facilities*; provided that, the *City* *shall* first consent to the expenditure, and in no event *shall* the funds paid to the association exceed the amount of funds paid into the general replacement fund by the subject development.

(3) Both developer contribution and annual sinking funds *shall* fund the general replacement account. Prior to plat recordation or issuance of construction permits, whichever *shall* first occur, the developer *shall* pay into the general replacement account an amount equal to fifteen (15) per cent of the initial construction cost of the *stormwater control facilities* . As determined from the sinking fund budget set forth in §10-5007(c)(6), two-thirds ( 2/3) of the total amount of sinking fund budget *shall* be deposited into the general replacement account within the first five (5) *years* and the full amount *shall* be deposited within ten (10) *years* *following* initial construction of the stormwater control measure or device. Moneys *shall* be deposited each *year* into the general replacement account. A portion of the annual assessments of the *property owners* association *shall* include an allocation into the general replacement account. Any funds drawn down from the general replacement account *shall* be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.

(4) The per cent of developer contribution and lengths of time to fund the general replacement account *may* be varied by the *City* depending on the design and materials of the stormwater control facility.

(5) Granting to the *City* a right of entry to inspect, monitor, *maintain* , repair, and reconstruct *stormwater control facilities* .

(6) Allowing the *City* to recover from the association and its members any and all costs the *City* expends to *maintain* or repair the stormwater control facility or to correct any operational deficiencies. Failure to pay to the *City* all of its expended costs, after forty-five (45) days *written* notice, *shall* constitute a breach of the agreement. The *City* *shall* thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien herein authorized by the agreement against the *property* , or both in the case of a deficiency. Interest, collection costs, and attorney fees *shall* be added to the recovery.

(7) A statement that this agreement *shall* not obligate the *City* to *maintain* or repair any stormwater control measure or device, and that the *City* *shall* not be liable to any *person* for the condition or operation of *stormwater control facilities* .

(8) A statement that this agreement *shall* not in any way diminish, limit, or restrict the right of the *City* to enforce any of its ordinances as authorized by law.

(Ord. No. 2001-991-TC-206, §1, TC-8-00, 5-1-01; Ord. No. 2003-373-TC-231, §46, TC-23-02, 2-4-03; Ord. No. 2003-432, §§13--17, TC-1-03, 4-15-03; Ord. No. 2005-897-TC-272, §§38, 39, TC-12-05, 9-20-05)