

ORDINANCE NO. 2017-10

**AN ORDINANCE AMENDING THE
UNIFIED DEVELOPMENT ORDINANCE
CHAPTER 6 ENVIRONMENTAL PROTECTION**

WHEREAS, the purpose of zoning regulations is to provide a comprehensive plan for the use of land and buildings in conditions of good health and safety and in conditions of orderly community development, these regulations shall apply to all land and structures within the respective zoning district; and,

WHEREAS, the City of Brevard Planning Board unanimously recommended approval of Ordinance changes on March 21, 2017; and,

WHEREAS, the City of Brevard City Council have reviewed the Planning Board's draft language as amended; and,

WHEREAS, in accordance with North Carolina General Statute 160A-383, Brevard City Council finds the following:

1) That the amendment is neither consistent with the 2015 Comprehensive Plan:

Objective 3.1: Preservation of surrounding natural assets of mountains, farmlands, woods, and water for future generations.

POLICY 3.1.D: Seek out and develop innovative solutions to protect water quality while reducing the cost of stormwater management to private developers.

POLICY 3.1.E: Revise development regulations to encourage and incentive the use of Low Impact Design techniques to manage stormwater.

2) That the proposed amendments will serve to protect health and safety of the citizens of Brevard.

3) That the proposed amendments address concerns raised by design professionals, city staff, elected officials, and environmental advocates.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BREVARD, NORTH CAROLINA THAT:

Section 1. The City of Brevard Unified Development Ordinance is hereby amended as described in Exhibit A.

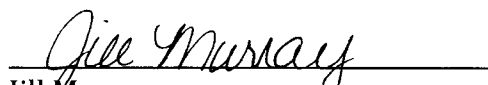
Section 2. This Ordinance shall become effective upon its adoption and approval.

Adopted and approved this the 24th day of April, 2017.



Mac Morrow
Mayor Pro Tem

ATTEST:


Jill Murray
Deputy City Clerk

APPROVED AS TO FORM:



Michael K. Pratt
City Attorney

EXHIBIT A
ORDINANCE 2017-10

New text shown in blue and underline
Deleted text shown in red and ~~strikethrough~~.

6.6. - Stormwater runoff provisions.

The purpose this section is to (1) protect life and property and minimize nuisances by limiting destructive runoff and flooding generated by impervious surface areas; and (2) to protect water quality and natural ecosystems by filtering sediments and pollutants such as nitrogen, phosphorus, trace metals, and hydrocarbons.

A. *Affected property:* The requirements of this section shall apply to the following activities:

1. Any new non-residential or mixed-use development that disturbs more than one acre of land, and or will have an impervious surface area more than 50% of the total acreage of the site; ~~or any existing non-residential or mixed-use development undergoing significant improvement; or any existing non-residential or mixed-use development undergoing an expansion of impervious surface area of 25 percent or more.~~
2. Any new residential development or subdivision of four or more dwelling units; ~~or any existing multi-family residential structure of four or more dwelling units undergoing significant improvement; or any expansion of or additions to an existing residential structure or development that would result in four or more dwelling units within the same parcel of land or structure or grouping of joined structures.~~
- 2.3. Any project for which Stormwater management is required as a condition of approval by the Planning Board, Board of Adjustment, or City Council.
- 3.4. In the event of redevelopment that results in increased impervious area, only the new impervious areas are subject to the standards in 6.6.C.
3. ~~All new residential and non-residential major subdivisions and any new phase or expansion of existing residential and non-residential major subdivisions.~~
4. ~~All new non-residential or mixed-use minor subdivisions and any new phase or expansion of existing non-residential or mixed-use minor subdivisions.~~
5. ~~Any new residential or non-residential development project permitted as a planned development or conditional zoning district.~~
6. ~~New structures; significant improvements to existing non-residential or mixed use structures; significant improvements to existing residential structures containing four or more dwelling units; and any expansion of impervious surface area of 25 percent or more within any development except expansions to residential structures containing fewer than four dwelling units, unless otherwise subject to these requirements.~~
7. ~~Any project for which stormwater management is required as a condition of approval by the planning board, board of adjustment, or city council.~~

B. *Exempt activities:* The following activities are exempt from the stormwater management provisions of this section:

1. Existing bona fide agricultural structures used exclusively for agricultural purposes, and
 2. Development or redevelopment of a single one or two family dwelling unit that disturbs less than one acre and will have an impervious surface area less than 20,000 square feet.
 3. Redevelopment that results in no net increase of impervious surface area on a property.
 4. Development or redevelopment of parcels located within the Heart of Brevard Municipal Service District.
 5. Small accessory buildings or structures, or additional less than 400 square feet.
2. Except as provided elsewhere in this ordinance, the placement of small accessory buildings or structures or small amounts of other built-upon area; provided, however, that the total additional built-upon area shall be no greater than 400 square feet and the additional built-upon area shall not be placed within a special flood hazard area or surface water protection area.

C. *Stormwater management requirements:* The following requirements shall apply to the entire parcel of land or project area and all impervious surface areas of affected properties.

1. **Design standards:** The property owner and developer of all affected property shall be required to comply with the following design standards:
 - a. Runoff volume shall be calculated with the use of the Soil Conservation System (SCS) method.
 - b. The stormwater run-off generated by a 2-year and 10-year, 24-hour rain event, shall be controlled limited to the pre-development discharge rates.
 - c. ~~b.~~ At a minimum, stormwater measures shall be designed to remove 85 percent of the Total Suspended Solids (TSS) from the first inch of rainfall of any rain event.
 - d. ~~e.~~ Stormwater measures shall have a drawdown of at least 48 hours, but not more than 120 hours.
2. **Stormwater measures shall be designed by a North Carolina Licensed Professional Engineer** ~~an appropriately qualified engineer, landscape architect or other appropriately qualified professional, and shall be constructed and maintained in accordance with commonly accepted best practices. Innovative designs that utilize "low impact" and non-structural control and treatment measures are encouraged.~~
3. Small scale Stormwater management practices, non-structural techniques, low-impact designs (LID), and site planning designed to mimic natural hydrologic runoff characteristics and minimize the impact of land development on water resources must be implemented. Only when it is absolutely necessary is the use of a structural BMP warranted.
4. ~~3.~~ Structural treatment devices used as an alternative to, or in conjunction with LID techniques are acceptable only when practically necessary.
5. Stormwater measures may be located off-site provided such measures are located within a parcel of land under the same ownership as the affected property or within a common area under the management of a property owners' association or similar entity. When stormwater measures are located off-site, deeds of both the affected property and the property containing the stormwater measure shall be provided and shall clearly reference an access easement and the right and responsibility of the owner of the affected property to access and maintain such measure.

- 6.4. In all instances stormwater measures shall be designed to complement a development and surrounding community and to minimize any threat to public health. If ponds or lakes are used, such areas shall be landscaped as amenities or hidden from view. This provision applies regardless whether the pond or lake typically contains water or may be dry for periods of time.
- D. *Permit requirements:* The administrator shall review all stormwater plans required by this ordinance to ensure compliance therewith. In making this determination, the administrator shall use the *Stormwater Best Management Practices Design Manual* published by the North Carolina Department of Environment and Natural Resources or other commonly accepted information and engineering data.
1. Stormwater management system concept plan. When required as part of any project, a written or graphic concept plan of the proposed post-development stormwater management system shall be submitted along with other application materials and shall include the following: 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 proposed stream channel modifications, such as bridge or culvert crossings.
 2. As-built plans and final approval. Upon completion of a project, and before final zoning approval or a Certificate of Occupancy may be granted, the applicant shall certify that the completed project has been built in accordance with the approved stormwater management plans and designs. The applicant shall submit actual "as built" plans for all stormwater management facilities or practices after final construction is completed.
- 3.a. 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.
- 4.b. A final inspection and approval by the administrator is necessary prior to the issuance of any Certificate of Occupancy, release of improvement guarantee, or other final approval.
- E. *Inspection of measures:* The administrator may, from time to time, inspect approved stormwater measures for compliance with this section and approved plans. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in stormwater measures; and evaluating the condition of stormwater measures. No person shall obstruct, hamper or interfere with the administrator while carrying out his or her official duties. If the owner or occupant of any affected property refuses to allow such inspection, the administrator shall proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2 or its successor.
- F. *Maintenance of stormwater measures:*
1. The owner of any stormwater measure installed pursuant to this section shall maintain and operate such measure so as to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the stormwater measure was designed.
 2. Furthermore, stormwater measures installed prior to the enactment of this ordinance as a requirement of the issuance of any permit shall be subject to the maintenance requirements herein.
 3. The owner of each stormwater measure, whether structural or non-structural in design, shall maintain it so as not to create or permit a nuisance condition.

H. *Illicit discharges*: Except as provided herein, no person shall cause or allow the discharge, emission, disposal, pouring, or pumping, whether directly or indirectly, of any liquid, solid, gas, or other substance, other than stormwater, into any surface water, ground water, or stormwater conveyance. This prohibition applies to any substance deposited upon the land in manner and amount that the substance is likely to reach a stormwater conveyance, surface or ground water.

1. The following discharges shall not be deemed illicit and shall be permitted under the terms stated:
 - a. Water line flushing, except any anti-freezing agent;
 - b. Landscape irrigation;
 - c. Diverted stream flows;
 - d. Rising ground waters;
 - e. Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20));
 - f. Uncontaminated pumped ground water;
 - g. Discharges from potable water sources;
 - h. Foundation drains;
 - i. Air conditioning condensation;
 - j. Irrigation water;
 - k. Springs;
 - l. Water from crawl space pumps;
 - m. Footing drains;
 - n. Lawn watering;
 - o. Individual residential car washing;
 - p. Flows from riparian habitats and wetlands;
 - q. Dechlorinated swimming pool discharges;
 - r. Street wash water; and
 - s. Other non-stormwater discharges for which a valid NPDES discharge permit has been approved and issued by the State of North Carolina.
2. Prohibited discharges include but are not limited to the following:
 - a. Discharges of oil, anti-freeze, chemicals, paints, garbage, litter;
 - b. Raw sewage discharges or overflows;
 - c. Discharges of wash water resulting from the hosing or cleaning of gasoline stations, auto repair garages, or other types of automotive service facilities;
 - d. Discharges resulting from the cleaning, repair, or maintenance of any type of equipment, machinery, or facility (including motor vehicles, cement-related construction equipment, port-a-potty servicing, etc.);
 - e. Discharges of wash water from mobile operations such as steam cleaning, power washing, pressure washing, carpet cleaning, and mobile carwash facilities; discharges of wash water from the cleaning or hosing of impervious surfaces in industrial and commercial areas including parking lots, streets, sidewalks, driveways, patios, plazas, work yards, and outdoor eating or drinking areas;
 - f. Discharges of runoff from material storage areas containing chemicals, fuels, grease, oil or hazardous materials or chemicals;
 - g. Discharges of pool or fountain water containing chlorine, biocides or other chemicals, and also discharges of pool or fountain filter backwash water;

- h. Discharges of water containing sediment or construction-related wastes; and
 - i. Discharges of food-related wastes such as grease, oil, fish processing water, kitchen mat wash water, trash bin wash water, pouring liquids into dumpsters.
- I. *Illicit connections:* Other than those exceptions listed in Section 6.6.H.1, above, it shall be unlawful to cause or permit any connection to a surface water or stormwater conveyance or stormwater conveyance system that allows the discharge of anything other than stormwater.
 1. Prohibited connections include, but are not limited to the following: floor drains, wastewater from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and wastewater from septic systems.
 2. Where such connections exist in violation of this section and said connections were made prior to the adoption of this provision or any other ordinance prohibiting such connections, the property owner or the person using said connection shall remove the connection within one year following the effective date of this ordinance. Provided, however, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat.
 3. Upon determining that an illicit connection may result in the discharge of hazardous materials or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat or that a connection was made in violation of any applicable regulation or ordinance, other than this section the administrator shall designate the time limit within which the connection shall be removed. In setting the time limit for compliance, the administrator shall take these matters into consideration:
 - a. The quantity and complexity of the work;
 - b. The consequences of delay;
 - c. The potential harm to the environment, to the public health, and to public and private property; and
 - d. The cost of remedying the damage.
- J. *Fee-in-lieu of stormwater compliance:* On-site compliance with the requirements of this section may be impractical or impossible ~~in certain watersheds on certain parcels within~~ of the city. The owner and/or developer of affected properties may pursuant to the provisions set forth herein, opt to pay a fee-in-lieu of compliance with the stormwater management requirements of this section.
 1. Payment may be made in the form of contribution of funds, contribution of land, contribution of engineered stormwater control construction work, or a combination of these, ~~the total value of which shall be in accordance with the stormwater fee-in-lieu schedule which shall be established by the city manager and periodically revised to account for changes in construction and maintenance costs.~~
 2. Fees shall be based upon actual cost of construction of a structural stormwater measure to control and treat stormwater runoff from the total impervious surface area of the affected property.
 - ~~3. Reserved.~~
 4. ~~City council shall adopt a map of watersheds within which a fee-in-lieu of stormwater compliance may be permitted.~~

~~53.~~ Fee-in-lieu contributions shall be set aside in a dedicated, watershed-specific special-fund, and applied to stormwater management and other water quality improvement projects, ~~within the same watershed as the affected property.~~

____ Purposes eligible for fee-in-lieu contributions include the following:

- a. The acquisition, design, or construction of stormwater control and treatment measures.
- b. Stream bank, wetland, or other surface water protection and restoration projects that enhance stormwater management goals, reduce erosion, and enhance water quality.
- c. The elimination of illicit or inappropriate connections to stormwater conveyances.
- d. Other activities identified by the city manager, provided that such activities are for the sole purpose of improving water quality.
- e. Matching funds for grants to fund any of the aforementioned types of activities.
- f. Matching funds for participation in any water quality improvement program funded by the Transylvania County Soil and Water Conservation Service, the North Carolina Department of Environment and Natural Resources, the USDA Natural Resources Conservation Service, or other local, regional, state or federal agencies.

~~64.~~ The expenditure of stormwater contributions is limited as follows:

- a. To the extent practical, contributions shall be applied to activities that will result in water quality benefits comparable to the benefits of controlling and treating stormwater on the contributing property.
- b. Contributions shall not be applied to the stormwater management requirements of other affected properties, or to the same affected property to satisfy the stormwater management requirements of future site plan approvals.
- c. Contributions shall not be applied to any other purpose or activity of the city not directly related to stormwater management and water quality improvement.