

Proposed Amendments to The Water Management Ordinance

SECTION 4. MAINTENANCE OF STORMWATER CONTROL MEASURES

7.2-4.2 Operation and Maintenance Agreement

Prior to the conveyance or transfer of any lot or building site to be served by a *SCM* pursuant to this ordinance, and prior to issuance of any permit for *development* or *redevelopment* requiring a *SCM* pursuant to this ordinance, the applicant or *owner* of the site must execute an operation and maintenance agreement that shall be binding on all subsequent *owners* of the site, portions of the site, and lots or parcels served by the *SCM*. Until the transference of all property, sites, or lots served by the *SCM*, the original *owner* or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.

The operation and maintenance agreement shall require the *owner* or *owners* to maintain, repair and, if necessary, reconstruct the *SCM*, and shall state the terms, conditions, and schedule of maintenance for the *SCM*. In addition, it shall grant to the City a right of entry in the event that the Stormwater Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the *SCM*; however, in no case shall the right of entry, of itself, confer an obligation on the City to assume responsibility for the *SCM*.

The operation and maintenance agreement must be approved by the Administrator prior to plan approval, and it shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. A copy of the recorded maintenance agreement shall be given to the Administrator within fourteen (14) days following its recordation.

Special Requirement for Homeowners' and Other Associations

For all *SCMs* required, pursuant to this ordinance, and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement shall include all of the following provisions:

- (1) Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.
- (2) Granting to the City the right of entry to inspect, monitor, maintain, repair, and reconstruct *SCMs*.
- (3) Allowing the City to recover from the association and its members any and all costs the City expends to maintain or repair the *SCMs* or to correct any operational deficiencies. Failure to pay the City all its expended costs, after forty-five days' written notice, shall constitute a breach of the agreement. In case of a deficiency, the City shall thereafter be entitled to bring an action against the association and its members to pay or foreclose upon the lien hereby authorized by the agreement against the property, or both. Interest, collection costs, and attorney fees shall be added to the recovery.
- (4) A statement that this agreement shall not obligate the City to maintain or repair any *SCMs*, and the City shall not be liable to any person for the condition or operation of *SCMs*.

- (5) 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.
- (6) A provision indemnifying and holding harmless the City for any costs and injuries arising from or related to the SCM, unless the City has agreed in writing to assume maintenance responsibility for the SCM and has accepted dedication of any and all rights necessary to carry out that maintenance.
- (7) The owner of the stormwater control management system shall establish, collect, and retain funds for maintenance, repair, replacement, and reconstruction costs for the owner's stormwater management system, which shall equal ten percent (10%) of the stormwater management system's original cost of construction and shall be retained by the owner of the system.
- (8) The owner of the stormwater control management system is allowed a term of five (5) years, beginning when the stormwater control management system is approved by the City, as meeting the standards of this Ordinance, for the funds to be collected and retained by the owner of the stormwater control management system. A minimum of twenty percent (20%) of the required funds shall be collected and retained each of the five (5) years. Funds collected must be held in a segregated escrow account and used solely for the purposes of maintaining, repairing, replacing, and reconstructing the owners' stormwater control management system. Evidence of the fund balance shall be provided to the City when the annual SCM inspection reports are submitted.

~~(2) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the SCMs. If SCMs 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 escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the SCMs, provided that the City shall first consent to the expenditure.~~

~~(3) Both developer contribution and annual HOA funds shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount equal to fifteen (15) per cent of the initial construction cost of the SCMs. Two-thirds (2/3) of the total amount of the maintenance fund budget shall be deposited into the escrow account within the first five (5) years and the full amount shall be deposited within ten (10) years following initial construction of the SCMs. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from~~

~~the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.~~

- ~~(4) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the City depending on the design and materials of the stormwater control and management facility.~~