

MEMORANDUM

Office of the City Attorney

Registrar No. 050076

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TO: Mayor and City Commission

DATE: Sept. 12, 2005
SECOND READING

FROM: City Attorney

SUBJECT: Ordinance No. 0-05-75; Petition 82TCH-05 PB
An ordinance of the City of Gainesville, Florida, amending subsection (a) of section 30-311 of the Land Development Code, relating to violations, enforcement and penalties pertaining to stormwater management regulations; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

Recommendation: The City Commission adopt the proposed ordinance.

COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

This petition proposes amendments to subsection 30-311(a) of the Land Development Code by updating the violations, enforcement and penalty provisions that pertain to stormwater management. Adoption of the proposed changes will facilitate compliance with the City's stormwater management regulations by providing improved code enforcement provisions.

Public Works Department staff, Community Development Department staff, and the City Attorney's office drafted the proposed amendments to the current stormwater management ordinance to allow for expanded and improved enforcement options by the City. The proposed enforcement options are similar to those for wetlands and surface waters, and provide for increasing corrective measures depending on the severity and imminence of the violation. Corrective measures could include any or all of the following: issuance of a notice of violation; issuance of a cease and desist order; entering into a consent agreement; and the City seeking injunctive relief.

On May 9, 2005, the City Commission removed the item (no. 030126) from the City Attorney's referral list, and referred the proposed changes to the stormwater management ordinance to the City Plan Board for consideration as a petition.

The Plan Board heard this petition and recommended that it be approved with a modification that "promptly" be replaced by "immediately" in subsection 30-311(a)(4) for consistency with related provisions.

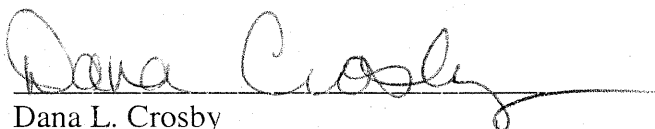
Public notice was published in the Gainesville Sun on June 1, 2005. The Plan Board held a public hearing June 16, 2005. Planning Division staff recommended that the Plan Board approve the petition. The Plan Board recommended that the City Commission approve Petition 82TCH-05 PB. Plan Board vote 6-0.

CITY ATTORNEY MEMORANDUM

This ordinance requires two public hearings. Should the Commission adopt the ordinance on first reading, the second and final reading will be held on Monday, September 12, 2005.

Fiscal Note: None

Prepared by:



Dana L. Crosby
Assistant City Attorney II

Approved and
Submitted by:



Marion J. Radson,
City Attorney

MJR:DLC:sw

ORDINANCE NO. 0-05-75

An ordinance of the City of Gainesville, Florida, amending subsection (a) of section 30-311 of the Land Development Code, relating to violations, enforcement and penalties pertaining to stormwater management regulations; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

WHEREAS, the City Plan Board authorized the publication of notice of a Public Hearing that the text of the Land Development Code of the City of Gainesville, Florida, be amended; and

WHEREAS, notice was given and publication made as required by law and a Public Hearing was then held by the City Plan Board on June 16, 2005; and

WHEREAS, at least 10 days notice has been given once by publication in a newspaper of general circulation notifying the public of this proposed ordinance and of a Public Hearing to be held in the City Commission Auditorium, City Hall, City of Gainesville; and

WHEREAS, the Public Hearings were held pursuant to the published notice described at which hearings the parties in interest and all others had an opportunity to be and were, in fact, heard; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA:

Section 1. Subsection (a) of Section 30-311, Land Development Code of the City of Gainesville, is hereby amended to read as follows:

1 **Sec. 30-311. Violations, enforcement and penalty.**

2 (a) *Stormwater management.* As regards the provisions of the stormwater management
3 sections of this article, and in addition to the provisions of Article X:

4 (1) Stormwater facilities shall function as per the approved final development
5 plan/final plat. Failure to comply with this provision shall be a violation of this Code.

6 (2) During construction if ~~If the public works department~~ City Manager or designee
7 observes that the stormwater facilities are not functioning properly in accordance with the
8 permitted site plan or subdivision construction design plan, in addition to other remedies
9 provided for in this section, no certificate of occupancy shall be issued until such time as
10 the facilities are corrected and are functioning properly.

11 (3) Any stormwater facility that is found by the City Manager ~~city manager~~ or
12 designee to be contributing to exacerbating mosquito control problems is in violation of
13 this article and the property owner shall must be immediately corrected the problem by
14 the owner-at the owner's expense.

15 (4) a. Prior to construction of a stormwater facility, a pollution prevention plan shall be
16 submitted to the City Manager or designee for approval. The pollution prevention plan
17 shall detail specific Best Management Practices for installation on a construction site and
18 that when installed have the net effect of preventing a deposit, obstruction, damage or
19 process problem to any of the City's stormwater management facilities or to the surface
20 waters of the state. If such deposit, obstruction, damage or process problem occurs this
21 occurrence shall be a violation of this article and the property owner shall cause the
22 deposit or obstruction to be immediately removed or cause the damage or process
23 problem to be immediately repaired.

24 b. Discharge from any facility that causes a deposit, obstruction, damage or process
25 problem to any of the City's stormwater management facilities or to the surface waters of
26 the state is a violation of this article and the property owner shall cause the deposit or
27 obstruction to be immediately removed or cause the damage or process problem to be
28 immediately repaired.

29 (5) Any temporary or permanent erosion or sedimentation control device that is
30 unable to perform continuous effective control shall be a in-violation of this article and
31 the property owner shall immediately correct the control device so that it performs
32 continuous effective control. Such correction or repair shall be taken at the owner's
33 expense.

34 (6)(5) If an the approved maintenance plan is not being adhered to, as approved the
35 property owner shall be in violation of this article and shall immediately resume
36 adherence to the approved maintenance plan.

37 (7) Should any person violate the provisions of this section, the City Manager or
38 designee shall require the violator to take corrective measures. In the event the violator
39 does not immediately correct the violation, the city may, depending upon the severity of
40 the violation, take the following actions:

1 (a) If the City Manager or designee finds a violation of this article or a
2 violation of any provision of a property owner's pollution prevention plan, which has
3 been provided to the City, is not immediately rectified, the City Manager or designee
4 shall notify the property owner of the violation within five days of inspection and
5 shall give the property owner a reasonable time to correct the violation. Should the
6 violation continue beyond the time specified for correction, the City Manager or
7 designee shall issue a notice of violation to the alleged violator and shall notify the
8 Code Enforcement Board to request a hearing. The Board, through its clerical staff,
9 shall schedule a hearing, and written notice of such hearing shall be hand delivered or
10 mailed to the property owner as provided in section 2-390 of the Code of Ordinances.
11 In the case of notice provided under section 2-390(a), notice shall be given at least
12 seven days in advance of the hearing, not counting the day of the hearing. If the
13 violation is corrected and then recurs or if the violation is not corrected by the time
14 specified for correction by the inspector, the case may be presented to the board even
15 if the violation has been corrected prior to the board hearing.

16 (b)1. Notwithstanding any other provision of this section, if the City Manager or
17 designee finds a violation of this article in relation to a City-issued permit or finds
18 a violation of the pollution prevention plan has occurred that presents an
19 imminent risk to the environment, the City Manager or designee may issue a
20 cease and desist order for any and all development on the site related to the
21 permit. Any person receiving such an order for cessation of operations shall
22 immediately comply with the requirements thereof. It shall be a violation of this
23 Code for any person to fail to or refuse to comply with a cease and desist order
24 issued once written notice of the cease and desist order is delivered by hand
25 delivery or by certified mail, return receipt requested, to the person to whom the
26 permit is issued.

27 (b)2. If the City Manager or designee issues a cease and desist order pursuant to
28 this Code, the property owner shall immediately cease all work on the site until
29 the violation is corrected or mitigated. The property owner shall have the right to
30 appeal to the Board of Adjustment the administrative decision of the City
31 Manager or designee to issue a cease and desist order and shall show cause why
32 the cease and desist order should be lifted. Any appeal to the Board of
33 Adjustment shall not stay the cease and desist order.

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35 (8) The City Manager or designee may enter into consent agreements, assurances or
36 voluntary compliance documents establishing an agreement with any user responsible for
37 noncompliance. Such documents shall include specific action to be taken by the user to
38 correct the noncompliance within the time period as specified in the document. Such
39 documents may provide for judicial enforcement.

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41 (9) In addition to all remedies provided above, in the event of failure to comply with
42 any requirement of this section or in the event a violation of this section is occurring in
43 the absence of a City-issued permit, the City Manager may request the city attorney's

1 office seek injunctive relief in a court of equitable jurisdiction so that the property owner
2 will cease any and all activity on the site.

3 (10) The remedies provided in this section shall not be exclusive, and are in addition
4 to any other remedies available to the County, State or Federal government; and the City
5 may seek whatever remedies are authorized in Code against any person or user for
6 violating the provisions of this section.

7 ~~(6) The property owner shall be mailed written confirmation that a violation has occurred~~
8 ~~within five days of any inspection. Notification of violation shall include the time and~~
9 ~~place of the inspection, the name of the inspecting officer, and a description of the~~
10 ~~conditions that are in violation. The property owner shall be given ten days to arrange a~~
11 ~~schedule acceptable to the public works director to abate the violation or file an appeal~~
12 ~~for additional time to abate the violation with the code enforcement board.~~

13 ~~(7) If the board of adjustment finds that delay in remediating the violation may result in~~
14 ~~an immediate danger to the public health and safety, the city manager or designee may~~
15 ~~order that work to be done immediately, at the expense of the property owner.~~

16 **Section 2.** It is the intention of the City Commission that the provisions of
17 Section 1 of this ordinance shall become and be made a part of the Code of Ordinances of
18 the City of Gainesville, Florida, and that the Sections and Paragraphs of this Ordinance
19 may be renumbered or relettered in order to accomplish such intentions.

20 **Section 3.** If any section, sentence, clause or phrase of this ordinance is held to
21 be invalid or unconstitutional by any court of competent jurisdiction, then said holding
22 shall in no way affect the validity of the remaining portions of this ordinance.

23 **Section 4** All ordinances, or parts of ordinances, in conflict herewith are, to the
24 extent of such conflict, hereby repealed.

1 Section 5. This ordinance shall become effective immediately upon final
2 adoption.

3 PASSED AND ADOPTED this ____ day of _____, 2005.

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PEGEEN HANRAHAN,
MAYOR

10 ATTEST:

Approved as to form and legality

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KURT M. LANNON
CLERK OF THE COMMISSION

MARION J. RADSON
CITY ATTORNEY

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17 This Ordinance passed on first reading this ____ day of _____, 2005.

18 This Ordinance passed on second reading this ____ day of _____, 2005.

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