

# MEMORANDUM

Office of the City Attorney

Legistar No. 050076

Phone: 334-5011/Fax 334-2229  
Box 46

TO: Mayor and City Commission

DATE: August 22, 2005  
FIRST 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.

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Recommendation: The City Commission (1) approve the Petition No. 82TCH-05 PB and (2) 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.

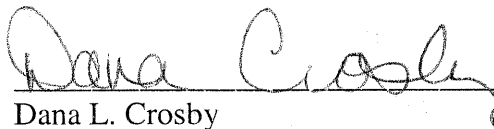
Public notice was published in the Gainesville Sun on June 1, 2005. The Plan Board held a public hearing June 16, 2005. Planning Division staff recommended that the Plan Board approve the petition. The Plan Board recommended that the City Commission approve Petition 82TCH-05 PB. Plan Board vote 6-0.

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.

34  
 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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This Ordinance passed on first reading this \_\_\_\_ day of \_\_\_\_\_, 2005.

This Ordinance passed on second reading this \_\_\_\_ day of \_\_\_\_\_, 2005.

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*H:\Dana Crosby\Ordinances\0-05-75 (82TCH).doc*

**City of**  
**Gainesville**

**Inter-Office Communication**

**Planning Division**  
**X5022, FAX x2282, Station 11**

**To:** City Plan Board **Item No. 4**  
**Date:** June 16, 2005

**From:** Planning Division Staff

**Subject:** Petition 82TCH-05 PB. City Plan Board. City of Gainesville. Amend the City of Gainesville Land Development Code regarding violations, enforcement and penalty provisions pertaining to stormwater management regulations.

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**Recommendation**

Staff recommends approval of Petition 82TCH-05 PB.

**Explanation**

This petition proposes amendment of 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.

On July 14, 2003, in response to discovery of stormwater management issues at the Sorrento residential development, the City Commission discussed the stormwater management language as stated in the Land Development Code. The Commission then adopted a staff recommendation that the City Attorney work with the Public Works Department staff to amend subsection 30-311(a) of the Code to better enable the City's enforcement efforts in the area of stormwater management. The matter was referred to the City Attorney's office (item 030126), and was subsequently placed in abeyance pending staff completion of amendments to the surface waters and wetlands regulations, including amendments to enforcement provisions, which passed the Commission on April 12, 2004.

Public Works Department staff, Community Development Department staff, and the City Attorney's office have drafted proposed amendments to the current stormwater management ordinance (subsection 30-311(a) of the Land Development Code) 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



City Plan Board  
Petition 82TCH-05 PB  
June 16, 2005

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 this item (no. 030126) from the City Attorney's referral list, and approved the draft amendment to the stormwater regulations to the Plan Board for consideration as a petition.

The proposed amendments to the violations, enforcement and penalty provisions pertaining to stormwater management (subsection 30-311 (a)) are attached.

Respectfully submitted,



Ralph Hilliard  
Planning Manager

DM

Attachment

**Proposed revisions to Subsection (a), section 30-311 of the Land Development Code:**

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

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

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

(2) During construction, if the public works department City Manager or designee observes that the stormwater facilities are not functioning properly, in addition to other remedies provided for in this section, no certificate of occupancy shall be issued until such time as the facilities are corrected and are functioning properly.

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

(4) Discharge from any facility that causes a deposit, obstruction, damage or process problem to any of the City's stormwater management facilities or to the surface waters of the state is a violation of this article and the property owner shall cause the deposit or obstruction to be promptly removed or cause the damage or process problem to be promptly repaired.

~~(5)~~(4) — Any temporary or permanent erosion or sedimentation control device that is unable to perform continuous effective control shall be a be in violation of this article and the property owner shall immediately correct the control device so that it performs continuous effective control. Such correction or repair shall be taken at the owner's expense.

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

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

~~(6)~~(a) If the City Manager or designee finds a violation of this article or a violation of any provision of a property owner's pollution prevention plan, which has been provided to the City, is not immediately rectified, The property owner shall be mailed written confirmation that a violation has occurred within five days of any inspection. Notification of violation shall include the time and place of the inspection, the name of the inspecting officer, and a description of the conditions that are in violation. the City Manager or designee shall notify the property owner of the violation within five days of inspection and shall give the property owner a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the City Manager or designee shall issue a notice of violation to the alleged violator and shall notify the Code Enforcement Board to request a hearing. The Board, through its clerical staff, shall schedule a hearing, and written notice of such hearing shall be hand delivered or mailed to

the property owner as provided in section 2-390 of the Code of Ordinances. In the case of notice provided under section 2-390(a), notice shall be given at least seven days in advance of the hearing, not counting the day of the hearing. If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the inspector, the case may be presented to the board even if the violation has been corrected prior to the board hearing. The property owner shall be given ten days to arrange a schedule acceptable to the public works director to abate the violation or file an appeal for additional time to abate the violation with the code enforcement board.

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

(b)2. If the City Manager or designee issues a cease and desist order pursuant to this Code, the property owner shall immediately cease all work on the site until the violation is corrected or mitigated. The property owner shall have the right to appeal the administrative decision of the City Manager or designee to issue a cease and desist order to the Board of Adjustment and shall show cause why the cease and desist order should be lifted.

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

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

(9) In the event of failure to comply with any requirement of this section or in the event a violation of this section is occurring in the absence of a City-issued permit, the City Manager may request the city attorney's office seek injunctive relief in a court of equitable jurisdiction so that the property owner will cease any and all activity on the site.

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

4. **Petition 82TCH-05 PB** City of Gainesville. Amend the City of Gainesville Land Development Code regarding violations, enforcement and penalty provisions pertaining to stormwater management regulations.

Mr. Dean Mimms was recognized. Mr. Mimms indicated that the petition was in response to stormwater issues at the Sorrento residential development. He explained that Planning staff worked with the Public Works Department and Law Department staff to amend the Code to better enable enforcement of its provisions. He indicated that the provisions of the ordinance were similar to those in the surface waters and wetland ordinance regarding violations and provided for increasing corrective measures. Mr. Mimms offered to answer any questions from the board.

Mr. Polshek noted that Section 30-311(4), required prompt action on a violation whereas the other sections called for immediate action. He further noted that it did not state that it was to be at the owner's expense, as did the other sections. He suggested that the text be changed to make it consistent with the other changes to the ordinance.

Mr. Mimms agreed with the proposed change.

Mr. Gold requested clarification on conjunctive relief in corrective measures.

Mr. Mimms stated that conjunctive relief would be a court order.

Mr. Gold asked what the penalties would be if a developer violated the ordinance.

Mr. Mimms explained that the penalties were provided under the Code and State Statute, and implemented by the Code Enforcement Board.

Mr. Cohen asked if the modifications were precipitated by a specific event.

Mr. Mimms explained that there were some stormwater issues with the Sorrento development.

There was no public comment on the petition.

<u>Motion By:</u> Mr. Gold	<u>Seconded By:</u> Mr. Rwebyogo
<u>Moved to:</u> Approve Petition 82TCH-05 PB, changing the word "promptly" to immediately in Section 30-311(4).	<u>Upon Vote:</u> Motion Carried 6 – 0 Ayes: Cohen, Gold, Rwebyogo, Reiskind, Tecler, Cole

**0001****LEGLAS****ADVERTISEMENT  
NOTICE OF PROPOSED  
ENACTMENT OF  
ORDINANCE****BY CITY COMMISSION,  
GAINESVILLE, FLORIDA**

Notice is hereby given that the proposed ordinances, whose titles appear below will be considered for First Reading on the 22nd day of August, 2005, at the City Commission meeting and if then adopted on First Reading will be considered for Second and Final Reading and adoption on the 12th day of September, 2005, at the City Commission meeting. The meetings begin at 6:00p.m. and the ordinances will be read as soon thereafter as may be heard. The meetings are held in the City Commission Auditorium, on the First Floor of City Hall, 200 East University Avenue, Gainesville, Florida. A copy of said ordinance may be inspected by any member of the public at the office of the Clerk of the Commission on the First Floor of City Hall during regular business hours located at 200 East University Avenue, Gainesville, Florida, and at the Public Library, Main Branch, located at 401 East University Avenue. On the dates mentioned above all interested parties may appear at the meeting and be heard with respect to the proposed ordinances. Persons with disabilities, who require assistance to participate in the meetings, are requested to notify the Equal Opportunity Office at 334-5051 or call the TDD phone line at least 2 business days in advance.

**ORDINANCE TITLE****ORDINANCE NO. 031014**

An ordinance of the City of Gainesville, Florida, amending the City of Gainesville Land Development Code, Chapter 30; creating a new section 30-207, entitled Special Environmental Concern Area; establishing overlay district regulations for a Special Environmental Concern Area; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

**ORDINANCE NO. 050076**

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.

**Note:** " All persons are advised that, if any person decides to appeal any decision made at any of these meetings, they will need a record of the proceedings and, for such purpose, they need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based."

August 12, 2005  
Publish Date

Kurt M. Lannon  
Clerk of the Commission

28861, 8/12/05  
#A000046885