



MEMORANDUM

Office of the City Attorney

Legistar 030126

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TO: Mayor and City Commission

DATE: May 9, 2005
CONSENT

FROM: City Attorney

SUBJECT: Stormwater Regulations

Recommendation: The City Commission (1) refer the draft amendment to the stormwater regulations, Chapter 30, City of Gainesville Land Development Code, to the Plan Board for consideration as a petition and, (2) remove this item from the City Attorney's referral list.

On July 14, 2003, in response to the discovery of stormwater management issues at the Sorrento development, the City Commission discussed the stormwater management language as stated in the Land Development Code. Following the discussion, the Commission 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). Following the referral, the matter was placed in abeyance pending staff completion of amendments to the wetlands regulations, including amendments to subsection 30-311(b) of the Land Development Code, relevant to surface waters and wetlands enforcement. (The wetlands regulations 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 greater options for enforcement by the City. Much like the current wetland enforcement regulations, the proposed enforcement options would provide for increasing corrective measures that could be taken by the City Manager or designee depending on the severity and imminence of the violation. Corrective measures could any 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; or seeking injunctive relief.

This proposed amendment to the Land Development Code would next be filed as a petition to the Plan Board.

Prepared by: Dana Crosby
Dana Crosby, Assistant City Attorney

Approved and
Submitted by: Marion Radson
Marion Radson, City Attorney

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

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 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,

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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 or NPDES, 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.

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