AN ORDINANCE TO AMEND THE BESSEMER CITY LAND DEVELOPMENT CODE (LDC) AND CODE OF ORDINANCES (COO) ESTABLISHING STORMWATER AUTHORITY

WHEREAS, the City of Bessemer City has operated a Municipal Separate Storm Sewer System (MS4) under National Pollutant Discharge Elimination System (NPDES) Permit Number NCS000412 since 2005; and

WHEREAS, the City of Bessemer City received a Notice of Violation of the terms of its NPDES MS4 Permit from the North Carolina Department of Environmental Quality on 13 April 2026, and;

WHEREAS, the City of Bessemer City adopted a RESOLUTION SUPPORTING IMPLEMENTATION OF A COMPLIANT NPDES MS4 STORMWATER PROGRAM on the 11th of May 2026; and

WHEREAS, the City of Bessemer City recognizes the need for a comprehensive update to its Code of Ordinances (COO), Land Development Code (LDC), and Stormwater Management Plan (SWMP) to establish the foundation of a fully compliant NPDES MS4 Stormwater Program

NOW, THEREFORE, BE IT RESOLVED that the City Council of Bessemer City hereby adopts the attached revisions of and additions to the Bessemer City Code of Ordinances (COO), and the Bessemer City Land Development Code (LDC) as set forth in Exhibits A through F attached hereto and incorporated herein by reference.

Exhibit A: LDC Section 5.3: Erosion and Sedimentation Control
Exhibit B: LDC Section 5.4: Stormwater Management
Exhibit C: LDC Section 5.5: Post-Construction SCM Standards
Exhibit D: COO Chapter 57 (Sections 57.01–57.10): Stormwater Utility
Exhibit E: COO Chapter 152, Article II (Sections 152.20–152.29): Illicit Discharge Detection and Elimination
Exhibit F: COO Chapter 152, Article V (Sections 152.70–152.79): Post-Construction Stormwater Control Measure Enforcement

Adopted this the 13th day of July, 2026

_____	_____
Becky S. Smith, Mayor	Hydeia Hayes, City Clerk

EXHIBIT A

5.3 EROSION AND SEDIMENTATION CONTROL

For the purpose of regulating certain land-disturbing activities, the provisions of the Gaston County Soil and Erosion Control Code found in Chapter 4, Article III of the Gaston County Unified Development Ordinance shall be administered and enforced by Gaston County.

5.3.1 Purpose and NPDES Compliance

The erosion and sedimentation control program of Bessemer City is administered in compliance with the City's NPDES Phase II Municipal Separate Storm Sewer System (MS4) Permit No. NCS000412, issued by the North Carolina Department of Environmental Quality (NCDEQ). Nothing in this section shall be construed to relieve any applicant, owner, or operator of the obligation to comply with all applicable requirements of Permit No. NCS000412 and any successor permit.

5.3.2 Delegation to Gaston County

Pursuant to Article 20 of Chapter 160A and Article 6 of Chapter 153A of the North Carolina General Statutes, the City of Bessemer City has entered into an Interlocal Agreement for Enforcement Services of the Gaston County Soil Erosion and Sedimentation Control Ordinance with Gaston County, executed May 12, 2025, and automatically renewing annually unless terminated as provided therein. Under that agreement, the Gaston County Department of Natural Resources provides plan review, permitting, inspection, and enforcement of the Gaston County Soil Erosion and Sedimentation Control Ordinance within the corporate limits of Bessemer City.

5.3.3 Applicability of County Ordinance

The provisions of the Gaston County Soil Erosion and Sedimentation Control Ordinance, as it now exists or may be amended from time to time, apply within the corporate limits of Bessemer City as provided in the Interlocal Agreement referenced in 5.3.2. The County Fee Schedule for erosion and sedimentation control items is adopted by reference.

5.3.4 Municipal Responsibilities Retained

Notwithstanding the delegation set forth in 5.3.2, the City of Bessemer City retains responsibility for the following:

(a) Preliminary submittal review to ensure compliance with Municipal ordinances and land development standards prior to submission of plans to Gaston County;

(b) Enforcement of any erosion control measures required as conditions of conditional rezoning or other Municipal ordinances that fall outside the scope of the Gaston County Soil Erosion and Sedimentation Control Ordinance; and

(c) All remaining NPDES MS4 Permit No. NCS000412 obligations not delegated to Gaston County under the Interlocal Agreement referenced in 5.3.2.

EXHIBIT B

BESSEMER CITY, NORTH CAROLINA

LAND DEVELOPMENT CODE — CHAPTER 5

SECTION 5.4 — STORMWATER MANAGEMENT

5.4 STORMWATER MANAGEMENT

5.4.A Authority

The City Council is authorized, pursuant to G.S. 160D-925, to appoint an Administrator to develop, administer, and enforce stormwater control regulations authorized by this Code. Further, the City may enter into a contract with Gaston County to serve as a member of its staff for purposes of exercising duties related to stormwater administration. The Planning, Zoning, and Stormwater Board, as established in Chapter 6 of this Code, shall serve as the review and advisory body for stormwater management matters as provided herein and in the City's Stormwater Management Plan (SWMP).

5.4.B NPDES MS4 Permit Compliance

The City of Bessemer City operates and maintains a Municipal Separate Storm Sewer System (MS4) under NPDES Permit No. NCS000412, issued by the North Carolina Department of Environmental Quality (NCDEQ). All stormwater management activities within the City's jurisdiction shall be administered in compliance with Permit No. NCS000412 and any successor permit. Nothing in this section shall be construed to relieve any applicant, developer, owner, operator, or contractor of the obligation to comply with all applicable requirements of Permit No. NCS000412.

5.4.C Administration by Article

Stormwater management within the City of Bessemer City is administered through the following regulatory framework:

5.4.C.1 Illicit Discharge Detection and Elimination (IDDE)

Illicit discharge detection and elimination is governed by COO Chapter 152, Article II (Sections 152.20–152.29). The prohibitions and enforcement provisions of Article II apply to all persons within the corporate limits of Bessemer City, including developers, contractors, and property owners, without regard to the size or nature of any development activity.

5.4.C.2 Stormwater Utility

The Bessemer City Stormwater Utility is established and governed by COO Chapter 57 (Sections 57.01–57.10). All developed land within the corporate limits is subject to stormwater service charges as provided therein. The Equivalent Residential Unit (ERU) is established at 3,286 square feet of impervious surface per the Bessemer City Stormwater Program Rate Study prepared by Withers Ravenel.

5.4.C.3 Post-Construction Stormwater Runoff Management

Requirements for the management of post-development stormwater runoff, including stormwater control measure (SCM) standards, operation and maintenance agreements, maintenance easements, annual inspection requirements, homeowners' association requirements, performance security, and long-term enforcement, are established in LDC Section 5.5. Enforcement authority for post-construction SCM violations is established in COO Chapter 152, Article V (Sections 152.70–152.79), which is incorporated herein by reference.

5.4.D Delegation to Gaston County — Post-Construction Review

Pursuant to Article 20 of Chapter 160A and Article 6 of Chapter 153A of the North Carolina General Statutes, the City of Bessemer City has entered into an Interlocal Agreement for Enforcement Services of the Gaston County Stormwater Ordinance with Gaston County, executed May 12, 2025, and automatically renewing annually unless terminated as provided therein. Under that agreement, the Gaston County Department of Natural Resources provides plan review, permitting, and construction-phase inspection for the post-construction portion of the Gaston County Stormwater Ordinance within the corporate limits of Bessemer City.

5.4.E Municipal Responsibilities Retained

Notwithstanding the delegation set forth in 5.4.D, the City of Bessemer City retains responsibility for the following:

(a) All NPDES MS4 Permit No. NCS000412 program elements not expressly delegated to Gaston County under the Interlocal Agreement referenced in 5.4.D, including but not limited to: Public Education and Outreach; Public Involvement and Participation; Illicit Discharge Detection and Elimination; Good Housekeeping and Pollution Prevention; and applicable Total Maximum Daily Load (TMDL) requirements;

(b) Long-term post-construction SCM maintenance enforcement after Gaston County conveys final SCM documentation to the City pursuant to the Interlocal Agreement, as governed by LDC Section 5.5 and COO Chapter 152, Article V;

(c) Withholding of applicable permits, zoning approvals, and final plat approvals until notified of compliance with the Gaston County Stormwater Ordinance by the County;

(d) Obtaining and holding performance surety bonds on all proposed Stormwater Control Measures until final SCM documentation has been received by the County and conveyed to the City; and

(e) Enforcement of any SCM requirements imposed as conditions of conditional rezoning or other Municipal ordinances that fall outside the scope of the Gaston County Stormwater Ordinance.

5.4.F Stormwater Management Plan

The City shall maintain a Stormwater Management Plan (SWMP) as required by NPDES Permit No. NCS000412. The Planning, Zoning, and Stormwater Board shall review and recommend updates to the SWMP to City Council as provided in Chapter 6 of this Code. The SWMP is a separate document maintained by the Administrator and is incorporated herein by reference.

EXHIBIT C

BESSEMER CITY, NORTH CAROLINA

LAND DEVELOPMENT CODE — CHAPTER 5

SECTION 5.5 — POST-CONSTRUCTION STORMWATER RUNOFF MANAGEMENT

5.5.A DEFINITIONS

For the purposes of this section, unless otherwise specifically provided or unless otherwise clearly required by the context, the words and phrases defined below shall have the meaning indicated when used in this section.

Administrator means the person designated by the City Manager to administer and enforce the provisions of this section, or that person's duly authorized representative(s). For purposes of this section, the Administrator is the Stormwater Administrator of the City of Bessemer City.

Best Management Practice (BMP) means a structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

Development means any land disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the soil.

High-density project means any project that exceeds the low-density threshold as defined herein.

Impervious surface means a surface which, because of its composition or compacted nature, impedes or prevents natural infiltration of water into the soil, including, but not limited to, roofs, solid decks, driveways, patios, sidewalks, parking areas, tennis courts, concrete or asphalt streets, or compacted gravel surfaces. Wooden slatted decks and the water area of swimming pools are considered pervious.

Low-density project means a project that has no more than twenty-four percent (24%) built-upon area for projects that drain to a non-impaired stream, or no more than twelve percent (12%) built-upon area for projects that drain to an impaired stream.

Operation and Maintenance Agreement (O&M Agreement) means a recorded legal instrument executed pursuant to 5.5.I that is binding on all subsequent owners of property served by a post-construction SCM and that establishes the terms, standards, conditions, and schedule for proper maintenance of the SCM.

Redevelopment means any rebuilding activity unless that rebuilding activity: (1) results in no net increase in built-upon area, and (2) provides equal or greater stormwater control than the previous development.

Stormwater control measure (SCM) means a permanent structural device designed and constructed to store, infiltrate, evapotranspirate, and/or treat stormwater runoff. SCMs include, but are not limited to, wet ponds, bioretention cells, permeable pavement, sand filters, stormwater wetlands, and level spreaders.

Stormwater management system means any combination of SCMs, conveyances, or other structural and nonstructural practices designed to control stormwater runoff quantity and quality.

5.5.B GENERAL PROVISIONS

5.5.B.1 Authority

This section is adopted pursuant to North Carolina law, including but not limited to: Article 14, Section 5 of the Constitution of North Carolina; G.S. 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; G.S. 160D-925; Chapter 160A, §§ 174, 185; Chapter 113A, Article 4; Chapter 160A, Article 19; and the City's NPDES MS4 Permit No. NCS000412.

5.5.B.2 Purpose

The purpose of this section is to protect, maintain, and enhance the public health, safety, environment, and general welfare by establishing minimum requirements and procedures to control the possible effects of increased post-development stormwater runoff and nonpoint and point source pollution associated with new development and redevelopment.

5.5.B.3 Applicability

This section shall be applicable to all development and redevelopment within the corporate limits of Bessemer City, including but not limited to site plan applications, subdivision applications, and grading applications, unless exempt pursuant to 5.5.B.4. No development for which a permit is required pursuant to this section shall occur except in compliance with the provisions, conditions, and limitations of the permit.

5.5.B.4 Exemptions

The following activities shall be exempt from the requirements of this section:

(a) Low-density projects as defined in 5.5.A, provided that stormwater runoff from the development is transported by vegetated conveyances to the maximum extent practicable, and an enforceable restriction on property usage running with the land, such as a recorded deed restriction or protective covenant, ensures that future development maintains the site consistent with the approved project plans. Low-density projects are exempt from the SCM requirements of this section but remain subject to the annual verification requirement of 5.5.K.3.

(b) Activities that are exempt from permit requirements of Section 404 of the Federal Clean Water Act, as specified in 40 CFR 232 (primarily, ongoing farming and forestry activities).

5.5.B.5 Interpretation

The Administrator has authority to determine the interpretation of this section. Any person may request an interpretation by submitting a written request to the Administrator, who shall respond in writing within thirty (30) days. The Administrator shall keep on file a record of all written interpretations of this section.

5.5.B.6 Design Manual

The Administrator shall use the policy, criteria, and information, including technical specifications and standards, in the NCDEQ Stormwater Design Manual as the basis for decisions about stormwater permits and about the design, implementation, and performance of structural and nonstructural SCMs. SCMs that are designed, constructed, and maintained in accordance with the NCDEQ Stormwater Design Manual will be presumed to meet the minimum water quality performance standards required by 15A NCAC 02H .1017.

5.5.B.7 Relationship to Other Laws

This section is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this section are in addition to the requirements of any other applicable ordinance, rule, regulation, or other provision of law. Where any provision of this section imposes restrictions different from those imposed by any other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare shall control.

5.5.C APPEALS BOARD

The Bessemer City Planning, Zoning, and Stormwater Board of Adjustment and Environmental Review, as established by ordinance of the City of Bessemer City Council and defined in Chapter 6 of this Code, shall serve as the appeals body for all appeals arising under this section. The Board shall be empowered to hear and make findings on appeals to the actions of the Administrator relative to this section, consistent with the procedures established in COO Section 152.78.

5.5.D STORMWATER ADMINISTRATOR

A Stormwater Administrator shall be designated by the City Manager to administer and enforce this section. In addition to the powers and duties that may be conferred by other provisions of

the Bessemer City Code of Ordinances and other applicable laws, the Administrator shall have the following powers and duties:

(a) To review and approve, approve with conditions, or disapprove applications for stormwater permits pursuant to this section;

(b) To make determinations and render interpretations of this section;

(c) To establish application requirements and schedules for submittal and review of applications and appeals;

(d) To enforce the provisions of this section in accordance with the enforcement provisions set forth herein and in COO Chapter 152, Article V (Sections 152.70–152.79);

(e) To maintain records, maps, and official materials related to the adoption, amendment, enforcement, or administration of this section;

(f) To provide expertise and technical assistance to the City Council and the Board of Adjustment and Environmental Review upon request; and

(g) To take any other action necessary to administer the provisions of this section.

5.5.E APPLICATIONS AND PERMITS

5.5.E.1 Permit Required

A stormwater permit is required for all development to which this section applies unless exempt pursuant to 5.5.B.4. A permit may only be issued subsequent to a properly submitted and reviewed permit application. A stormwater permit shall govern the design, installation, and construction of stormwater management and control practices on the site, including SCMs and/or other elements of site design for stormwater management.

5.5.E.2 Application Submittal

All applications for permits required pursuant to this section shall be submitted to the Administrator by the landowner or the landowner's duly authorized agent, along with the appropriate fee as established by the City's fee schedule. The stormwater management permit application shall detail how post-development stormwater runoff will be controlled and managed and how the proposed project will meet the requirements of this section. All plans shall be prepared by a qualified registered North Carolina professional engineer, surveyor, soil scientist, or landscape architect.

5.5.E.3 Review and Decision

The Administrator shall review the application and determine whether it complies with the standards of this section. If the application complies, the Administrator shall approve the application and issue the stormwater permit, with conditions as needed to ensure compliance.

If the application fails to comply, the Administrator shall notify the applicant and indicate how the application fails to comply. A revised application shall be reviewed after resubmittal. If a revised application is not resubmitted within sixty (60) calendar days from the date of notification, the application shall be considered withdrawn.

5.5.E.4 Permit Expiration

An approved plan and permit shall become null and void if the applicant has failed to make substantial progress on the site within one year after the date of approval. The Administrator may grant a single one-year extension for good cause shown upon receiving a written request before the expiration of the approved plan.

5.5.F PRE-APPLICATION CONCEPT PLAN AND CONSULTATION MEETING

At any time before a completed stormwater management permit application is submitted, the Administrator or developer may request a consultation on a concept plan for the post-construction stormwater management system to be utilized, as well as to discuss constraints, opportunities, and potential approaches to stormwater management designs before formal site design engineering is commenced. The concept plan should include:

(a) Existing conditions and proposed site layout sketch plans, illustrating at a minimum: existing and proposed topography; perennial and intermittent streams and wetlands; boundaries of existing predominant vegetation and proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas, and other impervious surfaces;

(b) A natural resources inventory, including soil conditions, forest cover, geologic features, and native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers, and other setbacks; and

(c) A written or graphic concept plan of the proposed post-development stormwater management system, including preliminary selection and location of proposed SCMs; low impact design elements; location of existing and proposed conveyance systems; flow paths; location of floodplain limits; and relationship of the site to upstream and downstream properties and drainages.

5.5.G AS-BUILT PLANS AND FINAL APPROVAL

Upon completion of a project, the applicant shall certify that the completed project is in accordance with the approved stormwater management plans and designs, and shall submit actual as-built plans for all stormwater management facilities or practices. The plans shall show the final design specifications for all SCMs 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. A final inspection and approval by the Administrator shall occur before the release of any performance securities. No certificate of compliance or occupancy shall be issued by the City without final as-built plans and a final inspection and approval by the Administrator.

5.5.H STANDARDS

5.5.H.1 General Standards

All development to which this section applies shall be at a minimum thirty (30) feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geological Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233(3)(a) or similar site-specific determination made using division-approved methodology.

5.5.H.2 Low-Density Projects

Low-density projects shall comply with each of the following standards:

(a) Stormwater runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable.

(b) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenant, to ensure that future development maintains the site consistent with the approved project plans.

5.5.H.3 High-Density Projects

High-density projects shall implement SCMs that comply with the following standards:

(a) Water quality standard. The SCMs shall control and treat the difference in stormwater runoff volume leaving the project site between the pre-development and post-development conditions for, at a minimum, the first inch of rain.

(b) Treatment volume drawdown time shall be a minimum of 48 hours, but not more than 96 hours.

(c) All structural stormwater treatment systems shall be designed to have a minimum of 85 percent average annual removal for total suspended solids (TSS) from the treatment volume. Any system designed in compliance with the NCDEQ Stormwater Design Manual shall be considered to have the TSS removal efficiency indicated in that manual.

(d) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as recorded deed restrictions or protective covenants, to ensure that future development maintains the site consistent with the approved project plans.

(e) High-density projects shall control peak runoff for the twenty-five-year and two-year storms.

5.5.H.4 SCM Design Standards

SCMs that are designed, constructed, and maintained in accordance with the criteria and specifications in the NCDEQ Stormwater Design Manual will be presumed to meet the minimum water quality and quantity performance standards of this section. Whenever an applicant proposes to utilize practices not contained in the NCDEQ Stormwater Design Manual, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this section.

5.5.H.5 SCMs in Floodplains

The implementation of an SCM in a floodplain shall require: (1) prior approval from both the Administrator and the Gaston County Floodplain Administrator; (2) design by a North Carolina Board-licensed Professional Engineer; (3) compliance with floodplain no-rise restrictions per LDC Section 5.1; (4) control of peak runoff for the 100-year and two-year storms; and (5) establishment of the seasonal high water table (SHWT) by a North Carolina licensed soil scientist to assure that the impounding and water quality components of the SCM are accurately accounted for.

5.5.H.6 Variances

Any person may petition the City for a variance through the Board of Adjustment and Environmental Review, granting permission to use the person's land in a manner otherwise prohibited by this section. The City may impose reasonable and appropriate conditions upon any variance it grants. To qualify for a variance, the petitioner must show all of the following:

(a) Unnecessary hardships would result from strict application of this section;

(b) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property;

(c) The hardships did not result from actions taken by the petitioner; and

(d) The requested variance is consistent with the spirit, purpose, and intent of this section; will secure public safety and welfare; and will preserve substantial justice.

5.5.I OPERATION AND MAINTENANCE AGREEMENT

5.5.I.1 General Requirement

Prior to the conveyance or transfer of any portion of a development or redevelopment, and prior to the issuance of any permit or certificate of occupancy for any lot, building site, development, or redevelopment requiring or to be served by a stormwater management system and/or an SCM pursuant to this section, the applicant and/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 stormwater management system and/or SCM. The O&M Agreement shall:

(a) Require the owner or owners to construct, maintain, repair, and if necessary reconstruct the stormwater management system and/or SCM;

(b) State the terms, standards, conditions, and schedule for proper maintenance of the stormwater management system and/or SCM, including methods of controlling non-native and invasive species, and controlling improper uses, dumping, and illicit activities;

(c) Require the owners of the site to grant to the City a perpetual easement and right of entry in the event that the Administrator has reason to believe it has become necessary to inspect or monitor the stormwater management system and/or SCM pursuant to the terms of this section, and to perform necessary maintenance, repair, or reconstruction of the stormwater management system and/or SCM, at the owner's cost, should the owner fail to perform such tasks required by the O&M Agreement or this section; and

(d) Be approved by the Administrator prior to plan approval, referenced on the final plat, and recorded by the applicant and/or owners in the real property records in the Gaston County Register of Deeds, stating that it is applicable to and runs with all of the land served by the stormwater management system and/or SCM.

The applicant and/or owners shall deliver a copy of the recorded O&M Agreement to the Administrator within fourteen (14) days of its recordation. In no case shall the perpetual easement and right of entry, of itself, confer an obligation on the City to assume responsibility for the stormwater management system and/or SCM, their maintenance, repair, or reconstruction. In the event the City undertakes any inspection, monitoring, maintenance, repair, or reconstruction upon failure of the owner to do so, the City shall bill the owner for all costs incurred. Any and all such costs shall constitute a lien upon all of the property served by the stormwater management system and/or SCM, which may be perfected by filing a claim of lien with the Clerk of Superior Court and collected in the same manner as any other lien on real property.

5.5.I.2 Special Requirements for Homeowners' and Other Associations

For all SCMs required pursuant to this section that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the establishment of

such an association is required as a condition of development approval. The required O&M Agreement for association-maintained SCMs shall include all of the following provisions:

(a) Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities;

(b) Establishment of an escrow account which can be spent solely for operation and maintenance activities required by the O&M Agreement and this section, including sediment removal, structural, biological, or vegetative replacement, 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 provided the City shall first consent to the expenditure;

(c) A statement granting to the City a right of entry to inspect and monitor SCMs;

(d) 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;

(e) 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; and

(f) A provision indemnifying and holding harmless the City for any costs and injuries arising from or related to the SCM.

5.5.J MAINTENANCE EASEMENT

Every SCM installed pursuant to this section shall be made accessible for adequate maintenance and repair by a recorded maintenance easement. The easement shall be recorded in the Gaston County Register of Deeds and its terms shall specify who may make use of the easement and for what purposes. The maintenance easement is a condition of all development approvals under this section and shall be executed and recorded prior to or concurrent with the O&M Agreement required by 5.5.I.

5.5.K ANNUAL INSPECTION REQUIREMENTS

5.5.K.1 Owner-Submitted Inspection Report

Annually, not more than thirty (30) days before the anniversary of the O&M Agreement required by 5.5.I, the owner and/or the person responsible for maintenance of any SCM installed pursuant to this section shall submit to the Administrator an inspection report from a person licensed or otherwise qualified to provide such a report. Qualified inspectors include engineers, surveyors, or landscape architects licensed in the State of North Carolina, or persons

certified by the North Carolina State University Biological and Agricultural Engineering Department. The inspection report shall contain:

(a) The name and address of the landowner;

(b) The name and address of the person(s) responsible for maintenance if different from the owner;

(c) The City site plan number for the site of each SCM;

(d) A statement that an inspection was made of all SCMs;

(e) The date the inspection was made;

(f) A statement that all inspected SCMs are performing properly and are in compliance with the terms and conditions of the approved O&M Agreement required by this section; and

(g) The original signature and seal of the engineer, surveyor, landscape architect, or certified inspector.

All inspection reports shall be on forms supplied by the Administrator.

5.5.K.2 City Inspection Program

Inspection programs by the City may be conducted or established on any reasonable basis, including but not limited to routine inspections, random inspections, and inspections based upon complaints or other notice of possible violations. Inspections may include reviewing maintenance and repair records and evaluating the condition of SCMs. If the owner or occupant of any property refuses to permit such inspection, the Administrator shall proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2 or its successor. No person shall obstruct, hamper, or interfere with the Administrator while carrying out official duties.

5.5.K.3 Low-Density Project Verification

Annually, not more than thirty (30) days before the anniversary of the deed restriction or protective covenant required by 5.5.H.2(b), the owner of any low-density project approved pursuant to this section shall submit to the Administrator a written verification that:

(a) The total built-upon area of the site has not exceeded the low-density threshold established in 5.5.A;

(b) All stormwater conveyances on the site remain vegetated to the maximum extent practicable and are free of conditions that would prevent them from functioning as designed; and

(c) The deed restriction or protective covenant required by 5.5.H.2(b) remains in full force and effect and has not been altered, vacated, or otherwise compromised.

The verification shall be submitted on a form supplied by the Administrator, shall include the name and address of the owner, the City site plan number for the site, and the date of inspection, and shall bear the original signature of the owner or the owner's duly authorized

agent. Failure to submit the required annual verification shall constitute a violation of this section subject to enforcement under 5.5.Q.

5.5.L PERFORMANCE SECURITY FOR INSTALLATION AND MAINTENANCE

5.5.L.1 Authority to Require

The City may, at its discretion, require the submittal of a performance security or bond with surety, cash escrow, letter of credit, or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the SCMs are installed by the permit holder and subsequently maintained as required by the approved stormwater management plan.

5.5.L.2 Amount

(a) Installation. The amount of an installation performance security shall be the total estimated construction cost of the SCMs approved under the permit, plus twenty-five percent (25%).

(b) Maintenance. The amount of a maintenance performance security shall be the present value of an annuity of perpetual duration based on a reasonable estimate of the annual cost of inspection, operation, and maintenance of the SCMs approved under the permit, at a discount rate that reflects the City's cost of borrowing minus a reasonable estimate of long-term inflation.

5.5.L.3 Use of Security

Upon default of the owner to construct, maintain, repair, and if necessary reconstruct any SCM in accordance with the applicable permit or O&M Agreement, the Administrator shall obtain and use all or any portion of the security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the owner to comply with the permit or O&M Agreement.

5.5.L.4 Release of Installation Security

Within sixty (60) days of final approval, the installation performance security shall be refunded to the applicant or terminated, with the exception of any amount attributable to the cost (plus 25%) of landscaping installation.

5.5.M DEED RECORDATION AND INDICATIONS ON PLAT

The applicable O&M Agreement pertaining to every SCM shall be referenced on the final plat and shall be recorded with the Gaston County Register of Deeds upon final plat approval. If no

subdivision plat is recorded for the site, then the O&M Agreement shall be recorded with the Gaston County Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.

5.5.N RECORDS OF INSTALLATION AND MAINTENANCE ACTIVITIES

The owner of each SCM shall keep records of inspections, maintenance, and repairs for at least five (5) years from the date of creation of the record and shall submit the same upon reasonable request to the Administrator.

5.5.O ON-SITE WASTEWATER

New and replaced on-site systems for domestic wastewater installed after the effective date of this section shall comply with all rules, regulations, and design and operation criteria indicated by the Gaston County Health Department. Any violation of those standards shall also be a violation of any stormwater permit or O&M Agreement with the City.

5.5.P NUISANCE

The owner of each SCM shall maintain it so as not to create or result in a nuisance condition. A nuisance condition includes, but is not limited to, the introduction or growth of non-native and invasive species of plants, as well as an environment which encourages pestilent life including, but not limited to, insects, vermin, dangerous animals, and noxious weeds.

5.5.Q ENFORCEMENT

5.5.Q.1 Violations

Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by this section, or the terms or conditions of any permit, O&M Agreement, or other development approval or authorization granted pursuant to this section, is unlawful and shall constitute a violation. Each day that a violation continues shall constitute a separate and distinct offense.

5.5.Q.2 Responsible Parties

Responsible parties for violations of this section shall include but not be limited to:

(a) An architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that

constitutes a violation of this section, or fails to take appropriate action so that a violation results or persists; and

(b) The owner of the land on which the violation occurs, any tenant or occupant of the property, any person, entity, agency, or association who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person who has control over or responsibility for the use or development of the property.

5.5.Q.3 Enforcement Authority

Violations of this section are subject to enforcement under COO Chapter 152, Article V (Sections 152.70–152.79), which establishes the City's authority to issue Notices of Violation, assess civil penalties, issue stop work orders, seek injunctive relief, and abate violations at the owner's expense. The remedies provided in COO Chapter 152, Article V are cumulative and may be exercised in any order.

5.5.Q.4 Withholding of Approvals

As long as a violation of this section continues and remains uncorrected, the City may deny any request for permit, certificate of occupancy, subdivision approval, or other development authorization for the land on which the violation occurs, whether under this section or any other provision of this Code.

5.5.R APPEALS

Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this section and made by the Administrator may file an appeal to the Board of Adjustment and Environmental Review within thirty (30) days of the decision, order, requirement, or determination, consistent with the procedures established in COO Section 152.78 and Chapter 6 of this Code. Every decision of the Board of Adjustment and Environmental Review shall be subject to superior court review by proceedings in the nature of certiorari. Petition for review by the superior court shall be filed with the Clerk of Gaston County Superior Court within thirty (30) days after the decision of the Board is filed.

5.5.S SEVERABILITY

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

EXHIBIT D

CITY OF BESSEMER CITY, NORTH CAROLINA
CODE OF ORDINANCES — TITLE V: PUBLIC WORKS
CHAPTER 57. STORMWATER UTILITY
Sections 57.01–57.10

Sec. 57.01. Findings.

(A) Stormwater poses a threat to the public health, safety, and welfare because it floods properties, erodes watercourses and channels, and pollutes streams and rivers.

(B) By mapping, planning, constructing, operating, cleaning, regulating, and maintaining natural and constructed stormwater management facilities, it is possible to reduce the adverse effects of stormwater and improve the quality of groundwater, streams, rivers, and lakes in and around the City.

(C) Providing a stable source of funding for the activities heretofore described can best be accomplished through the creation of a stormwater utility fund. Such a utility fund will benefit owners and occupants of developed land in the City.

(D) The amount of impervious surface on a property is the single most important factor affecting the peak rate of runoff, the total volume discharged, and pollutant loadings of stormwater that flows from property. It is most equitable to fund a stormwater utility through a system in which service charges are based on the amount of impervious surface on developed land.

(E) The Water Quality Act adopted by the U.S. Congress in 1987 directed the Environmental Protection Agency to establish regulations requiring any city with a population of less than 100,000 (Phase II cities) to obtain a National Pollutant Discharge Elimination System (NPDES) permit in order to discharge stormwater from their municipal storm sewer systems into the nation's waters. See WQA § 405, Pub.L. No. 100-4, 101 Stat. 69 (1994)(codified at 33 U.S.C. § 1342(p)(6)). The City of Bessemer City holds NPDES MS4 Stormwater Permit No. NCS000412, issued by the North Carolina Department of Environmental Quality pursuant to the federal Phase II stormwater regulations and applicable state law. This Stormwater Utility Ordinance is adopted in furtherance of the City's obligations under that permit. The EPA's Final Rule on NPDES Phase II permits has been codified at 40 CFR Parts 9, 122, 123, and 124.

(F) When Congress enacted the NPDES permitting program, it did not provide the states with funding to support the federally required stormwater management programs. The General Assembly of North Carolina has ratified statutes which allow for the operation of stormwater management programs as a public enterprise by a municipality. See G.S. 160A-311 through 160A-312. The General Assembly has further accorded municipalities the right to fix and enforce rates and fees for the operation of a stormwater management program. G.S. 160A-314. This Stormwater Utility Ordinance is adopted pursuant to the aforementioned grants of authority.

Sec. 57.02. Definitions.

All definitions found elsewhere in COO Chapter 152 apply in this chapter, in addition to the ones below, unless the context of the section language clearly indicates otherwise. The Stormwater Administrator is authorized to interpret and apply these definitions.

(A) City means the City of Bessemer City, North Carolina.

(B) Customer or consumer means the person or entity to which a bill for stormwater service charges is sent. This may include the owner, occupant, or tenant of property, a homeowner's association with responsibility for property or for common areas associated with property, or a person or entity who has requested in writing to be billed for stormwater service charges for a property.

(C) Developed land means property that contains impervious surface, and includes improved land without structures and land on which improvements are under construction through a valid building permit.

(D) Equivalent residential unit (ERU) means 3,286 square feet of impervious surface, which is the average amount of impervious surface on a single-family property in the City, as determined by the Bessemer City Stormwater Program Rate Study prepared by Withers Ravenel in 2022.

(E) Impervious surface means a surface which, because of its composition or compacted nature, impedes or prevents natural infiltration of water into the soil, including, but not limited to, roofs, solid decks, driveways, patios, sidewalks, parking areas, tennis courts, concrete or asphalt streets, or compacted gravel surfaces. Wooden slatted decks and the water area of swimming pools are considered pervious.

(F) Other residential and nonresidential land means any developed land not fitting the definition of a residential unit. It includes but is not limited to land upon which there are located parking lots and streets; and land containing improvements under construction or impervious surfaces that are not structures.

(G) Property owner or owner means the owner of a parcel of land as shown on the Gaston County Tax Records.

(H) Residential unit means any structure or portion of a structure that is used as an individual residence, including but not limited to a single-family house, a manufactured home, a townhome, a condominium, or an apartment, provided that such structure or portion thereof has a separate utility account for service provided thereto.

(I) Stormwater means the runoff from precipitation that travels over natural or developed surfaces to the nearest stream, other conduit, or impoundment and appears in lakes, rivers, ponds, or other bodies of water.

(J) Stormwater infrastructure services mean City activities related to the mapping, planning, review, construction, operation, cleaning, maintenance, inspection, and regulation of the stormwater system.

(K) Stormwater Administrator means the person designated by the City Manager to manage stormwater services and who is charged with certain duties and responsibilities by these sections, or that person's duly authorized representative(s).

Sec. 57.03. Creation of Stormwater Account; Activities of the Stormwater Services Program.

The City of Bessemer City shall establish a Stormwater Enterprise Fund responsible for the operation of stormwater management services. Stormwater service charges and interest generated by such charges shall be placed in a separate City account and shall be used solely for the operational costs, indirect costs, debt principal and debt service, and establishment of a reserve fund for stormwater management services. The charges collected shall not be used for general or other governmental or proprietary purposes of the City, except to pay for the equitable share of the cost of accounting, management, administration, and government thereof. Other than as described in this section, the charges shall be used for stormwater management purposes to include, but not be limited to, paying the cost of:

(A) Salaries, benefits, and operational costs of City staff responsible for administration of the stormwater management program and compliance with NPDES MS4 Permit No. NCS000412;

(B) Stormwater management planning and preparation of comprehensive watershed master plans for stormwater management;

(C) Regular inspections of public and private stormwater management facilities and measures and the construction thereof;

(D) Maintenance and repair of stormwater infrastructure owned by the City, including pipes, inlets, catch basins, ditches, swales, and other conveyance facilities within City-owned rights-of-way and easements;

(E) Capital improvements to the City's stormwater infrastructure as identified in the City's Capital Improvements Program;

(F) Pavement management activities to the extent stormwater infrastructure is incorporated therein;

(G) Plan review, inspection, permitting, and enforcement activities related to the City's stormwater program, including review of sediment control and stormwater management plans, measures, and practices;

(H) Retrofitting designed watersheds to reduce existing flooding problems or to improve water quality;

(I) Acquisition of interests in land, including easements;

(J) Design and construction of stormwater management facilities and acquisition of equipment;

(K) Water quantity and water quality management, including monitoring and surveillance;

(L) Mapping stormwater facilities;

(M) Implementation of all program elements required by NPDES MS4 Permit No. NCS000412, including public education, public involvement, illicit discharge detection and elimination, construction site runoff control, post-construction runoff management, and good housekeeping and pollution prevention; and

(N) Professional services, equipment, and other costs incidental to the foregoing.

Sec. 57.04. Stormwater Service Charges.

(A) All developed land in the City, whether public or private, shall be subject to a stormwater service charge. Exemptions shall not be allowed based on age, tax exemption, or other status of an individual or organization. The stormwater service charges shall be established by the City Council.

(B) Service charges on developed land shall be computed as follows:

(1) Residential units shall be charged at one equivalent residential unit (ERU) per month.

(2) Other residential and nonresidential land shall be charged one ERU per month for each equivalent residential unit, based upon the total impervious surface. ERUs of less than five-tenths shall be rounded down and those five-tenths or greater shall be rounded up to the nearest whole number. Any other residential or nonresidential property that contains less than five-tenths ERU of impervious surface shall be charged at one ERU.

Sec. 57.05. Billing Method; Responsible Parties.

(A) Bills for stormwater service charges shall be sent at regular, periodic intervals. Stormwater service charges may be billed on a combined utility bill.

(B) Stormwater service bills for a property that receives water, sewer, and/or electrical service may be sent to the customer receiving such service. However, where multiple water and sewer accounts exist for a single parcel, the stormwater service bill may be sent to the property owner.

(C) The property owner is ultimately responsible for payment of the stormwater service charge for property for which the party billed has not paid the service charge.

Sec. 57.06. Payment Provisions; Utility Termination.

(A) Where stormwater service charges appear on a combined utility bill, partial payment will be applied to the respective service charges in the following order: stormwater charges; water charges; sewer charges; and electric charges.

(B) Where a property receives water, sewer, and/or electrical service, if stormwater service charges for that property are not paid, water, sewer, and/or electric service to that property may be terminated, whether or not the stormwater charges were included on a combined utility bill.

(C) No property for which stormwater service charges are outstanding is entitled to receive water, sewer, and/or electric service until the outstanding stormwater service charge on that property is paid. No customer with a delinquent stormwater service account is entitled to open a water, sewer, and/or electric account at the same or different location until the delinquency has been satisfied.

(D) If property is incorrectly billed, or not billed, or a bill is sent to the wrong party, the City may backbill a property for up to a twelve-month period for unpaid charges.

Sec. 57.07. Charge Adjustment/Appeals.

(A) Any nonresidential utility customer who has paid the stormwater management utility fee and who believes that the fee is in error, or any customer who believes the provisions of these sections have been applied in error, may, subject to the limitations set forth in this section, submit an adjustment request or appeal to the Stormwater Administrator.

(B) Adjustment requests or appeals shall be made in writing and shall set forth in detail the grounds upon which the request is made. A current survey prepared by a North Carolina Professional Land Surveyor showing total property area and impervious area shall be provided by the customer if the adjustment request is based upon an alleged error in the impervious area of the property.

(C) The Stormwater Administrator shall review the adjustment request or appeal and shall either deny or grant the request in writing within sixty (60) days following receipt of the request.

(D) A rate adjustment, if granted, shall apply retroactively to the date at which the erroneous information was applied to the customer's fee but shall not exceed one year prior to the adjustment request.

(E) An appeal may be taken from any decision of the Stormwater Administrator which is adverse to the customer by giving notice of appeal to the City Manager's office within thirty (30) days after service of the Administrator's written decision on the customer. The City Manager or designee shall fix a reasonable time for the hearing of the appeal, give due notice to the customer and the Administrator, and render a decision within a reasonable time. Review of the decision of the City Manager or designee shall be by proceedings in the nature of certiorari initiated within fifteen (15) days after service of the decision upon the aggrieved party in Gaston County Superior Court.

Sec. 57.08. Exemptions.

(A) Except as provided in this section, no public or private property shall be exempt from stormwater service charges, receive a credit, or offset against such service charges. No exemption or reduction in stormwater service charges shall be granted based on age, tax or economic status, race, or religion of the customer, or other condition unrelated to the cost of providing stormwater services and facilities.

(B) The following exemptions shall be allowed:

(1) Undeveloped land shall be exempt from stormwater service charges.

(2) Public road rights-of-way which have been conveyed to and accepted for maintenance by the State or the City and are available for use in common by the general public for motor vehicle transportation shall be exempt from stormwater service charges. This exemption shall not apply to any other uses of developed land for public purposes such as, but not limited to: offices, airports, maintenance yards, water and wastewater treatment plants, water reservoirs, parking lots or garages, parks, recreation facilities, libraries, schools, or public housing. This exemption shall not apply to private roads or drives, or to internal roads, drives, and parking areas in privately owned properties.

(3) Railroad tracks shall be exempt from stormwater service charges. However, railroad stations, maintenance buildings, or other developed land used for railroad purposes shall not be exempt.

Sec. 57.09. Municipal Liability.

Nothing in this chapter and no action or failure to act under this chapter shall or may be construed to:

(A) Impose any liability on the City, or its departments, agencies, officers, or employees for the recovery of damages; or

(B) Relieve any person engaged in a land disturbing activity of duties, obligations, responsibilities, or liabilities arising from or incident to operations associated with such activity or imposed by the provisions of this chapter or the laws and regulations pursuant to which they were adopted.

Sec. 57.10. Severability.

If any section, subsection, paragraph, or clause of this chapter is held to be invalid or unenforceable, all other sections, subsections, paragraphs, and clauses nevertheless continue in full force and remain in effect. In addition, if the City's use of funds for any portion of its stormwater program is held invalid, all other funded portions of the program shall continue in full force and remain in effect.

EXHIBIT E

CITY OF BESSEMER CITY, NORTH CAROLINA
CODE OF ORDINANCES — CHAPTER 152
SECTIONS 152.13–152.19. RESERVED.

Sec. 152.13–152.19. Reserved.

Sections 152.13 through 152.19 are hereby reserved. No ordinance provisions are currently codified in this range. This reservation is intentional and shall not be construed as a drafting error or omission. When new provisions are adopted within this range, this section shall be amended accordingly.

CITY OF BESSEMER CITY, NORTH CAROLINA

CODE OF ORDINANCES — CHAPTER 152

ARTICLE II. ILLICIT DISCHARGE DETECTION AND ELIMINATION

Sections 152.20–152.29

Sec. 152.20. Statutory and General Authorization.

The State legislature has, in NCGS § 160D-925, authorized cities to adopt and enforce a stormwater control ordinance to protect water quality and control water quantity.

As a result, the City of Bessemer City ("City") implements, administers, and enforces the provisions of the Bessemer City Stormwater Pollution Control Ordinance. The Administrator of the City of Bessemer City department that is responsible for management of the City's NPDES MS4 Stormwater Permit NCS000412 is charged with the implementation, administration, and enforcement of this article. The Administrator shall determine the authorized representative(s), policies, procedures, and guidelines necessary for the effective implementation, administration, and enforcement of this article.

Sec. 152.21. Definitions.

The following words, terms and phrases, whether shown in uppercase or lowercase, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Active Construction Site means any parcel or portion thereof on which land-disturbing activity, grading, building construction, demolition, or site preparation work is underway under a valid permit or is otherwise subject to regulation under this article, regardless of the total acreage of disturbance.

Board of Adjustment and Environmental Review means the Bessemer City Planning, Zoning, and Stormwater Board/Board of Adjustment and Environmental Review as established by Ordinance of the City of Bessemer City Council, and defined in Chapter 6 of the Bessemer City Land Development Code with any amendments thereto.

Charity Vehicle Washing means vehicle washing performed to raise money to be used for purposes other than making a profit.

City means the City of Bessemer City, North Carolina.

Commercial means activity or property devoted in whole or in part to commerce, that is, the exchange and buying and selling of commodities or services.

Contractor means any person, firm, corporation, or other entity that performs construction, grading, site preparation, demolition, or other land-disturbing activity on an Active Construction Site pursuant to a contract or subcontract with the property owner or a general contractor, or otherwise in control of day-to-day site operations.

Day(s) means calendar day(s), including Saturdays, Sundays and holidays, unless otherwise specified.

Administrator means the person appointed by the City to lead the department that is responsible for management of the City's NPDES MS4 Stormwater Permit NCS000412, and who is charged with certain duties and responsibilities by this article, or that person's duly authorized representative(s).

Discharge or Discharged means the addition, release, or disposal of Non-Stormwater or any Pollutant, whether in solid, liquid, or gaseous form, either directly or indirectly to the Stormwater System or the Waters of the State.

EPA means the United States Environmental Protection Agency or other duly authorized official of the Agency, including its successors.

High PAH Pavement Product means a product, material or substance that contains greater than 0.1% (1000 ppm) PAH by weight and is intended for use on an asphalt or concrete surface. High PAH pavement product may contain coal tar, coal tar pitch volatiles, RT-12, refined tar, steam-cracked petroleum residues, heavy pyrolysis oil, steam-cracked asphalt, pyrolysis fuel oil, heavy fuel oil, ethylene tar, ethylene cracker residue, or a variation of those substances assigned the chemical abstracts service (CAS) numbers 65996-92-1, 65996-93-2, 65996-89-6, 8007-45-2, 64742-90-1, or 69013-21-4.

Illicit Connection means any physical connection, actual or potential flow Discharge, or other condition that could allow Non-Stormwater or a Pollutant to enter the Stormwater System or the Waters of the State. Examples of Illicit Connection include, but are not limited to: Wastewater lines such as those from washing machines or sanitary sewers; and pipes, drains, hoses, ditches, troughs, etc. carrying Wastewater, Washwater or any other Non-Stormwater or Pollutant from a facility, dwelling, building, vehicle, operation, or property, except as allowed pursuant to Section 152.25 of this article.

Illicit Discharge means any Discharge not composed entirely of Stormwater that may directly or indirectly enter the Stormwater System or the Waters of the State, except as allowed pursuant to Section 152.25 of this article. Examples of Illicit Discharge include, but are not limited to: oil; grease; household and industrial chemical waste; sanitary sewage; Wastewater; paint; paint Washwater; garbage; yard waste; animal waste; food waste; cooking oil/grease; swimming pool/hot tub/spa water containing Pollutants; concrete; concrete equipment Washwater; commercial vehicle Washwater; heated water; soaps/detergents; sediment/silt; litter; trash; debris; or any other discarded or abandoned substances or waste materials.

Incidental means occurring by chance or without intention or calculation; also, occasional, minor, casual or subordinate in significance or nature.

Litter means any discarded, abandoned, or improperly contained waste material, including but not limited to paper, cardboard, plastic, packaging materials, food waste, construction debris, scrap materials, and any other solid waste, regardless of size or weight.

MS4 means municipal separate storm sewer system.

NCGS means North Carolina General Statute(s).

Non-Stormwater means any flow that is not from a form of natural precipitation.

NPDES Discharge Permit means the National Pollutant Discharge Elimination System Permit issued pursuant to the federal Clean Water Act, 33 USC 1251 et seq., specifically permit number NCS000412.

PAH means polycyclic aromatic hydrocarbons.

Person(s) means any individual, partnership, firm, association, agency, joint venture, company, trust, estate, corporation, board, cooperative, interstate body, commission, institution, utility, governmental entity, NPDES permittee, or other legal entity or their legal representatives, agents or assigns.

Pet Waste means feces, urine, or other biological waste deposited by any domesticated or companion animal, including but not limited to dogs, cats, rabbits, and other household pets kept or maintained by a Person within the City.

Pollutant means any substance that alters the chemical, physical, biological, thermal and/or radiological integrity of water.

Potable Water means water that is suitable for human consumption.

State when referring to regulatory authority, means the NC Department of Environmental Quality or any duly authorized representative thereof; otherwise, it means the State of North Carolina.

Stormwater means any flow of water occurring during or following any form of natural precipitation and resulting therefrom.

Stormwater System means the network of curbs, gutters, inlets, catch basins, manholes, pipes, ditches, swales, ponds, detention and retention basins, and other natural or manmade facilities and appurtenances that serve to collect and convey Stormwater through and from a given drainage area to the Waters of the State. For purposes of this article only, the Stormwater System includes the City's municipal Stormwater System and privately owned and operated Stormwater Systems on private property that discharge or flow to the City's municipal Stormwater System or the Waters of the State.

Uncontaminated means not containing any Pollutants.

Unmodified Potable Water means Potable Water that does not contain any Pollutants or chemical agents such as detergents, acids, degreasers, surfactants or other agents added to or mixed with it, regardless of whether the added/mixed agent is labeled as, or is generally considered to be environmentally safe and/or biodegradable.

Violation means an act, action, allowance, or occurrence that fails to comply with any prohibition or requirement set forth in this article.

Violator means the Person(s), determined by the Administrator, to be responsible for the Violation.

Washwater is a subset of Wastewater and means any water or liquid Discharged after and as a result of conducting washing or cleaning activity.

Wastewater means any water or other liquid, other than Uncontaminated Stormwater or Uncontaminated Potable Water, Discharged after use. Examples of Wastewater include, but are

not limited to: water Discharged after use generally for industrial or manufacturing process; sewage treatment; or water used for washing, flushing, or cleaning.

Waters of the State, as defined in NCGS § 143-212(6) as may be amended from time to time in compliance with Federal and State law.

Sec. 152.22. Purpose.

The purpose of this article is to meet the requirements of the City's NPDES MS4 Stormwater Permit NCS000412 and to support the protection of surface water quality resources within the City's jurisdiction by controlling the Discharge of Pollutants to the Stormwater System and making it illegal for Non-Stormwater or Pollutants to be Discharged to the Stormwater System or the Waters of the State. This article is supplemental to and in no way replaces regulations, rules, statutes, and laws administered by the State or federal government.

The objectives of this article are:

(A) To regulate the Discharge of Pollutants to the Stormwater System and the Waters of the State;

(B) To prohibit Illicit Discharges and Illicit Connections to the Stormwater System and the Waters of the State; and

(C) To establish legal authority to carry out all investigation, inspection, surveillance, monitoring, enforcement and penalty procedures necessary to ensure compliance with this article.

Sec. 152.23. Jurisdiction.

The provisions of this article shall apply to the area encompassed within the City of Bessemer City corporate limits.

Sec. 152.24. Prohibitions.

Sec. 152.24(A). Illicit Discharge(s).

No Person shall cause or allow the Discharge of Non-Stormwater or any Pollutant, either directly or indirectly, to the Stormwater System, the Waters of the State, or upon the land in a manner or amount that is likely to reach the Stormwater System or the Waters of the State except as allowed pursuant to Section 152.25 of this article. Upon discovery, the Violator shall immediately: collect and remove the Non-Stormwater or Pollutant(s); restore all affected areas to their pre-Discharge condition; and implement actions to prevent further Discharges of Non-Stormwater or Pollutants.

Sec. 152.24(B). Illicit Connection(s).

No Person shall install, maintain or use any connection to the Stormwater System or the Waters of the State for the Discharge of Non-Stormwater or a Pollutant; or shall cause Non-Stormwater or a Pollutant to be Discharged or conveyed through any connection to the Stormwater System or the Waters of the State unless the Discharge is an allowable Discharge pursuant to Section 152.25 of this article. Upon discovery of the Illicit Connection, the Violator shall immediately remove the connection and restore all affected areas to their pre-connection condition in a manner to prevent any Discharges of Non-Stormwater or a Pollutant to the Stormwater System.

This prohibition expressly includes, without limitation, Illicit Connection(s) made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

Sec. 152.24(C). Accidental Discharge(s).

Accidental Discharge(s), as described in this subsection, shall be a Violation. If an accidental Discharge to the Stormwater System or the Waters of the State occurs, the Person responsible for the Violation shall immediately collect and remove the Discharge and restore all affected areas to their pre-Discharge condition. The Person responsible for the Violation shall immediately notify the Administrator, and other local, State, and federal authorities as appropriate, of the accidental Discharge by telephone or other mode of instantaneous communication. The notification shall include the location of the Discharge, type of Pollutant, volume, time of Discharge and corrective action(s) taken. Such notification shall not relieve the Person responsible for the Violation of any of the expenses related to removal, restoration, loss, damages or any other liability that may be incurred as a result; nor shall such notification relieve the Person responsible for the Violation from other liability that may be imposed by this article or any other applicable regulations, rules, statutes, or laws.

Sec. 152.24(D). Improper Storage, Handling, or Processing of Materials.

No Person shall store, handle, or process any material upon the land in any manner or method that would allow the material to deposit a Pollutant upon the land which may become intermixed with Stormwater entering the Stormwater System or the Waters of the State.

Sec. 152.24(E). Failure to Comply.

Failure to comply with any requirements or corrective actions set forth in a Notice of Violation, Notice of Civil Penalty Assessment, Compliance Order, or any other notice or order issued pursuant to Section 152.27 of this article, shall be a Violation of this article. Said Violation may be enforced against the Violator as a discrete Violation of this article or as a factor in conjunction with other enforcement remedies and penalties.

Sec. 152.24(F). Use of High PAH Pavement Products Prohibited.

No Person shall use, or permit to be used, a high PAH pavement product within the City. For the purposes of this subsection, the term "high PAH pavement product" means a product, material or substance that contains greater than 0.1% (1000 ppm) polycyclic aromatic hydrocarbons (PAH) by weight, and is intended for use on an asphalt or concrete surface, including but not limited to a driveway, playground, parking area, sidewalk, pathway, or roadway.

Sec. 152.24(G). Obstruction.

No Person shall obstruct, hamper, or interfere with the Administrator while carrying out official duties authorized by this article. Upon presentation of credentials, necessary arrangements shall be made to allow the Administrator immediate access onto premises or into an area protected by security measures. Any obstruction to the safe and easy access to property, a facility, equipment, or enclosure on property, or to monitoring devices shall immediately be removed. Denial of access or unreasonable delays in providing safe and reasonable access or removing obstructions shall be a Violation of this article. Said Violation may be enforced against the Violator as a discrete Violation of this article or as a factor in conjunction with other enforcement remedies and penalties.

Sec. 152.24(H). Litter, Trash, and Debris Containment on Active Construction Sites.

(1) Prohibition. No Person shall cause, allow, or permit Litter, trash, or debris generated on or associated with an Active Construction Site to:

(a) Be deposited on land in a manner that allows it to blow, migrate, wash, or otherwise be transported off site;

(b) Enter the Stormwater System or the Waters of the State by wind, water, or any other means; or

(c) Accumulate on site in a manner that creates a condition likely to result in off-site migration or entry into the Stormwater System.

(2) Affirmative Duty. The Contractor and the property owner of every Active Construction Site shall each have an affirmative, ongoing duty to:

(a) Provide and maintain adequate covered containers or enclosures sufficient to contain all Litter, trash, and debris generated on site;

(b) Ensure that containers are emptied at a frequency sufficient to prevent overflow;

(c) Secure or cover materials, packaging, and waste during wind events or prior to precipitation events that could cause off-site transport; and

(d) Remove any Litter, trash, or debris that has escaped the site and entered adjacent property, rights-of-way, or the Stormwater System as promptly as practicable.

(3) Applicability. The requirements of this subsection shall apply to all Active Construction Sites within the corporate limits of Bessemer City, without regard to the size of the site or the extent of land disturbance. No minimum acreage threshold shall exempt a site from compliance with this subsection.

(4) Joint and Several Liability. The Contractor and the property owner of an Active Construction Site shall be jointly and severally liable for violations of this subsection. In the event of a violation, the Administrator may issue a Notice of Violation to the Contractor, the property owner, or both. The Administrator shall have full discretion to determine which responsible party or parties to cite, and the issuance of a Notice of Violation to one responsible party shall not preclude subsequent or concurrent enforcement against the other. Enforcement shall proceed under the remedies and penalties established in Section 152.27 of this article.

(5) Construction Washwater. Concrete washwater and equipment washwater generated on Active Construction Sites are prohibited from entering the Stormwater System or the Waters of the State and shall be managed in accordance with Section 152.24(A) and Section 152.25 of this article.

Sec. 152.24(I). Pet Waste.

(1) Prohibition. No Person who owns, harbors, keeps, or is in control of any domesticated or companion animal shall allow, permit, or fail to prevent Pet Waste deposited by that animal to:

(a) Remain on any public street, sidewalk, right-of-way, park, greenway, or other public property;

(b) Remain on private property other than property owned or controlled by that Person, without the permission of the property owner; or

(c) Be deposited, washed, or otherwise discharged into the Stormwater System or the Waters of the State.

(2) Affirmative Duty. Any Person who owns, harbors, keeps, or is in control of any domesticated or companion animal shall:

(a) Immediately remove any Pet Waste deposited by that animal on any public street, sidewalk, right-of-way, park, greenway, or other public property; and

(b) Dispose of Pet Waste in a sealed bag or container in a solid waste receptacle, or by any other method approved by the Gaston County Health Department that does not result in discharge to the Stormwater System or the Waters of the State.

(3) Private Property. Pet Waste deposited on private property owned or controlled by the animal's owner shall be managed in a manner that prevents it from entering the Stormwater System or the Waters of the State. Accumulation of Pet Waste on private property in quantities or in a manner likely to result in discharge to the Stormwater System or the Waters of the State shall constitute a Violation of this article.

(4) Applicability. This subsection applies to all persons within the corporate limits of Bessemer City. No minimum number of animals shall exempt a Person from compliance with this subsection.

(5) Enforcement. Violations of this subsection shall be subject to enforcement under Section 152.27 of this article.

Sec. 152.25. Allowable Incidental Discharges of Non-Stormwater.

Stormwater is the only Discharge permitted in the Stormwater System or the Waters of the State with exception of the following allowable Incidental Non-Stormwater Discharges; provided that said Discharges do not negatively impact surface water quality. Allowable Incidental Non-Stormwater Discharges include:

(1) Water line flushing, provided the discharge does not cause an exceedance of surface water quality standards;

(2) Landscape irrigation;

(3) Diverted stream flows;

(4) Uncontaminated groundwater infiltration (as defined at 40 CFR §35.2005(20));

(5) Uncontaminated, pumped groundwater;

(6) Rising groundwaters;

(7) Discharges from Uncontaminated Potable Water sources;

(8) Collected infiltrated Stormwater from foundation drains or footing drains;

(9) Air conditioning condensate from residential or commercial units;

(10) Irrigation water (does not include reclaimed water as described in 15A NCAC 2H .0200);

(11) Uncontaminated springs;

(12) Uncontaminated, collected groundwater and infiltrated Stormwater from basement or crawl space pumps;

(13) Lawn watering;

(14) Swimming pool and hot tub/spa Discharges, provided that the Discharge does not contain chlorine, bromine, salt, or any other treatment chemicals. These Discharges do not include swimming pool or hot tub/spa filter backwash Discharge or saltwater pool Discharge, which are expressly prohibited;

(15) Street Washwater only when Unmodified Potable Water is used;

(16) Flows from emergency fire and rescue operations other than those resulting from negligence on the part of the Person who owned or controlled the Pollutant. This allowance does not include discharge flows from fire and rescue training operations;

(17) Single-family residential and Charity Vehicle Washing (see note below);

(18) Flows from riparian habitats and wetlands;

(19) NPDES permitted discharges authorized by NCDEQ, EPA, or delegated local authority, provided said discharges are in compliance with the requirements, conditions and discharge limitations of the permit;

(20) Dye testing, using suitable dyes, for verifying cross-connections, tracing plumbing lines, determining flow direction or rate and for similar purposes, provided that verbal notification by non-governmental entities is provided to the Administrator prior to testing;

(21) Water used for removal of Stormwater System blockages only when Unmodified Potable Water is used; and

(22) Splash pad (spray ground) water from a Potable Water source only; refer to item (14) above if the water is treated with chemicals used similarly for a swimming pool or hot tub/spa.

** Designated vehicle wash areas at multi-family residential complexes are not allowed if they connect, directly or indirectly, to the Stormwater System or the Waters of the State. Charity Vehicle Washing performed by the same organization or at the same location on a routine basis (more than one time in a thirty-day period) is not allowed under this article.*

Sec. 152.26. Powers and Authority for Inspection.

Sec. 152.26(A). Authority to inspect and monitor.

The Administrator, bearing proper identification, may enter upon public or private properties at all reasonable times to inspect, investigate, or monitor activities and conditions subject to this article. Persons occupying premises to be inspected shall allow the Administrator ready access at all times to all parts of the premises to perform investigation, inspection, monitoring, records examination, copying, photography, video recording or other duties. The Administrator shall have the right to set up on a Person's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations. Where a Person has security measures in force that would require identification and clearance before entry into the premises, the Person shall make arrangements with security personnel so that, upon presentation of identification, the Administrator will be permitted to enter and perform their specific duties and responsibilities without delay.

Sec. 152.26(B). Search warrants.

Should the occupant of private property refuse to permit such reasonable access, the Administrator may proceed to obtain an administrative search warrant pursuant to NCGS § 15-27.2, or its successor, to conduct investigations and determine compliance with this article.

Sec. 152.26(C). Confidential information.

(1) To the extent permitted by applicable law and except as otherwise provided in this section, information and data on a Person obtained from reports, questionnaires, permit applications,

permits, monitoring programs and inspections shall be available to the public or other government agencies without restriction, unless the Person specifically requests, and is able to demonstrate to the satisfaction of the Administrator, that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the Person. Any such request must be asserted at the time of submission of the information or data.

(2) To the extent permitted by applicable law, when requested by a Person furnishing a report, the portions of a report that might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available upon request to governmental agencies for uses related to this article; provided, however, that such portions of a report shall be available for use by the State or any State agency in judicial review or enforcement proceedings involving the Person furnishing the report.

(3) Documents that are not public records and the information set forth therein may be withheld and released only as provided by applicable law.

Sec. 152.27. Enforcement Remedies and Penalties.

Sec. 152.27(A). Notice of Violation.

(1) When the Administrator finds that a Violation of this article has occurred or is occurring, the Administrator may issue a written Notice of Violation to the Violator. The Notice of Violation shall:

(a) Identify the property, location, or activity at issue;

(b) Describe the nature of the Violation with reasonable specificity;

(c) Identify the corrective actions required to achieve compliance;

(d) Establish a compliance deadline, which shall be not less than thirty (30) days from the date of the notice unless the Administrator finds that an imminent threat to public health, safety, or water quality requires a shorter deadline;

(e) State the civil penalties that may be assessed if the Violation is not corrected within the compliance deadline; and

(f) Identify the process for requesting a meeting with the Administrator.

(2) The Notice of Violation may be served by United States Postal Service certified mail, regular mail, hand delivery, or by any means authorized under NCGS § 1A-1, Rule 4 of the North Carolina Rules of Civil Procedure. Refusal to accept the notice shall not relieve the Violator of the obligation to comply.

(3) If the Administrator finds that an imminent threat to public health, safety, or water quality exists, the Administrator may order immediate corrective action without prior written notice and may seek emergency enforcement under Section 152.27(J) of this article.

Sec. 152.27(B). Civil Penalty Assessment.

(1) Any Violator who fails to correct a Violation within the deadline established in a Notice of Violation issued pursuant to Section 152.27(A) shall be subject to a civil penalty.

(2) Civil penalties shall be assessed at a rate not to exceed five hundred dollars ($500.00) per day for each day the Violation continues after the compliance deadline. Each day of continued Violation shall constitute a separate and distinct offense.

(3) In determining the amount of a civil penalty, the Administrator shall consider relevant aggravating and mitigating factors, including but not limited to: the degree of harm or risk to water quality or public health; whether the Violation was willful or the result of neglect; the cost of corrective action; the prior compliance history of the Violator; and whether the Violator took reasonable steps toward compliance.

(4) Civil penalties shall be assessed by written notice to the Violator. If the Violator does not pay the assessed penalty within thirty (30) days of receipt of the notice, the Administrator may request the City Attorney to institute a civil action to recover the amount of the penalty in Gaston County Superior Court.

Sec. 152.27(C). Remittance of Civil Penalties.

Civil penalties collected pursuant to this article shall be applied as follows:

(1) First, to reimburse the City for all direct costs of investigation, inspection, sampling, testing, and administration incurred in connection with the Violation;

(2) Second, to reimburse the City for all costs of any abatement, remediation, or restoration performed by or on behalf of the City pursuant to this article;

(3) Third, to reimburse the City for all legal costs, including attorney's fees, incurred in connection with enforcement of this article;

(4) Any remainder, after reimbursement of all City costs described in items (1) through (3) above, shall be remitted to the Bessemer City–Gaston School System.

Sec. 152.27(D). Cost Recovery.

The City may recover from the Violator all reasonable costs incurred by the City in connection with the investigation, inspection, sampling, testing, abatement, remediation, restoration, and legal enforcement arising from any Violation of this article. Such costs shall be in addition to, and not in lieu of, any civil penalties assessed under this article. If the Violator does not pay such costs within thirty (30) days of written demand, the City may institute a civil action to recover them in Gaston County Superior Court.

Sec. 152.27(E). Compliance Agreement.

In lieu of or in addition to issuing a Notice of Violation, the Administrator may enter into a written Compliance Agreement with a Violator. A Compliance Agreement shall:

(1) Identify the Violation and the property or activity at issue;

(2) Establish a schedule of specific corrective actions and corresponding deadlines;

(3) Require the Violator to provide written progress reports to the Administrator at intervals specified in the Agreement;

(4) State that failure to comply with any term of the Agreement constitutes a separate and independent Violation of this article subject to enforcement under this section; and

(5) Be signed by both the Violator and the Administrator.

A Compliance Agreement does not waive the City's right to pursue any other remedy available under this article, and does not toll the accrual of civil penalties for ongoing Violations unless the Agreement expressly so provides.

Sec. 152.27(F). Compliance Order.

The Administrator may issue a written Compliance Order requiring any Violator to undertake specific corrective actions within a specified time period. A Compliance Order shall identify the Violation, describe the required corrective action with reasonable specificity, and establish a compliance deadline. Failure to comply with a Compliance Order shall constitute a separate Violation of this article and shall not preclude the Administrator from pursuing any other remedy available under this section.

Sec. 152.27(G). Cease and Desist Order.

The Administrator may issue a written Cease and Desist Order requiring any Violator to immediately stop any act, activity, or condition that constitutes or contributes to a Violation of this article. A Cease and Desist Order is effective upon service. Failure to comply with a Cease and Desist Order shall constitute a separate Violation of this article.

Sec. 152.27(H). Withholding of Permits.

The Administrator may withhold or condition upon compliance with this article any building permits, zoning permits, certificates of occupancy, subdivision approvals, or other development approvals for any property on which a Violation of this article exists and remains uncorrected.

Sec. 152.27(I). Stop Work Order.

The Administrator may issue a stop work order for any construction or development activity on a property where a Violation of this article exists and remains uncorrected. A stop work order is effective upon service and shall remain in effect until the Administrator confirms in writing that the Violation has been corrected.

Sec. 152.27(J). Emergency Enforcement.

If delay in correcting a Violation would pose an immediate threat to public health, safety, welfare, or water quality, the Administrator may order the Violator to take immediate corrective action without prior notice. If the Violator fails to act immediately, the Administrator may, without further notice, cause the City or a contractor designated by the City to enter the property and take such action as is necessary to abate the threat. The cost of such emergency action shall be recoverable from the Violator as provided in Section 152.27(D).

Sec. 152.27(K). Injunctive Relief.

The Administrator, with the written authorization of the City Manager, may authorize the City Attorney to institute a civil action in Gaston County Superior Court for a mandatory or prohibitory injunction and order of abatement, pursuant to G.S. 160A-175. Such action may be brought in addition to, or in lieu of, any other remedy available under this article.

Sec. 152.27(L). Restoration.

In addition to any other remedy available under this article, the Administrator may require the Violator to restore any portion of the Stormwater System, Waters of the State, or other affected area to its pre-Violation condition. The Administrator shall specify the required restoration measures and a deadline for completion. If the Violator fails to complete required restoration within the specified deadline, the City may perform or cause to be performed the necessary restoration work, and the cost thereof shall be recoverable from the Violator as provided in Section 152.27(D).

Sec. 152.28. Appeal.

(A) Any Person aggrieved by a Notice of Violation, civil penalty assessment, Compliance Order, Cease and Desist Order, Stop Work Order, or other enforcement action taken under this article may appeal to the Bessemer City Board of Adjustment and Environmental Review by filing a written notice of appeal with the Administrator within thirty (30) days of receipt of the enforcement action.

(B) The written notice of appeal shall identify the enforcement action being appealed, state the grounds for the appeal with reasonable specificity, and include the name, address, and contact information of the appellant.

(C) The filing of a notice of appeal shall not stay the enforcement action being appealed unless the Administrator, in his or her discretion, grants a written stay pending the outcome of the appeal. A stay shall not be granted where the Administrator has determined that an imminent threat to public health, safety, or water quality exists.

(D) Appeals shall be conducted as quasi-judicial proceedings before the Board of Adjustment and Environmental Review, consistent with the procedures established in Chapter 6 of the Bessemer City Land Development Code and applicable provisions of G.S. 160D-405.

(E) Any party aggrieved by the decision of the Board of Adjustment and Environmental Review may seek review in Gaston County Superior Court by proceedings in the nature of certiorari within thirty (30) days of the date the Board's written decision is filed with the City Clerk.

(F) Any Person who fails to file a written notice of appeal with the Administrator within thirty (30) days of receipt of the enforcement action shall be deemed to have waived the right to appeal that enforcement action. An unappealed enforcement action shall be final and binding upon all parties.

Sec. 152.29. Severability.

If any section(s) or subsection(s) of this article is/are held to be invalid or unenforceable, all other sections and subsections shall nevertheless continue in full force and effect.

CITY OF BESSEMER CITY, NORTH CAROLINA
CODE OF ORDINANCES — CHAPTER 152
SECTIONS 152.30–152.69. RESERVED.

Sec. 152.30–152.69. Reserved.

Sections 152.30 through 152.69 are hereby reserved. No ordinance provisions are currently codified in this range. This reservation is intentional and shall not be construed as a drafting error or omission. When new provisions are adopted within this range, this section shall be amended accordingly.

EXHIBIT F

CITY OF BESSEMER CITY, NORTH CAROLINA

CODE OF ORDINANCES — CHAPTER 152

ARTICLE V. POST-CONSTRUCTION STORMWATER CONTROL MEASURE ENFORCEMENT

Sections 152.70–152.79

This article establishes enforcement authority for long-term post-construction SCM maintenance requirements set forth in LDC Section 5.5. The standards and requirements governing SCM design, operation and maintenance agreements, easements, annual inspections, and HOA obligations are located in LDC Section 5.5 and are incorporated herein by reference.

Sec. 152.70. Purpose and Authority.

(A) Purpose. This article establishes the enforcement authority of the City of Bessemer City to require compliance with the post-construction stormwater control measure (SCM) maintenance standards set forth in LDC Section 5.5 of the Bessemer City Land Development Code, and to pursue remedies and penalties against persons who fail to comply with those standards. This article is adopted pursuant to G.S. 160D-925, G.S. 143-214.7, G.S. 160A-174, and G.S. 160A-175, and in furtherance of the City's obligations under NPDES MS4 Permit No. NCS000412.

(B) Cross-Reference. The design standards, operation and maintenance agreement requirements, maintenance easement requirements, annual inspection requirements, homeowners' association obligations, performance security requirements, deed recordation requirements, and nuisance provisions governing post-construction SCMs are set forth in LDC Section 5.5, which is incorporated herein by reference. This article governs enforcement of those requirements.

Sec. 152.71. Definitions.

The following definitions apply to this article. All other definitions in Chapter 152 apply unless the context clearly indicates otherwise.

Administrator means the person designated by the City Manager to administer and enforce the provisions of this article and LDC Section 5.5, or that person's duly authorized representative(s). For purposes of this article, the Administrator is the Stormwater Administrator of the City of Bessemer City.

Operation and Maintenance Agreement (O&M Agreement) means the recorded agreement required by LDC Section 5.5 that is binding on all subsequent owners of property served by a post-construction SCM and that establishes the terms, standards, and schedule for proper maintenance of the SCM.

Responsible Party means any person who is required to maintain a post-construction SCM pursuant to LDC Section 5.5, an O&M Agreement, or any permit or approval issued thereunder,

including but not limited to: property owners; homeowners' associations; property owners' associations; or any other entity with legal responsibility for SCM maintenance under a recorded agreement or instrument.

SCM means a stormwater control measure as defined in LDC Section 5.5.

Violation means any failure by a Responsible Party to comply with the requirements of LDC Section 5.5, the terms of an O&M Agreement, or any order or notice issued pursuant to this article.

Sec. 152.72. Jurisdiction.

The provisions of this article shall apply to all post-construction SCMs located within the corporate limits of Bessemer City that are subject to the requirements of LDC Section 5.5.

Sec. 152.73. Inspection Authority.

(A) The Administrator, bearing proper identification, may enter upon any property at all reasonable times to inspect any post-construction SCM subject to LDC Section 5.5, to review O&M records, to verify compliance with annual inspection report requirements, and to determine whether any Violation exists.

(B) Every post-construction SCM subject to LDC Section 5.5 shall be made accessible for inspection pursuant to the maintenance easement required by LDC Section 5.5. The existence of such easement is a condition of all development approvals under LDC Section 5.5.

(C) If the owner or occupant of any property refuses to permit such inspection, the Administrator may proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2 or its successor. No person shall obstruct, hamper, or interfere with the Administrator while carrying out official duties under this article.

Sec. 152.74. Notice of Violation.

(A) When the Administrator finds that any post-construction SCM is not being maintained in compliance with LDC Section 5.5 or the applicable O&M Agreement, the Administrator shall issue a written Notice of Violation to the Responsible Party or parties. The Notice of Violation shall:

(1) Identify the property and SCM(s) at issue;

(2) Describe the nature of the Violation with reasonable specificity;

(3) Identify the corrective actions required to achieve compliance;

(4) Establish a compliance deadline, which shall be not less than thirty (30) days from the date of the notice unless the Administrator finds that an imminent threat to public health, safety, or water quality requires a shorter deadline;

(5) State the civil penalties that may be assessed if the Violation is not corrected within the compliance deadline; and

(6) Identify the process for requesting a meeting with the Administrator.

(B) The Notice of Violation may be served by United States Postal Service certified mail, regular mail, hand delivery, or by any means authorized under NCGS § 1A-1, Rule 4 of the North Carolina Rules of Civil Procedure. Refusal to accept the notice shall not relieve the Responsible Party of the obligation to comply.

(C) If the Administrator finds that an imminent threat to public health, safety, or water quality exists as a result of an SCM failure or neglect, the Administrator may order immediate corrective action without prior written notice and may seek emergency enforcement under Section 152.77 of this article.

Sec. 152.75. Civil Penalties.

(A) Any Responsible Party who fails to correct a Violation within the deadline established in a Notice of Violation issued pursuant to Section 152.74 shall be subject to a civil penalty.

(B) Civil penalties shall be assessed at a rate not to exceed five hundred dollars ($500.00) per day for each day the Violation continues after the compliance deadline. Each day of continued Violation shall constitute a separate and distinct offense.

(C) In determining the amount of a civil penalty, the Administrator shall consider relevant aggravating and mitigating factors, including but not limited to: the degree of harm or risk to water quality; whether the Violation was willful or the result of neglect; the cost of corrective action; the prior compliance history of the Responsible Party; and whether the Responsible Party took reasonable steps toward compliance.

(D) Civil penalties shall be assessed by written notice to the Responsible Party. If the Responsible Party does not pay the assessed penalty within thirty (30) days of receipt of the notice, the Administrator may request the City Attorney to institute a civil action to recover the amount of the penalty in Gaston County Superior Court.

(E) Civil penalties collected pursuant to this article, less City administration costs, shall be remitted to the Bessemer City-Gaston School System, consistent with the penalty remittance provision of COO Section 152.27(C)(8).

Sec. 152.76. Additional Remedies.

The following remedies are available to the Administrator and may be exercised singly, simultaneously, or cumulatively with civil penalties, in any order:

(A) Withholding of Permits. The Administrator may withhold or condition upon compliance with this article any building permits, zoning permits, certificates of occupancy, subdivision approvals, or other development approvals for any property on which a Violation exists.

(B) Stop Work Order. The Administrator may issue a stop work order for any construction or development activity on a property where a Violation of this article remains uncorrected.

(C) Injunctive Relief. The Administrator, with the written authorization of the City Manager, may authorize the City Attorney to institute a civil action in Gaston County Superior Court for a mandatory or prohibitory injunction and order of abatement, pursuant to G.S. 160A-175.

(D) Abatement by the City. If a Violation has not been corrected pursuant to the requirements of a Notice of Violation, the City or a contractor designated by the City may enter the property pursuant to the maintenance easement required by LDC Section 5.5 and take such action as is necessary to bring the SCM into compliance. The Responsible Party shall be notified of the cost of such abatement, including administrative costs. If the specified amount is not paid within thirty (30) days of receipt of notification, the City may pursue collection as a lien against the property served by the SCM. Any and all such costs shall constitute a lien upon the property, which may be perfected by filing a claim of lien with the Clerk of Superior Court and collected in the same manner as any other lien on real property.

Sec. 152.77. Emergency Enforcement.

If delay in correcting a Violation would pose an immediate threat to public health, safety, welfare, or water quality, the Administrator may order the Responsible Party to take immediate corrective action. If the Responsible Party fails to act immediately, the Administrator may, without prior notice, cause the City or a contractor designated by the City to enter the property and take the necessary corrective action. The cost of such emergency action shall be recoverable from the Responsible Party as provided in Section 152.76(D).

Sec. 152.78. Appeals.

(A) Any Responsible Party aggrieved by a Notice of Violation, civil penalty assessment, or other enforcement action taken under this article may appeal to the Bessemer City Board of Adjustment and Environmental Review by filing a written notice of appeal with the Administrator within thirty (30) days of receipt of the enforcement action.

(B) Appeals shall be conducted as quasi-judicial proceedings consistent with the procedures established in COO Section 152.28 and applicable provisions of the Bessemer City Land Development Code Chapter 6.

(C) Any party aggrieved by the decision of the Board of Adjustment and Environmental Review may seek review in Gaston County Superior Court by proceedings in the nature of certiorari within thirty (30) days of the Board's decision.

Sec. 152.79. Severability.

If any section(s) or subsection(s) of this article is/are held to be invalid or unenforceable, all other sections and subsections shall nevertheless continue in full force and effect.

CITY OF BESSEMER CITY, NORTH CAROLINA

CODE OF ORDINANCES — CHAPTER 152

SECTIONS 152.80–152.99. RESERVED.

Sec. 152.80–152.99. Reserved.

Sections 152.80 through 152.99 are hereby reserved for future expansion of Chapter 152. No ordinance provisions are currently codified in this range. This reservation is intentional and shall not be construed as a drafting error or omission. When new provisions are adopted within this range, this section shall be amended accordingly.