

**AN ORDINANCE PERTAINING TO APPENDING PROVISIONS TO THE ADOPTED
STORMWATER MANAGEMENT PROGRAM TO ALLOW IN CERTAIN
CIRCUMSTANCES STORMWATER MANAGEMENT FACILITIES BE LOCATED
WITHIN PUBLIC RIGHTS-OF-WAY AND UPON PUBLIC LANDS**

WHEREAS, the Board of County Commissioners of Calvert County has the authority pursuant to Title 4, Subtitle 2 of the *Environmental Article* of the Maryland Annotated Code to adopt and amend a County program addressing stormwater management;

WHEREAS, the Board of County Commissioners of Calvert County adopted a stormwater management program to manage stormwater runoff and to reduce stream channel erosion, pollution, sedimentation, siltation, and local flooding by Ordinance 21-10 on August 3, 2010, which was subsequently codified at Chapter 123 of the Calvert County Code;

WHEREAS, the Department of Public Works obtained comments and recommendations from the private sector that locating stormwater management facilities within the public right-of-way and upon public lands could benefit all parties involved;

WHEREAS, upon consideration and evaluation, the Department of Public Works has recommended that, in certain circumstances, and with sufficient protections of the public trust and accounts, the same could be true and has prepared provision to append to Chapter 123 of the Calvert County Code for consideration;

WHEREAS, a public hearing regarding the proposal was duly advertised in a newspaper of general circulation in Calvert County for two consecutive weeks before the public hearing, and held on September 15, 2020, at which time the Board of County Commissioners received public comment; and

WHEREAS, upon due consideration of the comments of the public and staff and in furtherance of the public health, safety, and welfare, the Board of County Commissioners finds that it is in the best interest of the public health, safety, and welfare of the citizens of Calvert County, Maryland, to adopt the recommendation as set forth below.

NOW, THEREFORE, BE IT ORDAINED, that the Board of County Commissioners of Calvert County, Maryland, hereby approves, adopts, and enacts the following to append to Chapter 123 of the Calvert County Code:

**Article XI. Stormwater Management Facilities in Public Rights-of-Way and Upon
Public Property**

§ 123-31 – Applicability and Definitions.

- (a) Stormwater management facilities in the public rights-of-way or upon public property may be approved by the Department in accordance with this Article XI.
- (b) Such facilities may be approved where, in the opinion of the Department:
 - i. Sufficient buildable right-of-way shall remain to accommodate future development of parcels that can utilize the right-of-way; and
 - ii. The location, nature, and all other characteristics of the facility will not pose a risk or heightened risk to the public.

- (c) The Director of the Department may grant a maintenance easement to developers, guarantors, and covenantors of stormwater management facilities located in the public rights-of-way or upon public property.

§ 123-32 - Prohibition.

- (a) Developers, guarantors, and covenantors, (sometimes referred to collectively and singly as “Persons Responsible” herein) are responsible for maintaining, repairing, and replacing, as deemed necessary by the Department, stormwater facilities located in the public rights-of-way or upon public property where subject to a covenant to maintain and repair the same.
- (b) It shall be unlawful for any person or persons to cause or allow a nuisance for any component of the stormwater system located on public property where subject to a covenant to maintain and repair that facility.

§ 123-33 - Declaration of a Nuisance.

- (a) To cause or allow a reduction in flow, capacity, storage, or other critical function of any component of the stormwater system due to damage, deterioration, blockage, etc., when the reduction causes or may cause a flooding or other hazard in the public right-of-way or require right-of-way closure for public safety, is hereby declared to be a nuisance.
- (b) To cause or allow a reduction of the designed flow attenuation, storage capacity, performance, or inlet/outlet control of any detention, retention, infiltration, treatment, or other stormwater facility is hereby declared to be a nuisance.

§ 123-34 –Agreement.

- (a) Where it is proposed that the public right-of-way or other public land be used for stormwater management or treatment, and such use is approved by the Department, the Landowner shall execute and record within the Land Records of Calvert County, Maryland, the County’s standard form entitled “Off-Site Stormwater Facility Maintenance Agreement” (Agreement), as may be amended from time to time, prior to the building permit(s) or grading permit(s) being issued.
- (b) The Agreement shall be binding upon the Landowner and shall run with the land encumbered, thereby to be binding upon all subsequent owners.
- (c) The final plat and any homes or business association Covenants and Restrictions shall contain language approved by the Director of Public Works to provide notice of stormwater management facilities presence and maintenance obligations, despite being located within the public right-of-way, and the funding requirements set forth in the Agreement.
- (d) The notice referenced in (c), above, shall be in a form approved by the Director and substantially as set forth below:

“Notice: This site includes off-site stormwater management and treatment obligations. This property is also subject to the obligations and requirements of the Off-Site Stormwater Maintenance Agreement recorded in Land Records with the Clerk of the Circuit Court for Calvert County.”

- (e) When the proposal involves a final plat, the foregoing notice shall appear on the face of the plat, as recorded.
- (f) When proposals do not involve a final plat, the notice shall be in the form of a notice of presence recorded with the Clerk of the Circuit Court for Calvert County, and the notice shall include the legal description of the property, the Landowner, the application date, other references to the project, and the notarized signature of such Landowner.

§ 123-35 – Maintenance Surety for Facilities within Public Property.

- (a) Prior to the County issuing the Certificate of Occupancy for a property subject to a covenant to maintain and repair stormwater facilities within the public right-of-way, or other public property, a Maintenance or Fidelity Bond shall be submitted on the form prescribed by the Director of the Department of Public Works warranting the proper maintenance and repair of the facilities.
- (b) The Maintenance Bond shall be in the amount not less than the construction cost of the facilities located in the public rights-of-way or upon public property.
- (c) The Maintenance Bond shall remain in effect until a subsequent covenantor, such as a homeowner's association, demonstrates and annually reaffirms that it has funds in its stormwater management facility reserve fund to cover the construction cost of the facilities located in the public rights-of-way or upon public property.
- (d) The covenantor(s) shall be responsible for all regular maintenance and repairs to the facilities while the maintenance surety is in effect, including, but not limited to, repairs necessary due to damage caused by intentional or unintentional acts of others.
- (e) Should the covenantors fail to perform all requisite maintenance, repair, or replacement, the Maintenance or Fidelity Bond, or the covenantor's reserve account (if such bond has been released), can be utilized for any maintenance or rehabilitation cost associated with the facilities deemed necessary by the County. This includes, but is not limited to, removal of sediment, mowing, replacement of vegetation, piping repairs, structural repairs, replacement of underdrains, other repairs to the facilities, and any administrative or engineering costs associated with such maintenance and repairs. Maintenance Bond funds and reserve funds so used shall be replenished or additional surety required; in addition, the County may require an extension of sureties.

§ 123-36 - Notice to Correct Conditions.

- (a) Upon the failure of any person to maintain the stormwater system to prevent the nuisance as described in this Article, the Director may serve notice to the Persons Responsible for maintenance and repair, ordering the remediation of the nuisance.
- (b) Notice may be served by any of the following methods and is effective as noted:
 - (1) Personally delivered to the Persons Responsible for maintenance and repair, or their resident agent if an association or business. Notice occurs on the date such delivery is made;

- (2) Mailed to the last known address of the Persons Responsible for maintenance and repair, or their resident agent if an association or business by first class, United States mail. Notice occurs three (3) days after the notice is deposited in the mail, properly addressed, and with sufficient postage to carry it to its destination; or
 - (3) Posting the notice on the public property on which the nuisance exists. Notice occurs on the date the notice is posted.
- (c) Service of notice by any of the methods set out above will be due notice within the meaning of this Article, provided, however, that no owner out of possession shall be liable to the penalty imposed by this Article unless there shall be personal service of such notice upon such owner or such notice mailed to such owner by first class, United States mail, as provided in this section.
- (d) The notice required under this section shall state that the recipient is entitled to a hearing. The notice shall be written in plain language and shall also include, at a minimum, the following elements:
- (1) A brief statement of this Article, which shall contain the consequences of failing to remedy the noted condition;
 - (2) The person, office, address, and telephone number of the Department or person giving notice;
 - (3) A description of the violation, including the minimum measures required to remedy the violation, and the deadline(s) to complete; and
 - (4) A place wherein the notified party may return a copy of the notice, indicating the desire for a hearing. Failure to make the request within the time specified in this Article shall, without exception, constitute a waiver of the right to a hearing.

§ 123-37 - Appeals.

Any person aggrieved by the determination and order under this Article may appeal administratively to the Engineering Division Chief within ten (10) days from the date of service of the notice. Such appeal shall be taken by filing with the Department of Public Works a notice of appeal stating in brief and concise form the grounds therefore. The Engineering Division Chief shall hear and determine such appeal as promptly as practicable, but within thirty (30) calendar days of the filing of the appeal, except upon written application for an extension of time by the appellant, who shall recite reasons satisfactory to the Engineering Division Chief before such extension may be granted. The Engineering Division Chief shall have the power to affirm, reverse, or modify the order of the inspector. The Engineering Division Chief's decision, together with the reasons therefore, shall be in writing and maintained as a public record. Any person who fails, refuses, or neglects to comply with the order of the inspector, as modified by the Engineering Division Chief, shall be in violation of the provisions of this Article. Appeals of the decision of the Engineering Division Chief shall be provided by law in cases of judicial review.

§ 123-38 - Failure to Correct Conditions; Abatement by County; Cost Recovery.

- (a) If the responsible person fails to remedy such conditions within the prescribed time, subject to a stay, if an appeal is made, the Department of Public Works

may take such action as is necessary to remedy the conditions and abate the nuisance. Contactors shall be invoiced at actual costs. If County resources, employees, or equipment are used to abate the nuisance, the Department of Public Works shall determine the reasonable cost of the required inspections, recorded examinations, notifications, complaint response, and movement of employees and equipment to and from the site in establishing a base charge, to which additional charges for equipment and employee operating time shall be added to establish the total cost to be billed to the owner. Upon failure of the owner to remit to the County the amount of such charge within thirty (30) days from the date of such notice, a ten (10) percent per annum penalty shall be added, and the total amount of the bill and the penalty shall be certified by the County and filed as a lien upon the property for which the expenditure is made.

- (b) In addition to the foregoing provisions, any person violating any of the provisions of this Article shall be liable for a civil penalty not to exceed fifty dollars (\$50.00) and the repayment of administrative costs incident to the correction of the municipal violation up to four hundred dollars (\$400.00). Each day any violation of this Article is not remediated shall constitute a separate offense for which the person in violation shall be liable.
- (c) The lien granted by this section shall be extinguished upon the payment to the County of all amounts owing hereunder, upon a finding that the lien was placed in error, or by operation of law.

§ 123-39 - Special Conditions.

For any nuisance that may impede emergency response or causes an immediate threat to the health and safety of the general public, the Director of the Department of Public Works may shorten the abatement period set forth in this Article, which may include immediate action by the County, its agents, employees, contractors, and subcontractors, with the Person Responsible being charged for the abatement as prescribed above.

BE IT FURTHER ORDAINED by the Board of County Commissioners of Calvert County, Maryland, that, in the event any portion of this Ordinance is found to be unconstitutional, illegal, null, or void, by a court of competent jurisdiction, it is the intent of the Board of County Commissioners to sever only the invalid portion or provision, and that the remainder of the Ordinance shall be enforceable and valid, unless deletion of the invalid portion would defeat the clear purpose of the Ordinance, or unless deletion of the valid portion would produce a result inconsistent with the purpose and intent of the Board of County Commissioners in enacting this Ordinance;

BE IT FURTHER ORDAINED by the Board of County Commissioners of Calvert County, Maryland, that the foregoing recitals are adopted as if fully rewritten herein; and

BE IT FURTHER ORDAINED by the Board of County Commissioners of Calvert County, Maryland, that this Ordinance shall be effective upon recordation and publication of a fair summary.

DONE, this 29th day of September 2020, by the Board of County Commissioners of Calvert County, Maryland, sitting in regular session.

Aye: 5
Nay: 0

Absent/Abstain: 0

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
OF CALVERT COUNTY, MARYLAND**

Rachel M. Distel
Rachel M. Distel, Clerk

Kelly D. McConkey
Kelly D. McConkey, President

Mike Hart
Mike Hart, Vice President

Approved for form and legal sufficiency
by:

Earl F. Hance
Earl F. Hance

John B. Norris
John B. Norris, County Attorney

Thomas E. Hutchins
Thomas E. Hutchins

Steven R. Weems
Steven R. Weems

Received for Record..... 9/30, 20 20
at 12:30 o'clock..... M. Same day
recorded in Liber KPS No. 61
Folio 423 COUNTY COMMISSIONERS
ORDINANCES AND RESOLUTION.

Garry P. Smith