

**ORDINANCE NO. (2023) 5194**

**AN ORDINANCE TO AMEND ORDINANCE NO. (2022) 5132 ENTITLED  
"THE 'GARNER FORWARD' TOWN OF GARNER UNIFIED DEVELOPMENT ORDINANCE  
FOR THE TOWN OF GARNER AND ITS EXTRATERRITORIAL JURISDICTION"  
REGARDING REGULATIONS RELATED TO NEW STORMWATER REQUIREMENTS FOR  
NITROGEN CONTROL**

WHEREAS, the Town Council has conducted a public hearing and received a written recommendation from the Planning Commission regarding zoning text amendment case # ZTA-23-01 in keeping with the requirements of Section 4.6.3 of the Town of Garner Unified Development Ordinance; and

WHEREAS, the Town Council finds that this request to amend the UDO reflects changes required by State Statute, NCGS Ch. 150B-21.2A; and

WHEREAS, the Town Council further finds the request is reasonable and in the public interest because it reflects a significant change in conditions or support a public policy established by the Town since the adoption of applicable land use plans;

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF GARNER HEREBY ORDAINS:

**Section One.** That Section 11.2.1. "Stormwater Requirements for Nitrogen Control" be amended to read as follows:

**11.2.1. Stormwater Requirements for Nitrogen Control**

All new development shall meet the requirements of the "~~The~~ Town of Garner Stormwater Program for Nitrogen Control." The major requirements that must be met by new development, as contained in the stormwater program, are as follows:

- A. New development shall comply with the requirements for protecting and maintaining riparian buffers as specified in the Riparian Buffer Rule 15A NCAC 2B.0233.
- B. Project area used for nitrogen calculations and stormwater requirements includes the site area less any existing built upon area. The project density used for determining stormwater requirements is the amount of built upon area subject to this section.
- C. Developers shall provide onsite stormwater treatment for all cumulative built upon area if the project density is greater than twenty-four (>24%) percent and must meet other low density, high density and other requirements of DEMLR's 02H.1003 Stormwater Rule.

- D. Additional built upon area and expansions of built upon area beyond the above limitations in subsection C, must comply with the stormwater treatment and nutrient requirements set forth in the Town of Garner Stormwater Program for Nitrogen Control.
- E. For all lots, portions of lots, planned rights-of-way, and common areas established within subdivisions after the date of ordinance adoption, estimated new built upon area for lots as well as multifamily and commercial development will be calculated based on densities of the following table:

Type	BUA Calculation	Stormwater Requirement
Less than or equal to R4 Single Family	Built Upon Area (BUA) is calculated for the overall subdivision, with BUA on individual residential lots estimated at 35% impervious area	Subdivision-level stormwater control required; 24% BUA or greater for the overall subdivision requires installation of stormwater control measure(s)
R8 Single Family	Built Upon Area (BUA) is calculated for the overall subdivision, with BUA on individual residential lots estimated at 45% impervious area	Subdivision-level stormwater control required; 24% BUA or greater for the overall subdivision requires installation of stormwater control measure(s)
Multifamily	Built Upon Area (BUA) is calculated for the development with calculated known impervious surface area	24% BUA or greater for the development requires installation of stormwater control measure(s)
Commercial	Built Upon Area (BUA) is calculated for the development with calculated known impervious surface area	24% BUA or greater for the development requires installation of stormwater control measure(s)

- F. Projects shall meet either a stormwater nitrogen loading rate target of 3.6 pounds per acre per year (lb/ac/yr) or meet “runoff volume match” as defined in 15A NCAC 02H.1002.
- G. The developer shall determine the nitrogen loading rate generated from the development project area without engineered stormwater controls and determine the required nitrogen load reduction to meet nutrient targets by using the most recently approved tool provided by NCDEQ.
- H. Nitrogen loading standards are supplemental to, not replacements for, stormwater standards otherwise required by federal, state or local law, including without limitation any riparian buffer protection requirements of 15A NCAC 02B.0714 and .0295.
- I. All projects shall meet the stormwater system design requirements set forth in 15A NCAC 02H.1003. Projects shall use a project density threshold of greater than twenty-four (>24%) percent built upon area, where upon high density stormwater design is required. All engineered stormwater controls will meet the standards set in the Design Manual and the State’s Minimum Design Criteria, 15A NCAC 02H.1050 through .1062.
- J. When high density stormwater design is required, stormwater systems shall meet the standards set forth in 15A NCAC 02H.1003(3) and be designed to control and treat the volume of runoff generated from all built upon area by one inch of rainfall or equivalent

runoff volume in one or more Primary SCMs. Projects may use offsite Primary SCMs dedicated to treating an area encompassing the project.

- K. Where high density stormwater design is not required, stormwater systems shall meet the low-density design standards set forth in 15A NCAC 02H.1003(2).
- L. Projects may reduce the export of nitrogen loading rate generated from the project through a combination of engineered stormwater runoff controls that treat the site, by an approved offsite regional engineered stormwater control or through acquisition of permanent nutrient offset credits.
- M. Permanent nutrient offset credits shall be acquired prior to obtaining a building permit for the development. The Stormwater Program Administrator shall issue an approval letter for the development that documents the needed nitrogen credits for the development. All permanent nutrient offset credits permitted by this ordinance shall meet the requirements of 15A NCAC 02B.0703. These permanent nutrient credits may be obtained through a private mitigation bank or through payment into the Riparian Buffer Restoration Fund established in N.C.G.S. 143-214.26.
- N. Except in certain situations, stormwater detention will be required on new development. The design standard for detention will be based upon peak flow reduction to predevelopment (existing) conditions for the 1-, 10-, 25-, and in some cases, the 100-year return frequency storm events.

**Section Two.** That Article 7. "Enforcement" be amended to add a new section to read as follows:

## 7.6. SPECIAL ENFORCEMENT OF STORMWATER REGULATIONS

### 7.6.1. Complaints Regarding Violations.

The Engineering Department may investigate violations of Section 11.2 of this UDO on its own initiative or upon receipt of complaints (oral, written, or otherwise).

### 7.6.2. Procedures upon Discovery of Violations

- A. If any provision of Section 11.2 is being violated, a written notice of violation shall be issued indicating the nature of the violation, ordering the action necessary to correct it, associated deadlines and penalties, and advising that the order may be appealed to the BOA, pursuant to G.S. §160D-405.
- B. If the property owner or responsible entity does not appeal and fails to correct the violation or if the property owner or responsible entity fails to correct the violation after a final BOA decision upholding the notice of violation, the property owner or responsible entity shall be subject to such remedies and penalties as authorized in Section 7.6.3.

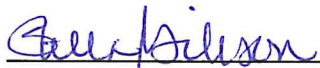
### 7.6.3. Penalties for Violation

- A. Persons Liable. The owner, tenant, or occupant of any building, land, or part thereof and any architect, builder, contractor, agent, or other person who participates in, assists, directs, creates, or maintains any situation contrary to the requirements of Section 11.2 is a responsible entity and may be held responsible for the violation, suffer the penalties, and be subject to the remedies herein provided.
- B. Violation or failure to comply with any of the provisions or requirements of Section 11.2 shall subject the offender to a civil penalty of \$100.00 per violation. If the offender fails to pay the civil penalty within 10 days after being issued the civil penalty, the penalty may be recovered by the Town in a civil action in the nature of debt.
- C. Each day a violation continues shall be considered a separate offense.
- D. Section 11.2 may also be enforced by any appropriate equitable action in addition to permit revocation pursuant to Section 7.3.3 or a stop work order pursuant to Section 7.3.4 of this UDO or as a nuisance pursuant to Article II of Chapter 6 of the Town Code of Ordinances. Any one, all, or any combination of penalties and remedies may be used to enforce Section 11.2.

**Section Three.** That all ordinances or portions thereof in conflict with this ordinance are hereby repealed.

Duly adopted this 4<sup>th</sup> day of April 2023.

  
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Ken Marshburn, Mayor

ATTEST:   
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Stella Gibson, Town Clerk

APPROVED AS TO FORM:   
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Terri Jones, Town Attorney