

## **RESOLUTION NO. (2018) 550**

### **A RESOLUTION TO REWRITE THE CITY OF RALEIGH STORMWATER QUALITY COST SHARE POLICY**

**WHEREAS**, on June 16, 2009, the City Council of the City of Raleigh adopted Resolution 2009 – 937 establishing the Raleigh Stormwater Quality Cost Share Policy; and

**WHEREAS**, on February 21, 2012 adopted Resolution 2012 – 534 amending the policy and on April 7, 2015 adopted Resolution 2015 – 83 further amending said policy; and

**WHEREAS**,

- A number of Raleigh's streams and water bodies are considered impaired based on current levels of pollution;
- Raleigh has a mandate to reduce pollutants in stormwater runoff to the maximum extent practicable (MEP) criteria;
- In the watersheds of Perry Creek and Pigeon House Branch, the City has an additional mandate, as part of the establishment of a Total Maximum Daily Load (TMDL), to develop a recovery plan to restore water quality;
- Retrofits are mandated under the City's NPDES and Neuse River Nutrient Sensitive Watershed requirements and are essential to meeting the MEP goal;
- Federal prohibition on in-stream water quality structures is limiting retrofit alternatives;
- Raleigh's citizens have demonstrated a strong interest in taking a more active role in improving water quality; and
- Currently there are no other City of Raleigh funding mechanisms to assist citizens in improving water quality through the installation of best management practices.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RALEIGH, NORTH CAROLINA THAT:**

**Section 1.** Resolution 2015 – 83 be deleted and rewritten as follows to be known as the “City of Raleigh Stormwater Quality Cost Share Policy.”

**Section 2.** The policy of the City of Raleigh with respect to installation of best management practices, subject to the conditions in this Policy, is to improve water quality:

Upon receipt of a petition by the owner(s) of property which is already subdivided and developed for private or public purposes or new development where a best management practice improves water quality in excess of current regulatory requirements, to the extent that funds are available, and to the extent that such work is reasonable and practical as determined by the City, the City will consider the water quality improvement project subject to the following:

- A. Petitions for requested projects will be processed and approved projects will be authorized based on the amount of the City’s contribution to the cost of the project, as follows:

	<b>City Cost Contribution</b>			
	<b>More than \$30,000</b>	<b>\$5,000.01 to \$30,000</b>	<b>\$1,000.01 to \$5,000</b>	<b>Up to \$1,000</b>
<b>Petition Evaluation</b>	City Staff	City Staff	City Staff	City Staff
<b>Petition / Project Approval</b>	Stormwater Management Advisory Commission / City Council	Stormwater Management Advisory Commission	City Staff	City Staff
<b>Authorization Instrument</b>	Executed Agreement	Executed Agreement	Executed Agreement	Letter of Notification

- B. City staff will report to the Stormwater Management Advisory Commission quarterly, and City staff and the Stormwater Management Advisory Commission will report to the City Council annually, regarding projects approved and implemented and funds committed and expended under this policy.
- C. The City Manager is given administrative authority for assigning staff responsibility for the receipt, review and evaluation of projects under this policy.
- D. The City will direct all work necessary to complete an authorized project including, but not limited to, design, engineering, materials acquisition and construction or, in the case of approved reimbursement projects, will review and approve all work necessary to complete an authorized project including but not limited to design, engineering, materials acquisition and construction.
- E. Acceptable cost of implementing an approved water quality improvement project may include costs for design, soil testing, surveying, construction, installation, materials, equipment, inspection, oversight, and/or supplies necessary for implementation, as determined by the City based on information provided by the petitioner. The following additional requirements apply to acceptable cost for specific types of water quality improvements:
1. For projects that employ permeable pavers or permeable pavements, acceptable cost may not include cost of removing or disposing of existing pavers or pavement. Acceptable cost will be established by the City on the following basis:

Acceptable cost = (Total cost of implementing the project) –  
(Cost of installing conventional, non-pervious pavement of the  
same dimensions at the same location).

2. For projects that employ green roofs, acceptable cost may not include cost of removing or disposing of existing roofing materials, installing materials that would be necessary for conventional roofing or roof drainage, or structurally reinforcing existing roofs.
- F. Except as otherwise provided in this policy, the City's contribution to the cost of implementing approved water quality improvement projects will be a percentage of the total acceptable cost of implementing the water quality improvement, as follows, subject to available City funding and funding priorities:
1. For projects in areas designated as Priority Water Quality Target Areas in Exhibit A of this policy: 90%.
  2. For projects in areas not designated as Priority Water Quality Target Areas: 75%.
  3. Except as otherwise provided in this policy, the acceptable cost of implementing an approved water quality improvement project as determined by the City shall be the basis for determining the City's level of funding in conjunction with the appropriate cost sharing formula as stated above. Property owners may select other alternative solutions, but will be responsible for all costs in excess of the acceptable project cost.
- G. Projects will be subject to the following criteria:
1. Any property owner(s), including residential, commercial, or public entity, paying a stormwater utility fee is eligible to petition for assistance.
  2. Projects receiving cost share funding through this policy shall not be eligible for credits included in the "City of Raleigh Stormwater Utility Credit and Adjustment Manual," but may be eligible for an adjustment based on reductions in impervious surfaces or the use of semi-impervious surfaces that meet the requirements outlined in the City of Raleigh Stormwater Utility Credit and Adjustment Manual.
  3. Projects shall be prioritized based on the following criteria:
    - a) Streams assigned a Total Maximum Daily Load (TMDL).
    - b) Streams included on the State's list of impaired streams (303d list).
    - c) Cost/benefit based on pollutant removal.

- d) Areas designated as Priority Water Quality Target Areas in Exhibit A of the City Stormwater Quality Cost Share Policy.
4. The Raleigh City Council will consider the funding for this program through the annual budget based on a recommendation from the Stormwater Management Advisory Commission and the City Manager.
5. Water quality improvements in new developments may be eligible provided the project treats runoff that would not have otherwise been treated under current regulatory requirements as determined by the City. These improvements shall not be used for future regulatory requirements unless the City is reimbursed for all costs associated with the project.

**Section 3.** In addition to the specific conditions and procedures applicable to each of the above sections, the following conditions and procedures shall also be applicable to each project:

- A. Petitions shall be on forms approved by the City.
- B. If the project is to be implemented by the City, within 30 days of the City Council approval of the project, the petitioner shall make a deposit equal to the costs of surveys, design, contract development and other costs as estimated by the City to be incurred prior to construction. This deposit is not refundable if the City has incurred costs for surveys, design, contract development and other costs as estimated by the City. If the petitioner continues with the project, the deposit would be applied to the project's total cost.
- C. Depending on the amount of City cost contribution to the project, plans for work prepared by engineers other than City staff or engineers retained by the City shall be as follows:
  1. City cost contribution of more than \$100,000: Plans shall be prepared under the seal of a licensed professional engineer or licensed landscape architect.
  2. City cost contribution up to \$100,000: Plans shall be coordinated with and approved by the City. Prior to preparation, agreement as to details should be reached.
- D. City staff and the Stormwater Management Advisory Commission will consider available funding, project priorities, and the submittal date of the petition. Funding assistance for any project for which design or construction work has begun without prior approval by the City shall be at the discretion of the Stormwater Management Advisory Commission. Petitions for projects under active design or construction may be considered; however, in no case will a project for which construction was completed more than one year before the petition is submitted to the City be eligible for funding assistance. For projects with a City cost contribution of more than \$30,000, the Stormwater Management

Advisory Commission will make a recommendation to the City Council for its determination.

- E. For projects that receive more than \$30,000 of City funds, the petitioner shall record a land-use restriction on the property’s deed that gives notice of the existence and location of the water quality improvement and that restricts uses of that portion of the property to uses consistent with and not detrimental to the intended performance of the water quality improvement. The land-use restriction shall be binding on heirs, successors, assigns, and grantees of the petitioner and shall run with the land for a term of not less than 10 years, after which time the land-use restriction may terminate. City funds will be expended for the project only after the land-use restriction has been recorded on the property deed with the Wake County Register of Deeds and a copy has been provided to the City.
- F. All authorized work referred to herein may be implemented either by the City, its agents, and/or its contractors, or by the property owner via a reimbursement agreement between the City and the property owner. If the project is to be implemented by the property owner and the cost for construction work is more than \$5,000, the property owner must solicit quotations or bids for construction work from qualified vendors or contractors.
- G. Participation by the City, its agents and contractors in the cost of the work shall be limited to the extent to which City funds are available for such purpose.
- H. A maintenance plan to which the petitioner(s) shall adhere will be included as an exhibit to the agreement or be attached to the letter of notification. The petitioner(s) shall maintain and keep in good repair and condition the water quality improvement for the maintenance term provided below and shall submit maintenance reports on forms provided by the City as required below or as otherwise defined in the agreement:

<b>City Cost Contribution</b>				
	<b>More than \$100,000</b>	<b>\$5,000.01 to \$100,000</b>	<b>\$1,000.01 to \$5,000</b>	<b>Up to \$1,000</b>
Maintenance Period	10 years	10 years	5 years	No specific duration required
Maintenance Reports	Annually by Licensed professional engineer or licensed landscape architect	Annually by property owner	Annually by property owner	No report required

- I. No action or inaction of the City pursuant to the policy established by this resolution shall impose upon the City of Raleigh, its agents, officers, or employees, any responsibility or liability of any kind, past or future, relating to any person or property. The petitioner(s) shall agree to covenant to and hold the City harmless from any death, personal injury, or property damage resulting from the work. No such action by the City shall be considered as a taking or appropriation of any stream, drain, water quality or quantity facility or ditch as a part of the City's drainage system.
- J. The Petitions shall be considered and acted upon as the workload of the City staff will permit. Such schedules shall be evaluated by the City Council in its complete discretion, on advice from the City Manager; provided, the improvements authorized by this resolution shall generally, and as nearly as practical, be constructed based on the priority as outlined in this policy then in the order in which petitions are submitted and acted upon by the City Council unless good cause exists for a variance.
- K. Nothing herein shall be construed or applied in such manner as to aid or assist in the subdivision or development of property in the City.
- L. The petitioner(s) shall grant the City appropriate easement(s) across (his)(her)(their) property(ies) for the purpose of performing the necessary, preliminary field work and the actual, later improvements. Access to the work area must be provided and the City will be held harmless for any damages to private property as long as diligent and judicial care is exercised in the pursuit of the work. The petitioner(s) agree that no claims or legal actions against the City or any City employees will be undertaken as a result of this work and that the City will be held blameless.
- M. For projects with City cost contributions of \$1,000 or more, the petitioners and the City shall execute agreements providing for the construction of the project and for the payment of the petitioners' shares of the project cost. If the project is to be implemented by the City, petitioners may pay their share of the project's cost by either of the following payment arrangements:
  1. Petitioners may pay their share of the cost by depositing with the City an amount equal to the estimated share and executing an agreement regarding responsibilities of the petitioner and the City. The petitioners' costs shall not exceed the estimated share, and any payment in excess of actual cost shall be refunded to the petitioner.
  2. Petitioners may pay their share in installments under the following conditions:
    - a) Applications for installment payment shall be submitted with a non-refundable application fee to cover credit checks, appraisals, and other costs of processing a loan. Investigations similar to those

used by banks to evaluate home equity loans shall be undertaken by the City.

- b) A first or second position lien in an amount no greater than 80 percent of the unencumbered property value will be considered sufficient security for the loan.
  - c) After determination that income, credit history, security, and other normal requirements for the loan have been met, the application for installment payments will be approved by the City.
  - d) The petitioner shall submit a deposit at least equal to 10 percent of the estimated share and an executed agreement to pay the remainder in equal annual payments at 6 percent interest over a time period not to exceed 10 years. The first payment will be due one year after notification of project completion by the City.
  - e) The minimum loan amount shall be \$2,000.
- N. If executed agreements and required deposits are not received from all participants within 4 months following presentation of such agreements by the City, the City will provide second notice that agreements should be executed. If all agreements are not executed and returned to the City within 2 months following the second notice, the project shall be terminated, deposits shall be refunded, and the City Council shall be notified of project termination.
- O. Failure to adhere to the requirements in this policy may result in the repayment of monies spent and costs incurred by the City. The repayment amount will be determined by the City.
- P. If the petitioner is not able or is not willing to fulfill its obligation via the agreement to inspect, maintain, and repair the water quality improvement project for the full term of the agreement, the petitioner may request that the City allow either of the following arrangements:
- 1. The petitioner repays project costs incurred by the City. The repayment amount will be determined by the City.
  - 2. The petitioner transfers to another party responsibility for inspecting, maintaining, and repairing the project for the remainder of the maintenance term. The transferee will sign an agreement with the City assuming this responsibility.

**Adopted:** March 6, 2018

**Effective:** March 6, 2018

**Attachment:** Map known as Exhibit A adopted March 6, 2018

