

Section 60.3 - Jurisdiction

The provisions of this chapter shall apply to all the territory encompassed in the Town of Indian Trail, North Carolina, and to any portion of the stormwater public enterprise system located outside of the corporate limits of Indian Trail.

Section 60.4 - Authority

This chapter is adopted pursuant to the authority granted to Indian Trail by North Carolina General Statutes Chapter 160A (Cities and Towns).

Section 60.5 - Definitions

As used in this article, unless the context clearly indicates otherwise, the following definitions apply:

Cemetery or cemeteries are areas that are set aside by public authority or private persons for the burial of the dead. Cemeteries are classified as independent parcels of land.

Customer or Consumer means the person or entity to which a bill for stormwater service charges is sent.

Developed Land means real property that contains impervious surfaces and includes improved land without structures and land on which improvements are under construction.

Dwelling Unit means one (1) or more rooms physically arranged to create a housekeeping establishment with separate facilities for cooking, sleeping and toilet for occupancy by one (1) or more persons.

Equivalent Residential Unit (ERU) is the median of impervious surface area on a single-family developed land in Town.

Graveyard is an area attached to a church as one parcel of land that is set aside for the burial of the dead.

Illicit Connections An *illicit connection* is defined as either of the following:

1. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the *storm drain system* including but not limited to any wastewater, and wash water to enter the *storm drain system* and any connections to the *storm drain system* from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted or approved by a government agency; or

2. Any drain or conveyance connected from a commercial or industrial land use to the *storm drain system* which has not been documented in plans, maps or equivalent records and approved by the Town.

Illicit Discharge means any unlawful disposal, placement, emptying, dumping, spillage, leakage, pumping, pouring or other discharge of any substance other than stormwater into the *storm drain system*, the *waters of the U.S.*, or upon the land such that the substance is likely to reach the *storm drain system* or the *waters of the U.S.* constitutes and illegal discharge, except as exempted in Section 60-9 below.

Impervious surface means any surface that because of its material composition or compacted nature impedes or prevents natural infiltration of stormwater into the soil. Impervious surfaces include, but are not limited to: roofs, roof extensions, patios, balconies, decks, athletic courts, swimming pools (excluding the water area of swimming pools); privately-owned streets, parking areas, driveways, sidewalks and any concrete, stone, brick, asphalt or compacted and/or sealed gravel surfaces. Porous pavers, un-graveled natural footpaths, compacted dirt surfaces, non-compacted gravel surfaces, wooden slatted decks over pervious surfaces, water surfaces of lakes and streams and septic system drain fields are not impervious surfaces.

Manager shall mean the Town Manager or his/her designee.

Non-residential developed land means all non-residential land uses including, but not limited to, churches; institutional buildings – whether public or private, hospitals, rest homes, public and private schools, colleges and universities, institutionally-owned fraternity and sorority houses, dormitories, commercial, office, hotels and motels, industrial buildings, bona fide farms, storage areas, parking lots and land containing non-residential improvements under construction or other impervious surfaces.

1. **Other residential developed land** means any individual lot or parcel of residential developed land that is not single-family developed land. It includes, but is not limited to, land upon which there are residential structures that contain more than one (1) dwelling unit, such as multi-family dwellings (duplexes and greater), manufactured home parks as defined in the ordinances regulating development, condominiums, apartments, boarding houses, rooming houses and privately-owned fraternity and sorority houses. Other residential developed land is sometimes called “multi-family” land.
2. **Proper Operations and Maintenance** means any action necessary to keep stormwater control measures and devices in proper working condition, so that such facilities will continue to comply with applicable Town of Indian Trail Code of Ordinances to prevent safety hazards, public nuisances and the failure of stormwater control measures and devices to function as intended. Maintenance includes activities identified on approved stormwater control plans, any applicable stormwater operations and maintenance manual any applicable agreements or certifications to the Town and those activities outlined in the Town’s Technical Standards Manual and this chapter of the Town of Indian Trail Code of Ordinances.

Property owner or owner means the owner of a real property as shown on the Union County tax records.

Single-family developed land means an individual lot or parcel of land developed with only one (1) single family or detached dwelling unit (which may include an accessory apartment), one (1) manufactured home, or one (1) mobile home and the ownership interest of the land and of the dwelling unit are united and identical. Single-family developed land shall not include structures used primarily for non-residential purposes or other residential and non-residential developed property.

Stormwater Control Measure means any device constructed to manage stormwater quantity and/or quality.

Stormwater management system or system means the network of natural and constructed devices owned or controlled by the Town for collecting, storing, treating and transporting stormwater. It includes, but is not limited to, structural drainage systems such as swales and ditches, catch basins, pipes, inlets, storm sewers, drains, culverts, junction boxes and other stormwater management facilities that affect the quality and quantity of stormwater located within dedicated public streets rights-of-way and Town of Indian Trail permanent drainage easements accepted by the Town and any natural stormwater drainage systems owned or controlled by the Town.

Stormwater service charge is the charge to provide stormwater services to developed property. The charge is based upon the single-family Equivalent Residential Unite (ERU) as calculated for that property.

Stormwater utility funds means the stormwater service charges and the interest generated by those charges.

Stormwater service means Towns stormwater management programs designed to protect water quality by controlling the level of pollutants in, and the quantity and flow of stormwater and Town service of structural and natural stormwater and drainage systems of all types. Stormwater services include any cost necessary to ensure that all aspects of stormwater quality and quantity are managed in accordance with federal and State laws, regulations and rules and costs related to the mapping, planning, construction, operation, maintenance, inspection, management and regulation of the stormwater management system and the regulation of impervious surface and stormwater.

Section 60.6 - Severability

If any section or sections of this chapter is/are held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and remain in effect.

ARTICLE II: THE STORMWATER UTILITY

Section 60.7 - Establishment of a Stormwater Utility

By the adoption of this ordinance the Town Council hereby establishes a stormwater utility to support stormwater management programs to protect water quality by controlling the level of pollutants in and the quantity a flow of stormwater as well as stormwater structures and natural stormwater and drainage systems of all types. The stormwater utility is a public enterprise furnishing services to the Town and its citizens.

Section 60.8 - Creation of Stormwater Management Accounting

All stormwater service charges and interest generated by such charges, also referred to as the stormwater utility funds, shall be accounted for separately from all other revenues and funds and shall be used by the Town of Indian Trail solely for the operational costs, maintenance costs, management costs, indirect costs, capital improvements, debt principal and debt service and establishment of a reserve fund for stormwater services the Town may use funds that are not stormwater utility funds to provide stormwater services.

Section 60.9 - Stormwater Management Service Charges

- A. Developed land in the Town, 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. Stormwater service charges may be subject to a credit system as further provided herein.
- B. Stormwater service charges on developed land shall be based on a schedule of rates, charges, tiers and late fees fixed and established from time to time by the Town Council, adopted in the annual budget ordinance and maintained on file in the offices of the Town Clerk. Stormwater service charges will be determined and modified from time to time by the Town Council, so that the total revenues generated by said charges will be used to pay the principal and the interest on the debt incurred for stormwater purposes, and such expenses as are reasonably necessary for providing stormwater services within the Town of Indian Trail.
- C. Computation of stormwater service charges:
 - 1. For single-family developed residential land, the monthly stormwater service charges shall be based on the median amount of impervious surface on a single-family residential lot in the Town, which is known as an "Equivalent Residential Unit" or ERU. (The median amount of impervious surfaces on a single-family residential lot in the Town of Indian Trail has been calculated to be 2,060 square feet). There shall be two tiers for single-family developed properties based on the amounts of impervious surfaces of single-family properties as shown in the following table.

<i>Tier</i>	<i>Residential Rate</i>
<i>Tier 1: ≤ 2,060 sq. ft.</i>	<i>\$4.43 per parcel per month</i>
<i>Tier 2: > 2,060 sq. ft.</i>	<i>\$5.30 per parcel per month</i>

- 2. For other developed residential land, the monthly stormwater service charges shall be one ERC per each dwelling unit. This category includes townhouses, apartments, condominiums and other multi-unit residential developments.

3. For all other developed properties, the monthly stormwater service charge on developed land is calculated by dividing the total impervious surface area of the property by one (1) ERU, rounded to the nearest tenth, multiplied by the established monthly ERU rate (as shown below):

<i>ERU</i>	<i>Non-Residential Rate</i>
<i>ERU = 2,060 sq. ft. of impervious area</i>	<i>Rate = \$3.38 per ERU per month</i>

4. The following exemptions from stormwater management service charges are allowed if requests for exemptions authorized under subsections (4) and (5) are made in writing to the Town Manager or his designee and document the application of the exemption. The Town Manager may approve or reject the request in whole or in part.
 - i. Undeveloped land
 - ii. Improved public transportation ways, including public streets, roads, greenways and trails, airport taxiways and runways and internal roads within public facilities which have been conveyed to the North Carolina Department of Transportation or Town of Indian Trail and which are used by the general public for motor vehicle transportation.
 - iii. Railroad tracks. However, railroad stations, maintenance buildings or other developed land shall not be exempted from stormwater management service charges.
 - iv. Developed land with less than four hundred (400) square feet of impervious surface area.
 - v. Cemeteries, excluding buildings located on cemetery property greater or equal to four hundred (400) square feet of impervious surface area. Churches with attached graveyards shall not be included in this exemption.

Section 60.10 - Billing Method, Responsible Parties, Collection

- A. The Stormwater Utility Fee shall be billed on an annual basis and shall be due and payable within the time and manner prescribed by law for Town ad valorem taxes (NCGS 105-360). The Town of Indian Trail Tax Collector shall bill and collect the annual Stormwater Fee established herein in the same manner as Town taxes are collected and shall include the Stormwater Fee as one (1) or more line items on the tax bills mailed to each owner of the property subject to the Stormwater Fee.
- B. The property owner is ultimately responsible for payment of the stormwater service charge for property for which the party billed has not paid the stormwater management service charge.
- C. Stormwater utility fees shall be past due after January 5th each calendar year. Said past due amounts shall bear the same rate of interest as unpaid past due property tax. Unpaid past due stormwater utility bills shall become a lien against the real property and may be collected by civil action in the nature of foreclosure in the appropriate division of the General Court of Justice for Union County, North Carolina. In any legal action for collection of past due unpaid stormwater utility bills, the attorney's fees for the Town shall be taxed against the customer or consumer as a part of the judgment.

- D. If property is under billed, or not billed, or a bill is sent to the wrong party, the Town may back bill up to a one-year period.
- E. Property owners with complaints about the accuracy of stormwater service charges are entitled to and may request a review of their current charges.

Section 60.11 - Adjustments and Credits Applicable to Stormwater Management Service Charges

A. Adjustments due to error or oversight

1. Request for adjustment of the stormwater service charge shall be submitted in writing to the Director of Engineering or their designee. Adjustments may be requested for errors or omissions on the customer's stormwater service charge. All requests shall be judged based on the number of dwelling units or amount of impervious area on the property.
2. In the case of a stormwater utility service fee adjustment requests related to the amount of impervious surface on a parcel, the appeal shall include a surveyed map of the parcel prepared by a registered land surveyor or professional engineer and showing all impervious areas as defined in Section 60-5 of this Code. The map shall be submitted in digital and hard copy format and shall contain a table summarizing total parcel area, impervious area and any other features or conditions related to impervious area.
3. Using information provided in the adjustment request, the Director of Engineering or designee shall conduct a technical review of the conditions on the property and respond to the request in writing. The Director of Engineering or designee may adjust the fee or credit if the adjustment is in conformance with the intent of this article. At the conclusion of the review, the Director of Engineering or designee shall issue a written determination stating whether an adjustment to the stormwater utility service fee or credit is appropriate, and if so the amount of such adjustment. Denial of a request for adjustment shall be appealable within 10 calendar days to the Stormwater Committee described in Article III below whose decision shall be final.
4. All decisions of the Director of Engineering or designee shall be served on the customer by mailing to the address provided in the request for adjustment.
5. The Director of Engineering or designee may make no adjustment to a customer's bill for more than the one-year period immediately preceding the date that the customer's adjustment request is received by the Director of Engineering or designee.
6. No provision of this article allowing for adjustment of Stormwater Utility Fee shall be deemed to suspend the due date of the Fee with payment in full. Any adjustment to the Stormwater Utility Fee for the person pursuing an adjustment shall be made by refund of the amount affected.

B. Credits

1. The Town may provide a system of credits to reduce stormwater service charges for properties on which stormwater control measures substantially mitigate the peak discharge or runoff pollution flowing from such properties or substantially decrease the Town's cost of maintaining the stormwater management system. The Town Manager or his designee will develop written policies to implement the credit system and codify said policies. No credit will be authorized until the Town Council approves written policies to implement the system of credits; a copy of the approved policies shall be on file with the Town Clerk. The Town's policies may make credits retroactive to the date stormwater management service charges were initiated but not to exceed one (1) year. Any bill charges requiring adjustments must be applied through the utility billing system. But no credit will be granted for more than one (1) past year. Nothing shall prevent the Town Council from modifying the adopted system of credits and such modifications may apply to holders of existing credits.
2. Each credit allowed against the stormwater management service charge is conditioned on the continuing proper operation, maintenance and functioning of the stormwater control measure as designed; credited stormwater control measures must comply with all applicable laws, ordinance and regulations, and credits may be rescinded for noncompliance with these standards.
3. Each credit for which a customer applies shall be subject to review and approval by the Director of Engineering or his designee. The Director of Engineering may approve or reject any application for a credit in whole or in part.
4. Credits shall only be applied to developed lands containing the credited stormwater control measure. For developments with common property containing credited stormwater control measures such as townhouse developments, cluster unit developments or condominiums, each dwelling unit shall be eligible for its equal pro rata share of the credit unless other arrangements for billing the stormwater service charge are made.

Section 60.12 - Limitations of Responsibility

- A. The Town shall be responsible only for the portions of the drainage system that are in Town-maintained street rights-of-way and permanent storm drainage easements conveyed to and accepted by the Town. Repairs and improvements to the drainage system shall be in accordance with established standards, policies and schedules.
- B. The Town's acquisition of storm drainage easements and/or the construction or repair by the Town of drainage facilities does not constitute a warranty against stormwater hazards, including, but not limited to, flooding, erosion or standing water.

Section 13 through 29 Reserved

ARTICLE III: STORMWATER MANAGEMENT ADVISORY COMMITTEE

Section 60.30 - Establishment

- A. The Indian Trail (IT) Stormwater Management Advisory Committee having been created by the IT Town Council (TC), shall be hereafter referred to as the "SWC".
- B. The Stormwater Committee shall be considered a "public body" and is subject to all rules and regulation for public bodies contained in North Carolina's Open Meetings regulation (i.e., Law, G.S. 143-318.10 et seq.).

Section 60.31 - Powers

- A. The General Purpose of the SWC is to serve as an advisory committee to TC regarding stormwater management. The SWC will assist in the implementation of the Town's stormwater management program by developing policy and making other recommendation to TC on Stormwater related issues.
- B. SWC shall have the following charge and duties. The SWC shall:
 - 1. Review and/or recommend to the TC stormwater management policies, policy changes, and long-range plans and estimate their budgetary and rate impacts.
 - 2. Review and/or recommend to the TC stormwater management policies, policy changes, and long-range plans and estimate their budgetary and rate impacts.
 - 3. Respond to the TC and Town staff requests for advice on matters related to stormwater services and the stormwater management utility.
 - 4. Present the Council with an annual report of key actions and issues and its annual work program.

Section 60.32 - Appointment and Terms

- A. The SWC shall consist of six (6) members, all of whom shall reside or own property within the Town limits. five (5) of these members shall serve as regular members, and one (1) members shall serve as alternate. TC appoint the membership of the SWC. The alternate members of the Board shall be requested to attend all regular and special meetings and shall be able to cast a vote when a regular member of the Board is absent or if any Board member has a conflict of interest.
- B. Each member shall be appointed for a period of one (1) year.
- C. If vacancy on the SWC occurs by reason of death, resignation, change of property ownership, TC removal, or any other cause, the seat shall be filled by TC in an expeditious manner for the duration of the unexpired term.
- D. The Town Clerk shall be responsible for maintaining a current list of SWC members, including the effective date of their appointment and the expiration date of their term. The Clerk shall keep TC informed as to when any term is to expire, at least sixty (60) days prior to the expiration date.

Section 60.33 - Officers

- A. The TC Member who is serving on the SWC shall serve as the Chairman. The Vice-Chairman shall be elected by the SWC Committee members. The Vice-Chairman shall serve for a one (1) year term but may be elected by the SWC for successive terms to the same office. Annually, in the regular meeting of the SWC held in the month of June a Vice-Chairman shall be elected. The Vice-Chairman shall serve from July 1 until relieved of his duties as herein provided.
- B. The Chairman shall appoint any committees found necessary to investigate any matters before the SWC. The Vice-Chairman shall serve as acting Chairman in the absence of the Chairman, and at such times he shall have the same powers and duties as the Chairman.
- C. In the event of the absence of both the Chairman and the Vice-Chairman from a stormwater meeting, the regular members present may elect a temporary Chairman for that meeting and proceed with the order of business.

Section 60.34 - Secretarial Services

- A. TC shall arrange to have secretarial duties performed for the SWC. Said person (s) (hereafter referred to as the "Secretary"), subject to the direction of the Chairman, shall take minutes and keep all records. The Secretary shall keep in a permanent volume the minutes of every meeting of the SWC. These shall show the record of all-important facts pertaining to each meeting and hearing for the SWC, and all votes of members of the SWC upon the final determination of any question, indicating the names or upon the final determination of any question, indicating the names of members absent. The SWC minutes shall be kept at the IT Town Hall and shall be available for inspection during normal working hours.

Section 60.35 - Rules of Conduct for Members

Members of the SWC may be removed by the TC for cause, including violation of the rules stated below herein.

- A. In order for the SWC to carry out its duties and responsibilities, it is necessary for all members to attend meetings. If any member is absent for two (2) consecutive regular meetings within a twelve-month (12) period, such member may be removed by TC and a replacement made for the unexpired portion of the term. Alternate members may be removed by TC for repeated failure to attend or participate in meeting when requested to do so pursuant to Section 4-2 as set forth above. The SWC may make a recommendation to TC regarding removal of a member for duly cited causes and the request must be in writing, signed by the Chairman of the SWC.
- B. A member may be excused from voting on a particular issue by a majority vote of the remaining regular members present under the following circumstances. If the:
 - 1. Member has a direct financial interest in the outcome of the matter at hand; or
 - 2. Matter at hand involves the member's own official conduct; or

3. Member has such close personal ties to the applicant that he cannot reasonably be expected to exercise sound and impartial judgment on behalf of the public's interest.
- C. If a SWC member determines that he may have a conflict of interest on a particular issue, he shall declare the nature of such conflict and ask to be excused from voting on the issue related to such conflict. The remaining members, by majority vote, shall determine whether such conflict exists and whether said member may excuse himself from further deliberations on said matter. If a member is excused from voting, he shall seat himself in the audience and not participate in any further discussion on said matter or he shall remove himself from the meeting room during all deliberation pertaining to such matter. In no instance may a member be excused from voting merely due to an unwillingness to vote on the issue at hand and where no conflict of interest is found to exist.
 - D. A challenge to the existence of a conflict of interest or a challenge of an undisclosed conflict of interest may be filed by any interest party with the SWC. Such a challenge may be an appeal for a review of the findings of the SWC or may be for the purpose of alleging an undeclared conflict of interest. Any challenge made to the SWC shall be supported by competent evidence and shall be submitted at a properly convened meeting of the SWC. The SWC shall hear all evidence and shall, by majority vote of the remaining regular members, make the final determination as to the existence of a conflict of interest.
 - E. In the event a SWC member is found to have a conflict of interest and is excused from voting by the, he shall be replaced by alternate member for that business associated with the conflict of interest.

Section 60.36 - Meetings

- A. Regular meetings of the SWC shall be held on the second Thursday of every quarter at 6:00 PM at the Town Hall, provided that the meetings may be held at any other convenient place in the Town nearby area if directed by the Chairman in advance of the meeting.
- B. Each member shall receive an agenda packet for each meeting by email, mail, or hand delivery at least forty-eight (48) hours prior to the meeting. An agenda notice shall be conspicuously placed at IT Town Hall at least forty-eight (48) hours prior to the meeting.
- C. Special Meetings of the SWC may only be called by the Chairman. At least forty-eight (48) hour-notice of the time and place of special meetings shall be given, by the Secretary, to each member of the SWC. Notice of such meeting shall also be conspicuously placed at IT Town Hall at least forty-eight (48) hours prior to the meeting.
- D. Whenever there is no business to come before the SWC, or whenever so many members notify the secretary of their inability to attend that a quorum will not be available, the Chairman may dispense with a regular meeting by having the Secretary give written or oral notice to all members prior to the time set for the meeting. Notice of meeting cancellations shall also be conspicuously posted at the IT Town Hall and appropriate notification given to the press as required by North Carolina law.

Section 60.37 - Quorum and Voting

- A. A quorum shall be a majority of those voting members attending each SWC meeting, providing that there are at least three (3) voting members present. A quorum of SWC shall be required before any vote is taken.
- B. Whenever a quorum is not present at a regular or special meeting, those present may adjourn the meeting to another day or hold the meeting for the purpose of considering such matters as are on the agenda.
- C. No action taken at such a meeting shall be final or official unless and until the matter serving as the basis of the action is put before the SWC by a proper motion and a vote is taken thereon at a meeting where a quorum of the SWC present.
- D. Voting, at the discretion of the Chairman, shall be by voice or show of hands. All matter to be voted on by the SWC shall be by a duly made motion and second.
- E. All meetings shall be open to the public. The order of business at regular meetings shall generally be as follows:
 - 1. Call to Order
 - 2. Approval of Minutes
 - 3. Discussion Items
 - 4. Action Items
 - 5. Adjournments
- F. Items of business for discussion at the meeting shall appear on the agenda. Business which is not identified on the agenda may be considered only after approval of a majority of a vote of the membership.
- G. Reference to Robert's Rules of Order, as follows:

To the extent not provided for in these rules and to the extent that the reference does not conflict with the spirit of these rules, the Stormwater Committee shall refer to Robert's Rules of Order for unresolved procedural questions.

Section 60.38 - Adoption of Amendments

These rules shall at all times be consistent with all ordinances of the Town of IT and laws of the State of North Carolina. Should any provisions of these rules be inconsistent with such ordinances or laws of the State of North Carolina, said ordinances and laws shall control.

Sec. 60-39 through 60-49 Reserved

ARTICLE IV: STORMWATER CONTROL AND MANAGEMENT

Section 60.50 - Unauthorized Installations Causing Runoff

It shall be illegal for any person to install any pipe, culvert or casing on any property in such a manner as to cause runoff water to flow into any storm sewer pipe, ditch or other means of facilitating the flow of water that is maintained by the Town without first obtaining approval from the Director of Engineering.

Section 60.51 - Connection Approval Criteria; Duty of Owner; Compliance by Utilities

- A. The Town Manager or his/her designee shall not be authorized to approve any connection to Town drainage facilities unless he/she believes the size, shape and location of the newly installed drainage facilities are adequate for handling the anticipated amount of water.
- B. It shall be the responsibility of the property owner of any parcel of land when making any improvements or changes affecting the land, which alters the existing flow pattern of runoff water, to install appropriated facilities for carrying the runoff water into a properly approved storm sewer, ditch or stream. No zoning compliance permit shall be issued for any property within the jurisdiction of the Town until the conditions of this section are met.
- C. It shall be illegal for any utility company to allow public water to be connected to any facility on any land that has not complied with the provisions of this section.

Section 60.52 - Prohibited Discharges

- A. **Illegal Discharges:** No person shall discharge or cause to be discharged into the Town storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater. The commencement, conduct, or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:
 - 1. Discharges from the following activities will not be considered a source of pollutants to the storm drain system and to waters of the US when properly managed to ensure that no potential pollutants are present, and therefore they shall not be considered illegal discharges unless determined to cause a violation of the provisions of this Ordinance: potable water line flushing, uncontaminated pumped groundwater and other discharges from potable water sources, landscape irrigation and lawn watering, diverted stream flows, rising groundwater, groundwater infiltration to the storm drain system, uncontaminated foundation and footing drains, uncontaminated water from crawl space pumps, air conditioning condensation, uncontaminated roof drains, springs, individual residential and occasional non-commercial car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash waters and flows from firefighting.
 - 2. The prohibition shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver or waste discharge order issued to the discharger and administered by the State of North Carolina under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver or order and other applicable laws and regulations, and provided that written notification of such permitted discharge

has been filed with the Stormwater Administrator, in a form acceptable to the Stormwater Administrator, for any discharge to the storm drain system.

3. With written concurrence of the North Carolina Department of Environment and Natural Resources, the Town may exempt in writing other non-stormwater discharges, which are not a source of pollutants to the storm drain system or waters of the US.

B. Illicit Connections

1. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
2. This prohibition expressly includes without limitation; illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
3. Where it is determined that said connection:
 - i. May result in the discharge of hazardous materials or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife or habitat, or;
 - ii. Was made in violation of any applicable regulation or ordinance other than this section.

The Director of Engineering shall designate the time within which the connection shall be removed.

4. In setting the time limit for compliance, the Director of Engineering shall take into consideration:
 - i. The quantity and complexity of the work,
 - ii. The consequences of the delay,
 - iii. The potential harm to the environment, to the public health and to public and private property, and
 - iv. The cost of remedying the damage.

C. Waste Disposal: No person shall throw, deposit, leave, maintain, keep or permit to be thrown, deposited, left or maintained in or upon any public or private property, driveway, parking area, street, alley, sidewalk, component of the storm drain system or water of the US any refuse, rubbish, garbage, litter or other discarded or abandoned objects, articles and accumulations so that the same may cause or contribute to pollution. Wastes deposited in streets in proper waste receptacles for the purpose of collection are exempted from this prohibition.

D. Spills: Spills and leaks of polluting substances release, discharged to, or having the potential to be released or discharged to the Town storm drain system or waters of the State, shall be contained,

controlled, collected and properly disposed. All affected areas shall be restored to their condition pre-existing the spill. Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were release or discharged, shall immediately notify the Director of Engineering and the Union County Public Works Department or the Union County Emergency Management Department of the release or discharge, as well as make any required notifications under state and federal law. Notification shall not relieve a person of any expenses related to restoration, loss, damage or any other liability which may be incurred because of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by State or other law.

- E. **Nuisance:** Illicit discharges and illicit connections which exist within the Town of Indian Trail are hereby found, deemed and declared to be public nuisances and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin or otherwise compel the cessation of such nuisance may be taken.
- F. **Discharges in Violation of Industrial or Construction Activity NPDES Stormwater Discharge Permit:** Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Town prior to or as a condition of a subdivision map, site plan, building permit or development or improvement plan; upon inspection of the facility, during any enforcement proceeding or action; or for any other reasonable cause.

Section 60.53 - Powers and Authority for Inspection

- A. Town of Indian Trail personnel or other duly authorized representatives(s), bearing proper identification, shall be permitted to enter upon all public or private properties for the purpose of inspection, observation, surveying, monitoring, sampling, testing and measuring compliance in accordance with the provision of this Ordinance.
- B. No person shall obstruct, hamper or interfere with any such representative while carrying out his official duties.

Section 60.54 - Violations, Enforcement and Penalties

- A. **Violation and Enforcement:** Any person who violates any of the provisions of this Ordinance is subject to a civil penalty. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation. The notice of violation shall identify the nature of the violation, set forth the measures necessary to comply with the Ordinance and provide a specific time period for compliance. In setting the time period for compliance, the following will be taken into consideration:
 - 1. The quantity and complexity of the work;
 - 2. The consequences of delay;

3. The potential harm to the environment, the public health and public and private property; and,
4. The cost of remedying the damage

The notice shall warn that failure to correct the violation within the specified time period will result in an assessment of a civil penalty and/or other enforcement action. If, after the allotted time period has expired, and the violation has not been corrected, the penalty shall be assessed from the date of receipt of notice of violation under this section.

The notice may be served by mail, hand delivery or any other means determined to give actual notice. Refusal to accept the notice shall not relieve the violator's obligation to comply with this Ordinance or to pay such penalty.

B. Civil Penalties for Illicit Discharge Violations: Any person who allows, acts in concert, participates, directs or assists directly or indirectly in the creation of a violation of the illicit discharge provisions of this ordinance shall be subject to civil penalties as follows:

1. For first time offenders, if the quantity of the discharge is equal to or less than five (5) gallons and consists of domestic or household products in quantities considered ordinary for household purposes, said person shall be assessed a civil penalty no to exceed one hundred dollars (\$100.00) per violation or per day for any continuing violation, and if the quantity of the discharge is greater than five (5) gallons or contains non-domestic substances, including but not limited to process wastewater, or if said person cannot provide clear and convincing evidence of the volume and nature of the substance discharged, said person shall be assessed a civil penalty not to exceed one thousand dollars (\$1,000.00) per violation or per day for any continuing violation.
2. For repeat offenders, the amount of the penalty shall be double the amount assessed for the previous penalty, not to exceed ten thousand dollars (\$10,000.00) per violation or per day for any continuing violation.

C. Civil Penalties for Illicit Connection Violations: Any person found with an illicit connection in violation of this Ordinance and any person who allows, acts in concert, participates, directs or assists directly or indirectly in the establishment of an illicit connection in violation of this Ordinance, shall be subject to civil penalties as follows:

1. First time offenders shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00) per day of continuing violation.
2. Repeat offenders shall be subject to a civil penalty not to exceed one thousand dollars (\$1,000.00) per day of continuing violation.

D. Determination of the Amount of a Civil Penalty: All relevant mitigating and aggravating factors shall be considered including, but not limited to the following:

1. The degree and extent of harm to the environment, the public health and public and private property caused by the violation
2. The cost of rectifying the damage
3. The duration of the violation
4. The amount of money the violator saved through noncompliance
5. Whether the violator took reasonable measures to comply with the Ordinance
6. Whether the violator voluntarily took reasonable measures to restore any areas damaged by violation
7. Whether the violation was committed willfully
8. Whether the violator reported the violation to the Director of Engineering; and
9. The prior record of the violator in complying or failing to comply with this Ordinance or any other local or State water pollution control ordinance or regulation.

The amount of the per diem penalty set in Section 60-39(b) and (c) may vary based on the aforementioned relevant mitigating and aggravating factors.

- E. In addition to the per diem civil penalties, penalties for costs to restore damaged property may be assessed based on restoration costs, which include but are not limited to clean up costs, devaluation of the property, value of animal and plant life damage and the Town of Indian Trail administrative costs.
- F. The Town Manager, or designee, shall determine the amount of the civil penalty assessment and shall notify the person responsible for the violation of the amount of the penalty and the reason for assessing the penalty. The notice of assessment shall be issued in writing and sent via registered or certified mail or other means reasonably calculated to give actual notice to the person responsible for the violation and shall direct the violator to either pay the assessment or appeal the assessment as described in Sec. 60-41 within thirty (30) days of receipt of notice. If an alleged violator does not pay a civil penalty assessed by the Town Manager or his designee within thirty (30) days after it is due, or does not appeal a civil penalty assessment as provided in Sec. 60-41, the Town Manager or his designee shall request the Town Attorney to institute a civil action to recover the amount of the assessment. The civil action shall be brought in Union County General Court of Justice or in any other court of competent jurisdiction. A civil action must be filed within three (3) years of the date the assessment was due.
- G. Civil penalties collected pursuant to this Ordinance shall be credited to the Town of Indian Trail general fund as non-tax revenue, or to such other fund as determined by the Town.
- H. Violation of this Ordinance shall not constitute a misdemeanor or infraction punishable under NCGS 14-4.

- I. In addition to the imposition of a civil penalty, this Ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction as authorized by NCGS 160A-175(d) or by injunction issued pursuant to authorization contained in NCGS 160A-175(e).

Section 60.55 - Restoration of Areas Affected by Failure to Comply

The Town Manager or his designee may require a person responsible for a violation to restore all areas affected by the violation to the conditions existing prior to the violation. This authority is in addition to any other civil penalty or injunctive relief authorized by this Ordinance.

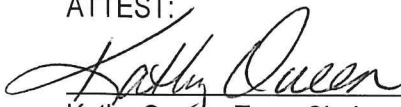
Section 60.56 - Appeals

- A. Any person who desires to appeal a civil penalty assessment shall have thirty (30) days from the date of issuance of a notice of assessment to appeal in writing to the Town of Indian Trail Board of Adjustment. The Board of Adjustment has ninety (90) days to hear the appeal and an additional sixty (60) days to respond in writing to the appellant with their findings via registered or certified mail.
- B. The Board of Adjustment shall provide the appellant a minimum of ten (10) days' notice of the time and place of the hearing.
- C. If the Board of Adjustment determines that a penalty was properly charged, the appellant must provide payment within thirty (30) days of receiving the Board's findings in writing.

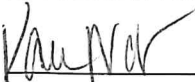
SECTION 2: THIS ORDINANCE SHALL BE EFFECTIVE IMMEDIATELY UPON ADOPTION AND ALL PREVIOUS VERSIONS SHALL BECOME VOID.

(Ord. #312, Adopted 5-28-19)

ATTEST:


Kathy Queen, Town Clerk

APPROVED AS TO FORM


Karen Wolter, Town Attorney

INDIAN TRAIL TOWN COUNCIL


Michael Alvarez, Mayo

