

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE  
AMENDING CHAPTER 23 STORMWATER MANAGEMENT, OF THE CODE OF  
ORDINANCES OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA**

BE IT ORDAINED, by the City Council of the City of Fayetteville, North Carolina, that:

**Section 1.** Chapter 23, Article I Sec. 23-3.2. is amended by deleting the same in its entirety and substituting the following therefor:

**Sec. 23-3.2. Drainage Assistance Program.**

- a. This section sets forth the criteria and circumstances by which Stormwater Enterprise Funds may be used for drainage assistance projects located outside of city-owned rights-of-way.
- b. *Process.* Requests for use of Stormwater Enterprise Funds for drainage projects located outside of the city-owned rights-of-way will be forwarded to the Public Services Department for review, investigation, and eligibility.
  1. The determination of eligibility for funding with Stormwater Enterprise Funds shall be made by the City Manager or his designee. For any request that is determined to not meet the eligibility criteria set forth in subsection c. below, the City Manager or his designee will inform the applicant property owner in writing what criteria they deemed were not met.
  2. Any property owner whose requests for eligibility for funding is denied may, within 30 days of receipt of notice of the denial, make a written request to the City Engineer for a review of their request by an independent, administrative hearing officer. If no such request for review is made, the decision of the City Manager or his designee shall not be subject to any further administrative review or appeal. When such a review is timely requested, the hearing officer shall review the written request and the grounds upon which the request was denied, and make an independent review of the request, applying the eligibility criteria set forth in subsection c. below. The decision of the hearing officer is final and not subject to any further administrative review or appeal
  3. As outlined below, eligible projects will be prioritized with a preliminary cost

estimate and forwarded to the Stormwater Advisory Board for final review and approval.

c. *Eligibility.* Drainage projects located outside of city-owned rights-of-way may be funded with Stormwater Enterprise Funds provided that all of the following eligibility criteria are met:

1. A formal request for assistance complying with city requirements (including the applicable fee in accordance with the city's fee schedule) is submitted to the city by the current property owner(s);
2. The property is within the corporate limits of Fayetteville;
3. The condition of the drainage system impacts single-family residential property;
4. The repair of the existing drainage structure would serve a public purpose (for example, conveying runoff from a city-maintained street);
5. The property owner(s) authorize the city to do the work on the drainage project, and provide access necessary via temporary or existing easements without compensation;
6. The property owner(s) acknowledge that the city will not take ownership of any drainage infrastructure installed on their property and any work will be a "one-time" effort by the city;
7. The property owner(s) acknowledge that the project will not include repair or replacement of surface features (such as trees, shrubbery, decorative walls, etc.) that may have to be removed during construction of the project;
8. The property owner(s) acknowledge that should the city determine the project is eligible, then the project design will be the most cost effective solution to the stormwater problem;
9. The drainage system is not located on property that is undergoing development or re-development;
10. The project does not include the repair, replacement, or installation of drainage infrastructure in a private road;
11. The drainage problem is not due to flooding present only during events larger than

city stormwater design criteria such as (but not limited to) hurricanes or unusually severe thunderstorms;

12. The problem will not be addressed by an existing Capital Improvement Plan project which is funded and schedule for construction; and

13. The project will require the repair of subsurface drainage infrastructure (such as pipes) and specifically does not include:

- i. Creek bank stabilization;
- ii. Landscaping or aesthetic maintenance (e.g., removal of brush, mowing of grass, litter pick-up);
- iii. Sediment removal from swales or ditches.

d. *Project Prioritization.* Eligible projects that exceed the capacity of the city's street maintenance functions because they require design prior to construction will be prioritized by the city based on standard project ranking criteria used for stormwater projects. The city will present the ranking criteria annually to the city's Stormwater Advisory Board for final review and approval.

e. The city's participation in eligible projects under the Drainage Assistance Program is limited to the extent to which funds are available for such purpose and no entitlement to receive funds for such work arises from this section. The city retains its right to reject, defer, or abandon any project considered under this section at any time. No action or inaction of the city pursuant to this section shall impose upon the city, its agents, officers, or employees, any responsibility or liability of any kind, past or future, relating to any person or property, unless City personnel or its agents cause damage to property. No action by the city, including, but not limited to, funding of work on drainage system components not owned by the city, shall be considered as a taking or appropriation of, or assumption of responsibility for any stream, drain, ditch or other drainage system feature that is outside city-owned property or right-of-way.

**Section 2.** It is the intention of the City Council, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code or Ordinances, City of Fayetteville, North Carolina, and the section of this ordinance may be renumbered to accomplish such intention.

ADOPTED this the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

CITY OF FAYETTEVILLE

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MITCH COLVIN, Mayor

ATTEST:

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PAMELA J. MEGILL, City Clerk