

## **PART II - CODE OF ORDINANCES**

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### **CHAPTER 23 - STORMWATER MANAGEMENT**

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#### **Article I. - In General**

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##### **Sec. 23-3. Establishment of A Stormwater Management Utility and Enterprise Fund.**

- a. There is hereby established a stormwater management utility within the engineering and infrastructure department which shall be responsible for stormwater management programs throughout the city, and which shall provide for the management, protection, control, regulation, use and enhancement of stormwater systems and facilities.
- b. There is hereby established a stormwater enterprise fund in the city budget and accounting system for the purpose of dedicating and protecting all funding applicable to the purposes and responsibilities of the stormwater management utility, including but not limited to; rentals, rates, charges, fees and licenses as may be established by the city council and other funds that may be transferred or allocated to the stormwater management utility. All revenues and receipts of the stormwater management utility shall be placed in the stormwater enterprise fund and all expenses of the utility shall be paid from the stormwater enterprise fund, except that other revenues receipts, and resources not accounted for in the stormwater utility enterprise fund may be applied to stormwater management programs, facilities, operations, and capital investments as deemed appropriate by the city council.
- c. The city council hereby transfers to the stormwater management utility (stormwater division) operational control over the existing stormwater management programs, systems and facilities performed, provided or owned and heretofore operated by the city and other related assets, including but not limited to properties other than roadways upon which such systems and facilities are located, easements, rights-of-entry and access, and certain equipment used solely for stormwater management.

*(Ord. No. S2009-004, § 1, 5-26-2009)*

##### **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 scheduled 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.

(Ord. No. [S2019-055](#), § 1, 09/23/2019)