

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. **Section 23-33**, Ownership and Maintenance of Stormwater Management Facilities, is amended by deleting the same in its entirety and substituting the following therefore:

Section 23-33, Ownership and Maintenance of Stormwater Management Facilities.

- A. All stormwater management facilities shall be privately owned and maintained unless the city accepts the facility for city ownership and maintenance. The owner thereof shall grant to the city a right of entry which allows for inspection and emergency repair, in accordance with the terms of the operation and maintenance agreement set forth in section 23-34, hereof.

- B. The person responsible for maintenance of any stormwater management facility installed pursuant to this article shall submit to the city engineer an inspection report from one of the following persons performing services only in their area of competence: a qualified registered North Carolina professional engineer, surveyor, landscape architect, soil scientist, aquatic biologist, or person certified by the North Carolina Cooperative Extension Service for stormwater treatment practice inspection and maintenance. The inspection report shall contain all of the following:
 - 1. The name and address of the landowner;
 - 2. The recorded book and page number of the lot of each stormwater management facility;
 - 3. A statement that an inspection was made of all stormwater management facilities;
 - 4. The date the inspection was made; and
 - 5. A statement that all inspected stormwater management facilities are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this article.

All inspection reports shall be on forms supplied by the city engineer. An original inspection report shall be provided to the city engineer beginning one year from the date of record-drawing certification and each year thereafter on or before the date of the record-drawing certification.

Section 2. **Section 23-35**, Performance Guarantee for Installation, is amended by deleting the same in its entirety and substituting the following therefore:

Section 23-35, Performance Guarantee for Installation.

- A. *Commercial developments.*
 - 1. *Shall be required.* The city shall require the submittal of a performance guarantee or bond with surety, cash escrow, or other acceptable legal arrangement prior to issuance of a permit

in order to ensure that the stormwater management facilities are installed by the permit holder as required by the approved stormwater design plan.

2. *Amount.* The amount of an installation performance guarantee shall be equal to at least 125 percent of the total estimated construction cost of the stormwater management facilities approved under the permit.
3. *Use of performance guarantee.*
 - a. *Forfeiture provisions.* The performance guarantee shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or owner in accordance with this article, approvals issued pursuant to this article, or an operation and maintenance agreement established pursuant to this article.
 - b. *Default.* Upon default of the owner to construct, maintain, repair and, if necessary, reconstruct any stormwater management facility in accordance with the applicable permit or operation and maintenance agreement, the city engineer shall obtain and use all or any portion of the guarantee to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the owner to comply with the permit or maintenance agreement.
 - c. *Costs in excess of performance guarantee.* If the city takes action upon such failure by the applicant or owner, the city may collect from the applicant or owner the difference between the amount of the reasonable cost of such action and the amount of the guarantee held, in addition to any other penalties or damages due.

B. *Single-family residential subdivisions.*

1. *Shall be required.* The city shall require the submittal of a performance guarantee or bond with surety, cash escrow, or other acceptable legal arrangement prior to approval of a final plat in order to ensure that the stormwater management facilities are installed by the permit holder as required by the approved stormwater design plan.
2. *Amount.* The amount of an installation performance guarantee shall be equal to at least 125 percent of the total estimated construction cost of converting the erosion control measure to the stormwater management facilities approved under the permit.
3. *Use of performance guarantee.*
 - a. *Forfeiture provisions.* The performance guarantee shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or owner in accordance with this article, approvals issued pursuant to this article, or an operation and maintenance agreement established pursuant to this article.
 - b. *Default.* Upon default of the owner to construct, maintain, repair and, if necessary, reconstruct any stormwater management facility in accordance with the applicable permit or operation and maintenance agreement, the city engineer shall obtain and use all or any portion of the guarantee to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the owner to comply with the permit or maintenance agreement.
 - c. *Costs in excess of performance guarantee.* If the city takes action upon such failure by the applicant or owner, the city may collect from the applicant or owner the difference between the amount of the reasonable cost of such action and the amount of the guarantee held, in addition to any other penalties or damages due.

- C. *Refund.* After final approval as outlined in section 23-32, the applicant may petition the city to release the value of the performance guarantee. Upon receipt of such petition, the city manager shall inspect the SCM to determine whether the controls are performing as designed and intended.

1. If controls are performing as designed and intended, the city manager may approve the petition and release the installation performance guarantee upon execution by the applicant of an indemnification agreement in favor of the city which shall be a covenant upon the property and run with the land.
 2. If controls are not performing as designed and intended, the city manager shall provide the applicant with instruction to correct any deficiencies and all steps necessary for the release of the installation performance guarantee.
- D. *Exemption.* Public entities are not required to obtain performance guarantees for the installation of water quality SCMs provided a letter signed by the manager or director of the project provides suitable assurances that the necessary improvements will be installed and maintained in accordance with ordinance requirements. Public entities shall include but not be limited to Cumberland County Schools, City of Fayetteville, Fayetteville Public Works Commission, Fayetteville Stormwater Services, Cumberland County, Fayetteville State University, and the State and Federal government.

Section 3. 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 _____, 2024.

CITY OF FAYETTEVILLE

MITCH COLVIN, Mayor

ATTEST:

PAMELA J. MEGILL, City Clerk