

**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 23-41, Performance Guarantee for Installation, is amended by deleting the same in its entirety and substituting the following therefore:

Sec. 23-41 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. The installation performance guarantee shall remain in place until at least one year after final approval.
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. The installation performance guarantee shall remain in place until at least one year after the facility starts to function as a stormwater management facility.
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.* No sooner than one year after final approval as outlined in section 23-39, 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 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 \_\_\_\_\_, 2021.

CITY OF FAYETTEVILLE

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MITCH COLVIN, Mayor

ATTEST:

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PAMELA J. MEGILL, City Clerk