



Legislation Text

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File #: 21-2213, Version: 1

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**TO: Mayor and Members of City Council**

**THRU: Adam Lindsay, Assistant City Manager**

**FROM: Sheila Thomas-Ambat, PE, Public Services Director  
Jason Miles, PE, Assistant Public Services Director - Engineering  
Byron Reeves, PE, Stormwater Manager**

**DATE: September 27, 2021**

**RE: Stormwater Control Ordinance Text Amendments for Sec. 23-24 & Sec. 23-41**

**COUNCIL DISTRICT(S):**  
All

**Relationship To Strategic Plan:**

Goal 3: High Quality Built Environment  
Goal 4: Desirable Place to Live, Work and Recreate

**Executive Summary:**

Staff seeks concurrence from City Council on two proposed text amendments to the Stormwater Control Ordinance.

- 1. Section 23-24 Exemptions from Requirements** to exempt redevelopment totaling less than 20,000 cumulative square foot of impervious surface from having to install onsite stormwater control measures. This proposed amendment was presented to Council at the August 2, 2021 Work Session under agenda item 4.05 and approved to move forward on consent at a Council Regular Meeting.
- 2. Section 21-41 Performance Securities for Installation** to increase performance securities to 125% of estimated construction cost for commercial developments, and 125% of estimated conversion cost for residential subdivision developments. This proposed amendment was presented at the August 26, 2021 Stormwater Committee Meeting under agenda item 4.3 and approved to move forward on consent at a Council Regular Meeting.

**Background:**

**Sec. 23-24 Exemptions from Requirements:**

The City of Fayetteville's Public Services Department has received multiple Notices of Petition for

Variance Request from the Stormwater Control Ordinance with respect to Sec. 23-24 - Exemptions from Requirements. To be more specific, these variance requests speak to Sec. 23-24 (2) & (3), which outline impervious limits that require on-site stormwater management measures for new development, redevelopment, and new construction to existing development.

The City's current Ordinance considers development with any type of existing impervious surface as redevelop and as such, must provide stormwater control measures when new impervious areas exceed 5,000 square feet. For sites that are undeveloped (no existing impervious surfaces), stormwater control measures are not required until impervious areas exceed 20,000 square feet.

Through further examination, there is a 'gap' that has been identified within the current Ordinance where the proposed redevelopment of a site could add more than 5,000 square feet of impervious surface but be cumulatively under 20,000 square feet of impervious surface. In this scenario, under the current Ordinance, the site would be required to construct on-site stormwater control measures. However, if the site were considered new development it would not meet the threshold for such requirement.

These redeveloped sites are typically smaller parcels and the requirement to construct onsite stormwater control measures significantly reduce the size of usable area, deterring redevelopment. In reference to the recent variance request, the proposed developments included the demolition and removal of existing dilapidated single family residential structures and the construction of commercial retail and affordable housing respectively.

To remove this 'gap' in the Ordinance a text amendment to Chapter 23 Sec. 23-24 will be required to include language exempting redevelopment or new construction to existing development that does not include more than 20,000 square feet of impervious area in total and that cumulatively disturbs less than one acre from providing stormwater control measures

### **Sec. 23-41 Performance Security for Guarantee**

Performance guarantees are required to ensure that stormwater control measure are installed by the permit holder as required by an approved stormwater design plan. When taking into account rising construction cost, projects taking multiple years to construct, and administrative cost; in the event the developer defaults, current security amounts would not cover the cost to properly construct these stormwater facilities.

Increasing the performance guarantee amount also incentivizes the developer to complete required improvements more expeditiously.

When the Ordinance was first enacted in 2009, performance securities were 150% of estimated construction cost. In 2012 performance securities were reduced to 75% of estimated construction cost. In 2013 performance securities for residential subdivisions were changed to 100% of the estimated conversion cost.

An increase to 125% for both estimated construction cost of commercial development SCMs, and estimated conversion cost of residential subdivision SCMs is sought.

**Issues/Analysis:**

**Sec. 23-24. - Exemptions from Requirements:**

The current Ordinance (Sec. 23-24(2)) reads as follows:

*“The following development activities are exempt from the provisions of this article and the requirements of providing stormwater management measures. Even if exempt from this article, the following as well as all development activity is not allowed to divert water to adjacent property to cause a nuisance and/or property damage and should comply with the intent of this article.*

*2. New developments that do not include more than 20,000 square feet of impervious area in total and that cumulatively disturb less than one acre.”*

The proposed amendment would change paragraph two (2) to read as follows:

*2. New developments, redevelopment, or new construction to existing development that does not include more than 20,000 square feet of impervious area in total and that cumulatively disturb less than one acre.*

Section 23-24, to include the proposed text amendment, can be found in the attached file **Sec. 23-24 Proposed Text Amendment**.

**Sec. 23-41. - Performance guarantee for installation:**

Staff is proposing an increase in the performance guarantee for installation of stormwater control measures from 75% to 125%

- Edit Sec. 23-41 (a) *Commercial Developments*
  - (1) *Shall be required.* The city shall require the submittal of a performance guarantee or bond with surety, cash escrow, ~~letter of credit~~ or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the ~~stormwater management facilities~~ SCMs 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 ~~75~~ **125** percent of the total estimated construction cost of the ~~stormwater management facilities~~ SCMs approved under the permit. The installation performance guarantee shall remain in place until at least one year after final approval.
- Edit Sec. 23-41 (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, ~~letter of credit~~ or other acceptable legal arrangement prior to approval of a final plat in order to ensure that the ~~stormwater management facilities~~ SCMs 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 ~~400~~ **125** percent of the total estimated construction cost of the ~~stormwater management facilities~~ SCMs 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 SCM.

Staff is also proposing to add text currently located in the Administrative Manual to this Ordinance Section:

- 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 23-41, to include the proposed text amendment, can be found in the attached file **Sec. 23-41 Proposed Text Amendment**

**Budget Impact:**

None

**Options:**

**Sec. 23-24. - Exemptions from Requirements**

1. Approve the proposed text amendment as written in the file **Sec. 23-24 Proposed Text Amendment.**
2. Remand the proposed text amendment back to staff for further consideration.

**Sec. 23-41. - Performance guarantee for installation**

1. Approve the proposed text amendment as written in the file **Sec. 23-41 Proposed Text Amendment.**
2. Remand the proposed text amendment back to staff for further consideration.

**Recommended Action:**

**Sec. 23-24. - Exemptions from Requirements**

1. Approve the proposed text amendment as written in the file **Sec. 23-24 Proposed Text Amendment.**

**Sec. 23-41. - Performance guarantee for installation**

1. Approve the proposed text amendment as written in the file **Sec. 23-41 Proposed Text Amendment.**

**Attachments:**

1. Sec. 23-24 Proposed Text Amendment

2. Sec. 23-41 Proposed Text Amendment
3. Stormwater Ordinance Sec 23-24 & 23-41 Proposed Text Amendment PPT
4. 2021.08.02 WKS Meeting Minutes
5. 2021.08.26 Stormwater Committee Draft Meeting Minutes
6. Sec. 23-24 Draft Ordinance
7. Sec. 23-41 Draft Ordinance