



## Legislation Details (With Text)

**File #:** 20-1632      **Version:** 2      **Name:**  
**Type:** Other Items of Business      **Status:** Agenda Ready  
**File created:** 11/9/2020      **In control:** City Council Work Session  
**On agenda:** 6/7/2021      **Final action:**  
**Title:** Stormwater Ordinance and Administrative Manual Review, Revisions, and Recommendations  
**Sponsors:**  
**Indexes:**  
**Code sections:**

**Attachments:** 1. 2020.11.19 Stormwater Committe Mtg Presentation, 2. 2021.03.21 Stormwater Committe Mtg. Presentation, 3. Current Stormwater Administrative Manual, 4. 20210517 Revised Stormwater Manual - draft, 5. 20210517 Revised Stormwater Manual - Comparison of Revisions, 6. Current Stormwater Ordinance, 7. 20210527 Revised Stormwater Control Ordinance\_Clean, 8. 20210527 Revised Stormwater Control Ordinance\_Compare, 9. 20210527 Fayetteville SCM Maintenance Memo\_Final, 10. 2021.06.07 Council Work Session Presentation - Stormwater Ordinance

| Date | Ver. | Action By | Action | Result |
|------|------|-----------|--------|--------|
|------|------|-----------|--------|--------|

**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:** June 7, 2021

**RE:**  
Stormwater Ordinance and Administrative Manual Review, Revisions, and Recommendations

**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:

In May of 2020, the City contracted with the firm Raftelis Financial Consultants, Inc. to conduct an independent review of the Stormwater Ordinance and its companion document, the Administrative Manual. The subsequent background and analysis provide details to the approach in identifying

inconsistencies between the two documents and outline a number of proposed changes and updates to both the City's Stormwater Control Ordinance and Administrative Manual

Staff seeks concurrence from City Council on the proposed Ordinance changes detailed below, to include a major policy decision to remove the option that allows for newly permitted residential subdivisions to transfer functional maintenance responsibilities of their SCMs over to the City.

Staff also seeks to establish a 2-year 'sunset' clause for existing permitted residential subdivision SCMs that have yet to be converted due to developer inaction. This sunset clause would allow for developers to complete the conversion of the SCMs per their approved permit while maintaining the ability to transfer the functional maintenance responsibilities to the City upon acceptance for up to a 2-year period. After the sunset clause expires, these basins would not be allowed to transfer the functional maintenance responsibilities to the City.

It is important to note that no changes to development standards are being recommended for the Ordinance at this time.

### **Background:**

The City's Stormwater Development Ordinance was adopted on October 27, 2008. Since its effective date of January 1, 2009, the ordinance has been amended on three separate occasions, the last being on June 10, 2013. The purpose of the Stormwater Control Ordinance is to protect, maintain, and enhance the public health, safety, and general welfare by establishing minimum requirements and procedures to control the adverse effects of the increase in stormwater quantity and the stormwater runoff quality associated with both future land development and consideration of existing developed land within the City of Fayetteville. Proper management of the quantity and quality of stormwater runoff will minimize damage to public and private property, prevent personal damage and bodily harm, ensure a functional drainage system, reduce the effects of development on land and stream channel erosion, promote the attainment and maintenance of water quality standards, enhance the local environment associated with the drainage system, reduce local flooding, and maintain as nearly as possible the pre-developed runoff characteristics of the area, and facilitate economic development while mitigating associated flooding and drainage impacts. Additionally, the purpose of this article is to comply with the post construction stormwater requirements as per the City's NPDES stormwater discharge permit.

The Administrative Manual for Implementation of the Stormwater Control Ordinance serves as the companion document to the Ordinance. This Administrative Manual describes how the Ordinance shall be administered for the City of Fayetteville and is designed to provide technical guidance to engineers and developers attempting to obtain stormwater approval for proposed development projects. The purpose of the Administrative Manual is to provide guidance and information to the staff of the City of Fayetteville as well as the general public for the effective and efficient implementation and administration of the Stormwater Control Ordinance. The Administrative Manual includes application requirements and forms, submission schedules, fee schedule, maintenance agreements, criteria for recordation of documents, inspection report forms, requirements for submittal of performance securities and where to obtain copies of the Stormwater Control Ordinance.

Prior to Raftelis' independent review of both the Stormwater Ordinance and its companion document, the Administrative Manual, four critical tasks were identified:

1. Review the current Ordinance and Administrative Manual for inconsistencies and provide

recommended revisions to both documents to include, general organization to follow permitting/construction processes, removal of technical details from the Ordinance that are more appropriately housed in the Administrative Manual and provide updated terminology where applicable.

2. Review the narrative contained within the Administrative Manual; shorten and limit to the technical details of the stormwater permit submittal and review process; and identify redundancies and contradictions to the Ordinance and remove.
3. Enhance the information within the Administrative Manual regarding the Ordinance's enforcement process and penalties and clarify and remove inconsistencies.
4. Provide guidance on alternative strategies for SCM maintenance within residential subdivisions. Sec. 23-38 of the current Ordinance allows for the functional maintenance responsibility to be transferred to the City once certain conditions have been met.

Preliminary findings of Raftelis' review were presented to the City's Stormwater Advisory Board (SWAB) on November 10, 2020 and to the Stormwater Council Committee on November 19, 2020 with a key focus on functional SCM maintenance responsibility of residential subdivision SCMs based off a comparative peer community analysis of municipalities located both in North Carolina and other states nationally.

As a result of the discussion at the November Stormwater Council Committee meeting, Raftelis was further tasked with evaluating funding methods for perpetual functional maintenance of SCMs serving residential subdivisions. The funding analysis analyzed long term maintenance and periodic replacement cost based of four independent estimating approaches, prior maintenance fund contributions, inflation, and a pilot study of seven existing residential subdivisions within Fayetteville in which the average tax values of homes were considered. Four different funding approaches were considered: Special Assessment Districts, Stormwater Fee Surcharges for benefitting ratepayers, citywide tax increases, and citywide stormwater fee increases.

It was determined to further examine funding through special assessment districts and stormwater fee surcharges due to the fact that these assess the rate payers who would be the benefitting party of this additional services. The findings of this funding analysis were presented to the Stormwater Council Committee on March 25, 2021 and after discussion the determination was to bring this item before the full Council at a work session for consideration.

## **Issues/Analysis:**

### **Administrative Manual:**

The Administrative Manual may be amended from time to time, based on policy changes, etc. The Public Services Department is responsible for all amendments to the Administrative Manual. Following the completion of modifications, the amended Administrative Manual shall go into effect. Notification of the modifications shall be made to both City staff and the general public.

Key Updates to the Administrative Manual include:

- Internal processes have been removed
- Extraneous narratives have removed
- Includes references to Ordinance rather than repeating Ordinance language
- Added stormwater design plan information from Ordinance (Section 3.0)

- Added clarifications to process in Section 4.0
- Added Enforcement Section (Section 8.0)
- Added required plat notes for easements on developments with and without an HOA (Section 6.0)

The Administrative Manual is also being proposed to be reorganized and formatted to better follow the design, review, construction process. The proposed Administrative Manual sections are as follows:

- Section 1.0 Administrative Manual Overview
- Section 2.0 Infrastructure Permit
- Section 3.0 Stormwater Design Plans
- Section 4.0 Operation and Maintenance Agreements
- Section 5.0 Performance Guarantee Requirements
- Section 6.0 Final Plats
- Section 7.0 Inspection Process
- Section 8.0 Enforcement
- Section 9.0 Record Drawing Surveys and Digital Submittals
- Section 10.0 Variances and Appeals

While proposed changes to the Administrative Manual have been identified and drafted, the Administrative Manual needs to accurately reflect any modifications or amendments to the Stormwater Ordinance. Council action on the proposed Ordinance amendments, specifically the transfer of functional maintenance responsibility of residential subdivisions to the City will shape the final version of the Administrative Manual, most notably Section 4.0 Operation and Maintenance Agreements.

The revisions and recommendations to the Administrative Manual will be finalized upon Council action taken on proposed Ordinance Amendments outlined below.

### **Stormwater Ordinance:**

The City of Fayetteville's Stormwater Control Ordinance is located in Chapter 23 Article III of the City's Code of Ordinances. It is currently comprised of 30 different sections. For the purposes of this analysis, we will address each section as they are currently listed in the Ordinance

#### **Sec 23-20. - Title, Purpose, Application.**

- No changes proposed

#### **Sec 23-21. - Definitions**

- Proposed moving definitions below other general information such as, Sec. 23-47 Relationship to other laws, regulations, and private agreements, Sec. 23-48 Severability, and Sec. 23-49 Effective date
- Definitions were added, deleted, and edited to align with usage in the Administrative Manual and Ordinance.

#### **Sec 23-22. - Scope of Article**

- No changes proposed

**Sec. 23-23. - Powers of the department.**

- Recommend moving section under Sec. 23-46 Enforcement

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

- Recommend moving section under Sec. 23-22 Scope of Article

**Sec. 23-25. - Scope of stormwater design plans.**

- Recommend removal from the Ordinance and including in the Administrative Manual

**Sec. 23-26. - Stormwater design plans and approval process.**

- Edit Sec. 23-26 (b)
  - Plan requirements. Stormwater design plans submitted to the city shall comply with all requirements described in the administrative manual, including but not limited to hydrologic, land use, easements, watersheds, and wetlands requirements
- Remove Sec. 23-26 (c) Consultation Meeting
- Edit Sec. 23-26 (d)
  - Added No decision by the city manager within the required timeframe shall constitute an approval.
  - Updated number of final plans required to be submitted (from three to four)
- Remove Sec. 23-26 (f)
  - Should any stormwater design plan involve any stormwater management facilities or land to be dedicated to public use, the same information shall also be submitted for review and approval to the department having jurisdiction over the land or other appropriate departments or agencies identified by the city engineer for review and approval. This stormwater design plan shall serve as the basis for all subsequent construction.
- Edit Sec. 23-26 (h)
  - Following approval of stormwater design plans and the issuance of an infrastructure permit, an owner shall have a vested right to develop the property in accordance with the conditions of approval for two years.

**Sec. 23-27. - Plan requirements.**

- Recommend removal from the Ordinance and including in the Administrative Manual

**Sec. 23-28. - Plan hydrologic criteria.**

- Recommend removal from the Ordinance and including in the Administrative Manual

**Sec. 23-29. - Plan land use conditions criteria.**

- Recommend removal from the Ordinance and including in the Administrative Manual

**Sec. 23-30. - Plan Wetlands Criteria**

- Recommend removal from the Ordinance and including in the Administrative Manual

**Sec. 23-31. - Minimum stormwater quantity control requirements.**

- No changes proposed

**Sec. 23-32. - Minimum stormwater quality control requirements.**

- Edit Sec. 23-32 (c) (3) to update to NCDEQ current standard verbiage:
  - *From:* “All structural stormwater treatment systems used to meet these requirements shall be designed to have a minimum of 85 percent average annual removal for Total Suspended Solids (TSS). “
  - *To:* “All structural stormwater treatment systems used to meet these requirements shall be designated as a Primary SCM (when 100% sized) or a Secondary SCM in series with a Primary SCM.”

**Sec. 23-33. - Approval and permit requirements.**

- Edit Sec. 23-33 (a)
  - If an infrastructure permit is required under the scope of this Article, no final site plan or subdivision plan approval shall be issued or modified without the following items...
- Edit Sec. 23-33 (b)
  - No final certificate of occupancy permit shall be issued pursuant to Chapter 7 of this Code of Ordinances or final plat approved without the following:
    - (1) All final inspection requirements per section 23-31 are met;
    - (2) Receipt of approved record drawings as outlined in section 23-31;
    - (3) An executed and recorded operation and maintenance agreement, if required, in accordance with section 23-33;
    - (4) The posting of an installation performance guarantee, if required, in accordance with section 23-34; and
    - (5) A recorded maintenance easement for every SCM to allow sufficient access for adequate maintenance, in accordance with section 23-37.
- Added: All items required for final site plan, subdivision plan, or certificate of occupancy approval must meet applicable requirements in this article and the administrative manual.

**Sec. 23-34. - Building permit or street plan approval suspension and revocation.**

- No changes proposed

**Sec. 23-35. - Professional registration requirements.**

- No changes proposed

**Sec. 23-36. - Fees.**

- No changes proposed

**Sec. 23-37. - Construction and inspection.**

- Edit Sec. 23-37 (e)
  - The permittee shall provide record drawings signed and sealed by a registered professional (as outlined in section 23-27) to be submitted upon completion of the stormwater systems included in the stormwater design plan. The record drawings shall be referenced to North Carolina State Plane Coordinates and shall be provided in hard copy form as well as a digital file which is compatible with the city's software. The registered professional shall state on the record drawings that:
    - (1) The systems have been constructed as shown on the record drawings;

- (2) The systems meet the approved stormwater design plan and specifications; and
- (3) The record drawings meet all applicable requirements of this article and the administrative manual.
- Remove Sec 23-27 (f) detailing record drawing requirements and move to Admin Manual

#### **Sec. 23-38. - Ownership and maintenance of stormwater management facilities.**

- Edit Sec. 23-38 (a)
  - All stormwater management facilities SCMs shall be privately owned and maintained unless the city accepts the facility for city ownership and functional 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 23-39, hereof.
- Remove Sec. 23-38 (b)
  - Single-family residential stormwater management facilities accepted for maintenance. The city shall accept functional maintenance responsibility of structural stormwater management facilities that are installed pursuant to this article following a warranty period of one year from the date of record-drawing certification described in section 23-37, or from the date the facility ceases to function as an erosion control measure and starts to function as a stormwater management facility, whichever is later, provided the stormwater management facility:
    - (1) Only serves a single-family detached residential development or townhomes all of which have public street frontage;
    - (2) Is satisfactorily maintained during the one-year warranty period by the owner or designee;
    - (3) Meets all the requirements of this article;
    - (4) Includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection, maintenance, repair, or reconstruction; and
    - (5) Prior to the release of the installation performance guarantee as outlined in section 23-41(b), the developer shall pay into a maintenance fund used to maintain such facilities in the future an amount equal to 20 percent of the initial construction cost of the stormwater management facilities related to detention ponds or other BMPs constructed to meet the requirements of this article.

#### **Sec. 23-39. - Operation and maintenance agreement.**

- Remove the following from Sec. 23-39 (a)
  - For single-family residential subdivisions, the original owner or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement for a period of one year from the date of record-drawing certification described in section 23-37, or for a period of one year from the date the facility ceases to function as an erosion control measure and starts to function as a stormwater management facility, whichever is later. At the end of the one-year timeframe, the stormwater management facility shall be inspected as outlined in section 23-41 in order to release the performance guarantee. Once the stormwater management facility has passed inspection, primary responsibility for carrying out the provisions of the maintenance agreement shall be transferred to a homeowners' association, property owners' association, or similar entity. In cases where the city is accepting functional maintenance responsibility, such responsibility shall be transferred to the city once the stormwater management facility has passed inspection. A homeowners' association,

property owners' association, or similar entity shall still be responsible for routine maintenance such as mowing the grass and picking up litter.

- Add to following to Sec 23-39 (b)
  - *Private maintenance responsibility*, The inspection, maintenance (functional and routine), repair and reconstruction of SCMs shall be the responsibility of i) the owner of the property on which such SCMs are located; and ii) any person or entity that has legally agreed to be responsible for the SCM as determined by reference to the operation and maintenance agreement.

#### **Sec. 23-40. - Inspection program.**

- No changes proposed

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

- 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 ~~100~~ **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.
- 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.

#### **Sec. 23-42. - Notice to owners; deed recordation and indications on plat.**

- Recommend moving under Sec. 23-39 Operation and Maintenance Agreement

#### **Sec. 23-43. - Records of installation and maintenance activities.**

- No changes proposed



**Sec. 23-44. - Variances from requirements.**

- No changes proposed, but includes the addition of reference to process outlined in the Administrative Manual

**Sec. 23-45. - Appeals.**

- No changes proposed, but includes the addition of reference to process outlined in the Administrative Manual

**Sec. 23-46. - Enforcement.**

- No changes proposed

**Sec. 23-47. - Relationship to other laws, regulations, and private agreements.**

- No changes proposed

**Sec. 23-48. - Severability.**

- No changes proposed

**Sec. 23-49. - Effective date.**

- No changes proposed

A new section was recommend to reference Maintenance Easement requirements:

- All aspects of the stormwater conveyance system, to include the SCM installed pursuant to this article shall be made accessible for adequate inspection, maintenance, reconstruction and repair by a maintenance easement, which will be shown and labeled on all plans and plats. The easement shall be established and recorded in accordance with the details provided in the administrative manual.
- The operation, maintenance, and reconstruction responsibility of the stormwater system, including the SCM, located within an easement rest with the owner. No obstruction shall be allowed in the easement which could impede necessary maintenance by the owner and any enforcement by the city.

The Ordinance is also being proposed to be reorganized into 7 different divisions to better follow the design, review, construction process:

- Division 1      General Provisions
- Division 2      Plans
- Division 3      Construction
- Division 4      Post-Construction
- Division 5      Variance and Appeals
- Division 6      Fees
- Division 7      Enforcement

Additionally, there were updates to dated terminology throughout:

- Stormwater Permit to Infrastructure Permit
- Engineering & Infrastructure Department to Public Services Department
- Stormwater Management Facilities to SCM
- City Engineer to City Manager or designee

**Functional Maintenance Responsibility of Residential SCMs:**

Section 23-38 (b) of the Ordinance currently states that the City shall accept functional maintenance responsibility of structural stormwater management facilities that are installed in accordance with the ordinance, following a warranty period of one year from the date of record-drawing certification or from the date the facility ceases to function as an erosion control measure and starts to function as a stormwater management facility (conversion), whichever is later. Further, the City will only accept the stormwater management facility provided several specific conditions, including:

- (1) The stormwater management facility is satisfactorily maintained during the one-year warranty period by the owner or designee;
- (2) It includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection, maintenance, repair, or reconstruction;
- (3) Prior to the release of the installation performance guarantee as outlined in section 23-41(b), the developer must pay into a maintenance fund used to maintain such facilities in the future an amount equal to 20 percent of the initial construction cost of the stormwater management facilities related to detention ponds or other BMPs constructed to meet the requirements of the ordinance.

To date the City has taken over functional maintenance of six residential SCMs, each of which met the conditions above. There are also approximately 35 additional residential subdivision SCMs that have been permitted but not yet converted from an erosion control measure. Once converted and requirements of the Ordinance outlined above are met, the City would be responsible for the functional maintenance of these SCMs.

There are significant liability and financial reasons to consider adjusting this policy. As functional maintenance responsibility for an SCM is transferred to the City, so too is the cost associated with that functional maintenance and periodic replacement. Functional maintenance activities include regular inspections, repairs, stabilizing slopes, and removing sediment, all as needed. Periodic replacement costs represent the cost to fully reconstruct the SCM once it has passed its useful life.

If the City continues with the current policy of taking over residential subdivision SCMs, it must also consider these growing costs and the appropriate mechanism for funding them. The required 20% maintenance fund payment by the developer is not enough to cover the ongoing costs in perpetuity. A rough cost of annual SCM maintenance for all current permitted residential basins, based off of NCSU Extension Service guidance on SCM maintenance, is estimated to cost in excess of \$400,000 annually, with replacement cost estimated to be approximately \$4,000,000. Without additional funding, the requirement to take on functional maintenance of residential subdivision SCMs will stress the stormwater program budget in future years as it is not set up to fund this type of additional service.

Raftelis evaluated a number of peer communities both in North Carolina and other states nationally to gauge how other utilities and communities address the maintenance of residential SCMs, and if so, how were these activities funded. A summary table below outlines the municipalities evaluated, if they maintain residential SCMs, the funding source, and the type of maintenance. More detail into each individual municipality can be found in the attached memo titled: *City of Fayetteville Residential SCM Maintenance Funding*

**Table 1. Peer Communities Responsibility**

|  | Does the utility maintain residential SCMs? | Funding Source         | Type of Maintenance   |
|--|---|------------------------|-----------------------|
| Charlotte-Mecklenburg Storm Water Services (City of Charlotte, NC) | By Petition                                 | Stormwater utility fee | Functional            |
| City of Austin (TX)  | Yes   | Stormwater utility fee | Functional, aesthetic |
| City of Durham (NC)  | No  | N/A                    | N/A                   |
| City of Raleigh (NC)   | No  | N/A                    | N/A                   |
| City of Greenville (NC)  | No  | N/A                    | N/A                   |
| El Paso Water (TX)   | Yes   | Stormwater utility fee | Functional            |
| Lexington-Fayette Urban County Government (KY)                     | Yes   | Stormwater utility fee | Functional            |
| Metro Government of Nashville & Davidson County (TN)               | No  | N/A                    | N/A                   |

|   |     |                        |            |
|---|-----|------------------------|------------|
| New Hanover County (NC)                             | No  | N/A                    | N/A        |
| Sanitation District No. 1 of Northern Kentucky (KY) | Yes | Stormwater utility fee | Functional |

Following the detailed peer review, the proposed recommendation was to amend the current Ordinance Sec. 23-38 to remove the option to transfer functional maintenance responsibility of residential SCMs over to the City.

It was also recommended to establish a sunset clause for the previously permitted residential SCMs that are awaiting conversion from an erosion and sediment basin due to continuous developer inaction. The City would continue functional maintenance of those residential SCMs already transferred and for those converted by the sunset date.

When the above recommendation was presented to the Stormwater Council Committee in November '20, Raftelis was tasked with evaluating in more detail how much functional maintenance and periodic reconstruction efforts cost over an extended period of time and how might these cost be recovered.

To achieve this, Raftelis utilized four different cost estimating methodologies (to include periodic replacement) to evaluate 7 existing residential subdivision within the City. The cost estimating methodologies are as follows:

- (1) Developer-provided annual maintenance costs
- (2) NCSU Extension maintenance estimate guidance
- (3) Peer NC City's maintenance estimate guidance
- (4) The Water Research Foundation (WERF) guidance

Raftelis then considered four funding approaches:

- (1) Special Assessment Districts for benefitting residential ad valorem taxpayers
- (2) Stormwater Fee Surcharges for benefitting residential ratepayers
- (3) Citywide tax increase
- (4) Citywide stormwater fee increase

Two of the above funding approaches were not modeled as they would require a city-wide tax increase and a city-wide stormwater fee increase. Both approaches would charge both benefitting and non-benefitting customers and would require regular increases as more SCMs are built and converted, and maintenance responsibility is turned over to the City.

The two funding approaches chosen to be analyzed in more detail were creation of Special Assessment Districts and Stormwater Fee Surcharges. Special Assessment Districts are established for benefitting residential ad valorem taxpayers. This approach would mean that each benefitting property pays according to the value of their property. The second approach considered a stormwater fee surcharge for benefitting residential ratepayers. This approach would add a charge on top of the existing stormwater fee. As more SCMs are built and converted, and maintenance responsibility is turned over to the City, the residential properties in associated developments would become subject to the tax or surcharge.

More detail into each funding approach, to include assumptions, tax evaluations, etc. can be found in the attached memo titled: *City of Fayetteville Residential SCM Maintenance Funding*

In total, annual maintenance and period replacement costs for the sample of seven existing developments would total about \$76,200. Across all developments, this equates to an average (weighed by the number of homes) revenue requirement of about \$121 per house. The average tax value of the homes in the seven neighborhoods is \$232,000, varying from less than \$100,000 to over \$340,000.

Findings from the funding analysis show that if the City decided to pursue a Special Assessment District tax, a tax of 5.2 cents per \$100 in taxable value would be needed to generate \$121 per house on average. Alternatively, a stormwater fee surcharge of \$121 per house amount would generate the needed revenue to maintain SCMs in this analysis.

Again, after the funding analysis, both Raftelis and staff's recommendation is that the City amend their current Ordinance Sec. 23-38 to remove the option for the City to accept functional maintenance responsibility of newly permitted residential SCMs because of the added expense and effort that is associated with maintenance, especially across numerous residential developments.

If that recommendation is pursued, further recommendation is that the City allow previously permitted SCMs that are eligible for conversion to be accepted by the City if they meet the established requirements within a specified timeframe (a sunset clause on the existing language). For example, developers could have two years to complete the conversion of their basins for the City to accept and assume functional maintenance responsibility. After that timeframe ends, and the one-year warranty period has passed, the City would not accept maintenance responsibility of any new SCMs.

The City should continue maintaining the SCMs that have already been accepted and maintain those converted by the sunset date and subsequently accepted. If the City decides to pursue this option, it should consider adding language in the Ordinance for enforcement action if the owner fails to perform routine maintenance on their SCM(s).

If the City decides to continue accepting functional maintenance responsibility of SCMs, Raftelis recommends recovering costs through a stormwater fee surcharge for residential ratepayers who benefit from the program. A surcharge of \$121 per benefitting residential property recommended. According to Raftelis' analysis, this surcharge should be enough to maintain residential development SCMs as well as cover the cost of any necessary periodic replacement. Should the City decide to pursue a stormwater fee surcharge, the City's ordinance should be updated to reflect this change. As discussed, the stormwater fee surcharge would apply to a property if, and when, the City takes over the SCM associated with that property's development.

### **Budget Impact:**

Specific to Sec. 23-38, if the City continues the current practice of accepting functional maintenance responsibility of residential subdivision SCMs, as these basins are converted and transferred to the City, additional annual maintenance cost will rise with no current funding source. Projecting forward, periodic replacement of failed basins are another annualized cost that currently has no funding source. The Stormwater Enterprise Fund is not structured or set up to fund or support the additional

service of providing functional maintenance to these privately owned SCMs.

**Options:**

1. Provide direction on the proposed Ordinance recommendations, revisions, and organization, to include the removal of the City's functional maintenance responsibilities in residential subdivisions and establishment of a sunset clause for existing residential subdivision SCMs that have failed to be converted and direct staff to bring text amendments back before a Council in a public hearing.
2. Provide direction on the proposed Ordinance recommendations, revisions, and organization, to include establishing a stormwater surcharge to fund functional maintenance responsibilities in residential subdivisions and direct staff to bring text amendments back before a Council in a public hearing.
3. Do not provide consensus to move forward with any or all options and provide further direction to staff.

**Recommended Action:**

Staff recommends option 1: Provide direction on the proposed Ordinance recommendations, revisions, and organization, to include the removal of the City's functional maintenance responsibilities in residential subdivisions and establishment of a sunset clause for existing residential subdivision SCMs that have failed to be converted and direct staff to bring text amendments back before a Council in a public hearing.

**Attachments:**

1. 2020.11.19 Stormwater Committee Mtg. Presentation
2. 2021.03.21 Stormwater Committee Mtg. Presentation
3. Current Stormwater Administrative Manual
4. Revised Stormwater Administrative Manual - draft
5. Revised Stormwater Administrative Manual - comparison of revisions
6. Current Stormwater Ordinance
7. Revised Stormwater Ordinance - redline draft
8. Revised Stormwater Ordinance - clean draft
9. City of Fayetteville Residential SCM Maintenance Funding Memo
10. 2021.06.07 Council Work Session Presentation