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1 14-5-1-1 et seq. of this article for the assistance and guidance of city officials,
2 city staff and all persons and entities within the jurisdiction of the city.

3 (B) As to flood control, to:

4 (1) Prevent ~~[the loss of or injury]~~[harm] to human life.

5 (2) Minimize flood damages to public and private property.

6 (3) Provide for timely and effective construction and maintenance of
7 flood control facilities.

8 (4) Preserve the capacity of flood control and storm drainage facilities
9 to accept ~~[and] [,]~~ convey or store ~~[flood and storm]~~ drainage flows by limiting
10 the introduction of groundwater cleanup flows to such flood control and storm
11 drainage facilities.

12 (C) As to storm drainage, to:

13 (1) Prevent the creation of public safety hazards and seek to eliminate
14 existing problems.

15 (2) ~~[Prevent to the extent feasible,]~~ [Minimize] the discharge of storm
16 runoff from public facilities onto private property.

17 (3) ~~[Prevent the increased risk of]~~ [Minimize] damage to private
18 property caused by storm runoff from other private property.

19 (4) Provide a reasonable level of public health and convenience at
20 reasonable cost.

21 (5) Provide for timely and effective construction and maintenance of
22 storm drainage facilities.

23 (6) Preserve the capacity of flood control and storm drainage facilities
24 to accept ~~[and]~~[,] convey or store ~~[flood and storm drainage]~~ flows by limiting
25 the introduction of groundwater cleanup flows to such flood control and storm
26 drainage facilities.

27 (D) As to [stormwater control, sediment and] erosion control ~~[,]~~, to:

28 (1) Help protect the hydraulic capacity of flood control and storm
29 drainage facilities from losses due to sedimentation~~[, trash, debris, and other~~
30 such stormwater constituents,] and degradation.

31 (2) Preserve public health, safety and convenience from jeopardy due
32 to [quality impairment,] erosion and sedimentation in private and public
33 facilities of all types.

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1 (3) Preserve the quality of the surface runoff.

2 (E) As [relating to groundwater cleanup impacts] to storm flow water
3 quality~~;~~~~] to limit the quantity, quality, frequency, location and means of
4 introduction of groundwater cleanup flows into flood and storm drainage
5 control systems [in order] that such introductions do not result in a mixed
6 flow of lower quality than that of flood~~[/]~~ [or] storm flows without such
7 introductions of groundwater cleanup flows or of lower quality than adopted
8 federal, state and city standards, whichever is most stringent.~~

9 § 14-5-2-4 DEFINITIONS.

10 For the purpose of §§ 14-5-2-1 et seq., the following definitions shall apply
11 unless the context clearly indicates or requires a different meaning.

12 **AMAFCA.** The Albuquerque Metropolitan Arroyo Flood Control Authority.
13 **[BMPs. Best Management Practices. Those practices described in Section**
14 **14-5-2-6(H) of this Ordinance.]**

15 **CHANNEL.** Any [natural or constructed drainage facility, including but not
16 limited to an]arroyo, stream, swale, ditch, diversion, or water course that
17 conveys storm runoff~~[, including manmade facilities].~~

18 **CHANNEL STABILITY.** A condition in which a channel neither degrades to
19 the degree that structures, utilities or private property are endangered, nor
20 aggrades to the degree that flow capacity is significantly diminished as a
21 result of one or more storm runoff events or moves laterally to the degree that
22 adjacent property is endangered.

23 **CHANNEL TREATMENT MEASURE.** A physical alteration of a channel for
24 any purpose.

25 **CIP.** The city's Capital Improvement Program.

26 **CITY ATTORNEY.** The chief legal counsel for the city or his~~[/]~~[her] designee.

27 **CITY ENGINEER.** The chief administrative engineer of the Engineering
28 Division of the ~~[Municipal Development]~~ [Planning] Department of the city or
29 his~~[/]~~[her] designee.

30 **CITY HYDROLOGIST.** A staff [P]rofessional Engineer designated by the
31 City Engineer to exercise primary responsibility for drainage control, flood
32 control and erosion control matters assigned to the office of the City Engineer.

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1 **COMPREHENSIVE PLAN.** The Albuquerque/ Bernalillo County
2 Comprehensive Plan and amendments thereto.

3 **CONCEPTUAL GRADING AND DRAINAGE PLAN.** A plan prepared in
4 graphical format showing existing and proposed grading, drainage control,
5 flood control[, runoff management] and erosion control information in
6 sufficient detail to determine project feasibility.

7 **[CONSTRUCTION SITE WASTE(S).** Discarded building materials, concrete
8 truck washout, chemicals, litter, sanitary wastes at construction sites, and
9 similar items or material that may cause adverse impacts.]

10 **DESIGN STORM.** A storm which deposits a [stated][specific] amount of
11 precipitation within a [stated] [specified] period over a defined area [~~and which~~
12 ~~is used~~] [. Used] in calculating storm runoff and in designing [structural and
13 operational measures for] drainage [~~control~~][,] flood [~~control~~][,] [stormwater
14 control,] and erosion control [~~measures~~].

15 **DEVELOPED LAND.** Any lot or parcel of land occupied by [an artificial
16 surface or by] any structure intended for human occupation, including
17 structures intended for commercial enterprise.

18 **DEVELOPER.** Any individual, [public entity,] estate, trust, receiver,
19 cooperative association, club, corporation, company, firm, partnership, joint
20 venture, syndicate or other entity engaging in the platting, subdivision, filling,
21 grading, [paving,] excavating, or construction of structures. [Farming related
22 work is exempted as is AMAFCA Operations and Maintenance.]

23 **[DEVELOPMENT PROCESS MANUAL (DPM).** A compilation of City
24 legislative requirements and administrative rules and procedures governing
25 development activities in the Albuquerque area.]

26 **DOWNSTREAM CAPACITY.** The ability of downstream major facilities to
27 accept and safely convey runoff generated upstream from the 100-year design
28 storm.

29 **DRAINAGE.** Storm drainage.

30 **DRAINAGE CONTROL.** The treatment and/or management of surface runoff
31 from all storms up to and including a 10-year Design Storm.

32 **[DRAINAGE MANAGEMENT PLAN.** A comprehensive drainage analysis
33 and report which covers a large area or an entire basin or watershed. A

1 Drainage Management Plan may include descriptions of infrastructure needed
2 to solve existing or anticipated drainage and flood control problems and may
3 establish allowable discharge rates and/or volumes and stormwater controls
4 for future development within the boundaries of the plan.]

5 *DRAINAGE PLAN.* A short detailed plan prepared in graphical format with
6 or on a detailed grading plan addressing on-site and off-site drainage control,
7 flood control[, stormwater control,] and erosion control issues for [a] lot[s] or
8 parcel of less than five acres.

9 *DRAINAGE REPORT.* A comprehensive analysis of the drainage, flood
10 control[, stormwater control,] and erosion control constraints on and impacts
11 resulting from a proposed platting, development or construction project.

12 *DRAINAGE RIGHT-OF-WAY.* A public right-of-way acquired, whether in fee
13 or in easement, by the city, county, AMAFCA, or the state for the primary
14 purpose of handling storm drainage.

15
16
17 *EROSION [AND SEDIMENT] CONTROL.* Treatment measures for the
18 prevention of damages due to soil movement and to deposition from the
19 [40][2]-year design storm runoff.

20 *EROSION [AND SEDIMENT] CONTROL PLAN.* A plan [~~for the mitigation of~~
21 ~~damages due to soil erosion and to deposition from the 10-year design storm~~
22 ~~runoff~~] prepared by a licensed New Mexico Professional Engineer submitted
23 to ensure that minimum design standards are met to reduce potential
24 pollutants that may result from demolition and construction activities.]

25 *[FARMING.* Working of the soil for agricultural purposes that does not
26 change the historic flow path or significantly change the amount of runoff
27 from the worked area.

28 *FIRST FLUSH.* The stormwater runoff during the early stages of a storm
29 equal to or less than runoff from a 90th Percentile Storm Event that can deliver
30 a potentially high concentration of pollutants due to the washing effect of
31 runoff from impervious areas directly connected to the storm drainage
32 system.]

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1 **FLOOD CONTROL.** The treatment measures necessary to protect life and
2 property from the 100-year design storm runoff.

3 **FLOOD HAZARD AREA.** An area subject to inundation from the 100-year
4 design storm runoff.

5 **FLOODWAY.** The channel of a river, arroyo or other watercourse and
6 adjacent land areas that must be reserved in order to safely discharge the 100-
7 year design storm runoff.

8 **FREEBOARD.** ~~[That part of a drainage channel that is designed to contain~~
9 ~~the wave action of the 100-year design storm]~~ [The additional height in a
10 drainage or flood control facility above the design water surface elevation
11 available for storage or flow capacity].

12 **FULLY DEVELOPED WATERSHED.** A hydrologic condition in which all
13 areas upstream and downstream of a point in question are assumed
14 completely developed, including any undeveloped areas which are assumed
15 to be developed in accordance with mid-range development densities as
16 established by the Comprehensive Plan, appropriate area plans or sector
17 plans, adopted facilities master plans and the hydraulic and hydrologic
18 standards established by §§ 14-5-2-1 et seq.

19 **GRADING PLAN.** A plan describing the existing topography and proposed
20 grading, including retaining wall locations and details, interfaces with adjacent
21 properties, streets, alleys and channels, referenced to mean sea level based
22 on a City Bench Mark, and showing sufficient contours, spot elevations,
23 stormwater controls, and cross-sections to allow a clear understanding by
24 reviewers, contractors and inspectors.

25 **GROUNDWATER CLEANUP.** The process necessary to remove
26 contaminants, as defined by state and/or federal groundwater standards, from
27 groundwater for the purpose of restoring the water quality of the aquifer.

28 [LARGER COMMON PLAN OF DEVELOPMENT. A contiguous area where
29 multiple separate and distinct construction activities may be taking place at
30 different times on different schedules under one plan.]

31 **MAINTENANCE.** The cleaning, shaping, grading, repair and minor
32 replacement of drainage, flood control and erosion control facilities, but not

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1 including the cost of power consumed in the normal operation of pump
2 stations.

3 **MAJOR ARROYO.** Any channel whose watershed exceeds 320 acres in a
4 100-year design storm whether such watershed is in its natural or unaltered
5 state or has been altered by development, runoff diversions, or detention
6 facilities.

7 ~~**[MAJOR FACILITY.** Any facility, including a street or alley, which would
8 collect, divert or convey a peak discharge of more than 50 cubic feet per
9 second (50 cfs) or store more than 2.0 acre-feet of runoff in the event of a 100-
10 year design storm.]~~

11 **MASTER PLANNED FACILITY.** Any drainage control, flood control or
12 erosion control facility recommended in the adopted "Albuquerque Master
13 Drainage Plan" (1981), amendments thereto, [or any approved Drainage
14 Management or Drainage Master Plan,] or any voter approved general
15 obligation bond financed drainage control, flood control or erosion control
16 facility.

17 ~~**[MINOR FACILITY.** Any facility which would collect, divert or convey
18 a peak discharge of 50 cubic feet per second (50 cfs) or less in the event of the
19 100-year design storm.]~~

20 **MULTIPLE USE FACILITY.** A drainage control, flood control or erosion
21 control facility in which other secondary uses are planned or allowed,
22 including but not limited to recreation, open space, transportation and utility
23 location.

24 **[90TH PERCENTILE STORM EVENT.** The precipitation event that is less
25 than or equal to ninety percent of all rainfall events in a calendar year based
26 on available precipitation records for a region. For the purposes of this
27 ordinance the 90th Percentile Storm Event is 0.44 inches.]

28 **NUISANCE WATERS.** Those waters leaving a site and entering a public
29 street ~~[which]~~ [that] do not result from precipitation~~[, such as]~~[. Examples
30 include] landscape over-watering or car washing.

31 **100-YEAR DESIGN STORM.** That storm whose precipitation within a six-
32 hour period and resulting runoff has a 1% chance of being equaled or
33 exceeded in any given year.

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1 **[PRIVATE STORMWATER FACILITY. A stormwater facility on private**
2 **property.**

3 **PROJECT. Any activity which disturbs or exposes the surface of the**
4 **ground to erosion. Farming activities are exempt.**

5 **PUBLIC STORMWATER FACILITY. Any stormwater facility within public**
6 **property, public right-of-way or a public drainage easement.**

7 **STORMWATER CONTROL MEASURE (SCM).**

8 **Any Best Management Practice, or combination thereof, aimed at reduce**
9 **pollutants from entering the Rio Grande.**

10 **STORMWATER CONTROL PERMIT FOR EROSION AND SEDIMENT**
11 **CONTROL. A permit issued to authorize work to be performed as regulated**
12 **and authorized by this ordinance.]**

13 **TEMPORARY DRAINAGE FACILITY. A nonpermanent drainage control,**
14 **flood control or erosion control facility constructed as part of a phased project**
15 **or to serve until such time that a permanent facility is in place, including but**
16 **not limited to desilting ponds, berms, diversions, channels, detention [and**
17 **retention] ponds, bank protection and channel stabilization measures.**

18 **10-YEAR DESIGN STORM. That storm whose precipitation within a six-**
19 **hour period and resulting runoff has a 10% chance of being equaled or**
20 **exceeded in any given year.**

21 **TRAFFIC ENGINEER. [The chief administrative engineer of the city's Traffic**
22 **Engineering Division or his authorized representative.] [A staff Professional**
23 **Engineer designated by the City Engineer to exercise primary responsibility**
24 **for transportation matters assigned.]**

25 **§ 14-5-2-5 JURISDICTION.**

26 Sections 14-5-2-1 et seq. shall apply to all lands within the city and, with
27 respect to planning and platting matters, it shall also apply to all lands within
28 its extraterritorial planning and platting jurisdiction. This jurisdiction is not
29 exclusive; in particular, **[in matters of flood control]** AMAFCA shares
30 jurisdiction **[in matters of flood control]**.

31 **§ 14-5-2-6 GENERAL PROVISIONS.**

32 (A) The city is and shall remain an active participant in the National Flood
33 Insurance Program. The city endorses the program goal of flood damage

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1 reduction through the regulation of development within flood hazard areas
2 and the preservation of floodways. Sections 14-5-2-1 et seq. are intended to
3 complement and supplement the Flood Hazard Ordinance set forth in §§ 14-5-
4 1-1 et seq. of this article and shall be administered in concert therewith.

5 (B) All developed land within the city shall be provided with adequate
6 drainage [control], flood control~~[, stormwater control,]~~ and erosion control
7 facilities. The protection of life~~[, health,]~~ and property shall be considered the
8 primary function in the planning, design, construction and maintenance of
9 drainage control, flood control~~[, stormwater control,]~~ and erosion control
10 facilities~~[, but]~~[. However,] other concerns, not limited to the following, shall
11 be addressed: channel capacity, watershed characteristics, channel stability,
12 maintenance, transitions between treatment types, multiple use goals~~[, and]~~
13 appearance. The needs of the community in transportation, utility services,
14 recreation, and open space shall be considered in planning, design,
15 construction, and maintenance ~~[(especially) [-particularly]~~ in the selection of
16 channel treatment measures~~)]~~. These needs shall always be considered
17 subsidiary to the primary function~~[s]~~ of the drainage control, flood control~~[,~~
18 stormwater control,] and~~[or]~~ erosion control ~~[facility]~~ [facilities].

19 (C) The design, construction and maintenance of dams, levees and
20 diversions that fall within the jurisdiction of the State Engineer shall meet or
21 exceed standards established by the State Engineer.

22 (D) The design, construction and maintenance of flood control facilities
23 shall be coordinated with AMAFCA [or other public agencies as appropriate].

24 (E) All ~~[major]~~ facilities [receiving water from public facilities and rights-
25 of-way] shall be constructed within dedicated rights-of-way or recorded
26 drainage easements granted to and accepted by the proper public authority
27 [or a private entity with an agreement for operations and maintenance].

28 (F) All ~~[detention ponds defined as minor]~~ facilities [which receive only
29 runoff from private property] shall be constructed on private property unless
30 otherwise authorized by the City Engineer. ~~[Except as is necessary for the~~
31 ~~treatment of nuisance water, all ponds shall be designed and constructed to~~
32 ~~be emptied in 24 hours or less.]~~ The use of individual ~~[on-]~~lot ponding shall be

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1 governed by the standards established by the City Engineer [in the
2 Development Process Manual].

3 (G) Wherever flood control, drainage [control, stormwater control,] or
4 erosion control improvements are necessary within dedicated public open
5 space, such improvements shall be designed and constructed in a manner
6 reasonably consistent with the natural surroundings. All construction and
7 maintenance activities in dedicated open space shall be performed so as to
8 minimize the disruption and destruction of vegetation and adjacent land
9 forms. Where such disturbance or destruction is unavoidable, revegetation
10 shall be performed at the earliest practical time by those responsible for such
11 disturbance and/or destruction.

12 [(H) All new development projects shall, where practicable, manage the
13 runoff from precipitation from 90th Percentile Storm Events, utilizing
14 appropriate techniques such as the following, to detain, retain and/or dispose
15 of said runoff: infiltration into soil, extended filtration procedures, water
16 harvesting, evapotranspiration, or other techniques appropriate under the
17 circumstances, and any combination of these practices. Generally, it shall not
18 be deemed “practicable”, in the context above, in site development cases that
19 include but are not limited to: (i) cases of conflicts with water rights
20 appropriations requirements, (ii) cases where post-development drainage
21 planning that does not and/or cannot practically connect to the River, and (iii)
22 cases where appropriate public or private drainage facilities are available
23 ‘offsite’ and will be be used in a manner consistent with the goals of this
24 Ordinacne to manage the Project runoff from precipitation from 90th Percentile
25 Storm Events.

26 (I) Where practicable, Stormwater Control Measures shall be designed
27 to manage first flush runoff and control runoff generated by contributing area
28 impervious surfaces.]

29 [(H)][(J)] The City Engineer is responsible for establishing criteria,
30 procedures and standards for design and construction of flood control,
31 drainage control[, stormwater control,] and erosion control improvements
32 within the city. [The city standards for design and construction are published
33 in the Development Process Manual (DPM) and the Standard Specifications for

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1 Public Works Construction (latest versions).] The City Engineer shall provide
2 for variance from normal criteria and standards when appropriate[~~;~~when] [
3 When] a variance is required or requested, the City Engineer shall document
4 the justification for his[~~/her~~] decision and retain as public records such
5 actions and justifications[~~;~~appeals] [. Appeal] of the City Engineer's variance
6 decisions is as provided in § 14-5-2-15. The City Engineer is also the
7 designated flood control official for the city in accordance with the
8 requirements of the Federal Insurance Administration.

9 [(4)][(K)] The introduction of groundwater cleanup flow to either natural or
10 constructed storm drainage and flood control facilities shall be prohibited
11 except as herein provided.

12 § 14-5-2-7 SURFACE USE OF STREETS FOR DRAINAGE AND FLOOD
13 CONTROL PURPOSES.

14 (A) The surface of streets may be used for drainage and flood control
15 purposes, to the extent such use does not interfere with the safe
16 transportation of people and vehicles.

17 (B) The 100-year design storm runoff shall not exceed a depth of 0.87 feet
18 at any point within the street right-of-way, or 0.2 feet above top of curb, in any
19 street nor enter private property from a street, except in recorded drainage or
20 flood control easements [~~or~~] [,] rights-of-way, [(~~l~~) or historic channels and
21 watercourses where easements or rights-of-way cannot be obtained()].

22 (C) The 10-year design storm runoff shall not exceed a depth of 0.5 feet in
23 any arterial street and shall flow such that [~~12.0 feet~~] [one] driving lane in each
24 direction is free of flowing or standing water. The 10-year design storm runoff
25 shall not exceed a depth of 0.5 feet in any collector street. Arterial and
26 collector streets that are in the state highway system may require more
27 stringent drainage criteria.

28 (D) The product of depth times velocity shall not exceed 6.5 at any
29 location in any street in the event of a 10-year design storm (with velocity
30 calculated as the average velocity measured in feet per second and depth
31 measured at the gutter flow line in feet).

32 (E) The discharge of nuisance waters to public streets shall be
33 discouraged. Arterial and collector streets shall be protected from damages

1 to the pavement surface and from the safety hazards created by surface flow
2 of nuisance waters across them.

3 (F) All developed land within the city shall be served by at least one
4 [paved] access that shall be an all-weather facility during a 100-year design
5 storm, with all channel-crossing structures beneath the road-way being able to
6 pass a 100-year design storm runoff event.

7 **§ 14-5-2-8 CROSSINGS.**

8 (A) Channel crossing structures shall be provided on all arterial and
9 collector streets to safely pass the 100-year design storm runoff from major
10 arroyos assuming a fully developed watershed.

11 (B) Streets other than arterial, collector and sole access may cross major
12 arroyos and other water-courses by means of a "dip section" or "overflow
13 section" provided depth times velocity (with velocity calculated as the average
14 velocity measured in feet per second and depth measured in feet at the
15 upstream edge of the roadway including sidewalk) does not exceed 6.5 for that
16 portion of the 10-year storm runoff crossing on the street.

17 (C) Where feasible, temporary crossings shall be designed so they may
18 be incorporated into the future permanent crossing structure and so that they
19 meet street design standards established by the Traffic Engineer.

20 (D) Crossings of major arroyos by arterial and collector streets shall be
21 at public expense. Crossings of arroyos by streets other than arterials and
22 collectors shall be constructed at developer expense and shall meet street
23 design standards established by the Traffic Engineer.

24 (E) Temporary crossings required for access, including those on arterials
25 and collectors, shall be constructed at developer expense.

26 **§ 14-5-2-9 FINANCIAL RESPONSIBILITY.**

27 (A) The city may participate in the construction of permanent flood
28 control facilities to the extent that public benefits are derived from such
29 construction and consistent with Capital Improvements Program (CIP)
30 priorities. Reimbursement for private funding of such projects may also be
31 available under these conditions.

32 (B) The city may participate in the costs of channel crossing structures
33 on arterial and collector streets which are required for sole access to a

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1 development. The developer's share shall not exceed the cost required to
2 meet the minimum street width standards established by the Traffic Engineer.

3 (C) The city shall not participate in the funding of flood control facilities
4 whose sole ~~[intent]~~ [purpose] is the reclamation of undeveloped land located
5 within a flood hazard area for private development purposes.

6 (D) All drainage control ~~[and]~~ [,] flood control~~[, stormwater control, and~~
7 erosion control] facilities which directly result from a proposed land use
8 change are the responsibility of the developer. Developer financed facilities
9 include all those within the boundaries of the development, those required for
10 development adjacent to a major arroyo or within a flood hazard area and, all
11 temporary and permanent off-site drainage facilities. Master planned facilities
12 shall be the responsibility of the city and in some instances AMAFCA.
13 However, if such facilities are not programmed and funded at the time of
14 development, the developer shall construct the master planned facilities or
15 provide for temporary facilities, constructed to City Engineer standards within
16 a temporary or permanent drainage easement until such time that the city or
17 AMAFCA constructed facilities are in place. If the construction of such
18 facilities is a condition of plat approval or building permit issuance, then
19 financial guarantees of such construction satisfactory to the City Engineer
20 shall also be provided as a prerequisite. The City Engineer shall coordinate
21 the construction and location of temporary facilities with AMAFCA and other
22 city departments. If the ultimate on-site drainage control, flood control~~[,~~
23 stormwater control,] ~~[and/]~~ or erosion control facilities require permanent
24 rights-of-way or easements, such rights-of-way or easements shall be
25 dedicated at the time of platting or building permit issuance~~[,]~~ whichever
26 occurs first.

27 (E) Except as allowed by AMAFCA Resolution 81-8 and amendments
28 thereto, the dedication of land for public purposes does not relieve a
29 developer of responsibilities for the construction of drainage control, flood
30 control~~[, stormwater control,]~~ and erosion control facilities that would
31 otherwise be necessary. The dedication of rights-of-way or easements for
32 drainage control, flood control~~[, stormwater control,]~~ or erosion control

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1 facilities does not relieve a developer of responsibilities that would otherwise
2 exist for the construction of other public infrastructure.

3 ~~[(F) Introduction of groundwater cleanup flows shall not normally be~~
4 ~~permitted, however, when such introduction of groundwater cleanup flow is by~~
5 ~~special agreement permitted, the entity responsible for such groundwater~~
6 ~~cleanup flow introduction (hereinafter termed "the discharger") shall also be~~
7 ~~responsible for all costs of installing, operating and removing the means of~~
8 ~~such introduction and shall provide public liability protection as required. The~~
9 ~~discharger of such groundwater cleanup flows shall also be responsible for~~
10 ~~payment of such permit fees, user fees, and effluent sampling fees according~~
11 ~~to the following schedule:~~

12 (1) ~~Permit fees.~~

13 (a) ~~Initial Permit Fee, \$2,273~~

14 (b) ~~Permit Renewal Fee required every three years, \$931.~~

15 (2) ~~Annual user fees.~~

16 (a) ~~Discharge Monitoring Fee, \$3,185~~

17 (b) ~~Effluent Sampling, \$2,200~~

18 (c) ~~If field monitoring indicates the need for additional water~~
19 ~~quality testing, the discharger will be charged \$1,100.00 per sample.~~

20 (d) ~~Conveyance Cost, \$22.72 per GPM/year.~~

21 (e) ~~A minimum user fee will be calculated on the agreed~~
22 ~~annual discharge rate and will be a minimum annual fee. If the instantaneous~~
23 ~~discharge from the groundwater cleanup exceeds the contracted amount by~~
24 ~~more than 10% on three consecutive days or ten total days in any quarterly~~
25 ~~period, the discharger shall pay an additional fee equivalent to one half of the~~
26 ~~annual user fee for each quarterly exceedance. If such exceedance occurs in~~
27 ~~more than two quarters in any year or more than thirty total days in any~~
28 ~~quarter, the agreement shall be terminated at the city's option. Exceedance~~
29 ~~shall be determined as provided for in regulations promulgated by the Mayor~~
30 ~~pursuant to § 14-5-2-13(G).]~~

31 § 14-5-2-10 MULTIPLE USE RIGHTS-OF-WAY AND EASEMENTS.

32 (A) Multiple use is encouraged for drainage rights-of-way and drainage
33 easements including, but not limited to, utility corridors [and][,] recreation

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1 trails[, and parks]. Where multiple use is planned by the city, another public
2 agency, or a public utility, the city may require that dedication statements
3 include language which permits said specified multiple uses in addition to the
4 primary drainage function[, flood control, stormwater control, or erosion
5 control]. However, land required to be dedicated for drainage [related] rights-
6 of-way shall be limited to those land areas necessary for drainage control,
7 flood control[, stormwater control, and] erosion control and necessary
8 appurtenances.

9 (B) Certain drainage rights-of-way in Sector Development Plans may be
10 credited for Zoning Code detached open space, except for any area which is
11 exclusively used for the drainage control [~~er~~][,] flood control[, stormwater
12 control, or erosion control] function.

13 ~~[(1) The amount of drainage right-of-way required exclusively for~~
14 ~~drainage control is defined as the width that would be necessary to contain a~~
15 ~~trapezoidal concrete-lined channel designed to convey the full 100-year design~~
16 ~~storm, including all necessary freeboard and also the outer limits of a 12 foot~~
17 ~~maintenance road on one side of the channel. In order to receive detached~~
18 ~~open space credit for a portion of the drainage right-of-way, the developer~~
19 ~~shall be responsible for reseeding any disturbed land within the drainage~~
20 ~~right-of-way except roads, trails, and the channel which is designed or~~
21 ~~retained to carry the 100-year design storm runoff; reseeding shall be with~~
22 ~~native and naturalized plant materials in the species, amounts, and~~
23 ~~proportions of plants associated with undisturbed soils in a specific area, to~~
24 ~~the satisfaction of the Director of the city's Park and General Services~~
25 ~~Department and Recreation Department and the City Engineer. Upon~~
26 ~~completion of said reseeding, the developer shall also be responsible for~~
27 ~~maintaining reseeded areas until whichever comes first, the end of three years~~
28 ~~or when the city gives notice of termination of the developer's responsibility~~
29 ~~caused by governmental undertaking of significant additional development or~~
30 ~~treatment in a given area; such maintenance shall be to the satisfaction of the~~
31 ~~Director of the City Parks and Recreation Department. Subsequently,~~
32 ~~maintenance becomes the responsibility of the city.~~

1 (2) ~~— Alternatively, a more intensive landscaping scheme proposed~~
2 ~~by the developer may be approved for open space credit by the Director of the~~
3 ~~City Parks and Recreation Department and the City Engineer; the developer~~
4 ~~shall then be responsible in perpetuity, for the maintenance of the~~
5 ~~landscaping.~~

6 (3) ~~— Any developer maintenance obligation specified by divisions~~
7 ~~(1) and (2) above shall be detailed by a binding legal agreement between the~~
8 ~~developer and the city specifying the type and schedule of maintenance~~
9 ~~required by the developer. Such agreement shall be satisfactory to the~~
10 ~~Director of the City Parks and Recreation Department and the City Attorney.~~
11 ~~Such agreement shall be executed before any benefits of open space~~
12 ~~designation accrue to the developer. The city's remedies for a developer's~~
13 ~~failing to meet the obligations of the maintenance agreement include but are~~
14 ~~not limited to terminating the developer's credit for detached open space.~~
15 ~~Where appropriate, a developer's obligations may run with the land. Further~~
16 ~~detailing of these provisions may be adopted as regulations in the city's~~
17 ~~Development Process Manual. See the Zoning Code, § 14-16-3-8(C).]~~

18 § 14-5-2-11 [STORMWATER CONTROL PERMITTING FOR EROSION AND
19 SEDIMENT CONTROL, INSPECTION, AND] MAINTENANCE RESPONSIBILITY.

20 [(A) ~~— Except as otherwise noted herein, all permanent major facilities shall~~
21 ~~be maintained by the city or other public body. The maintenance of multiple~~
22 ~~use facilities to which the general public is denied access shall be the~~
23 ~~responsibility of the owners and shall be performed to City Engineer~~
24 ~~standards. The City Engineer may allow private maintenance within public~~
25 ~~right-of-way or easement provided that adequate guarantees and~~
26 ~~indemnifications are supplied.~~

27 (B) ~~— Minor facilities shall be maintained by their owners to City Engineer~~
28 ~~standards.~~

29 (C) ~~— The maintenance of temporary facilities constructed at private~~
30 ~~expense (except crossing structures) is the responsibility of the developer~~
31 ~~until permanent facilities are in place.~~

32 (D) ~~— The developer shall be responsible for maintaining or replacing~~
33 ~~temporary crossing structures for a period of six years or until a permanent~~

1 ~~structure is built, whichever comes first. The city shall maintain temporary~~
2 ~~crossings which are designed and built such that they may be directly~~
3 ~~incorporated into the ultimate facilities.~~

4 ~~(E) Maintenance and operation of any groundwater cleanup flow~~
5 ~~connection to any public storm drainage or flood control facility shall be the~~
6 ~~responsibility of the originator of such a connection. Groundwater cleanup~~
7 ~~flow connection shall only be allowed by special agreement.]~~

8 [(A) A current Stormwater Control Permit for Erosion and Sediment
9 Control is required for all construction, demolition clearing, and grading
10 operations within the City of Albuquerque that disturbs the soil on one acre or
11 more of land.

12 (1) The Stormwater Control Permit for Erosion and Sediment
13 Control holder must be either the owner of the property or an authorized agent
14 of the owner in order for the permit to legally cover the activities occurring at
15 the site. If the permit holder is other than the owner, evidence of delegation of
16 authority acceptable to the city shall be provided prior to issuance of a permit
17 by the city.

18 (2) Upon approval of plans and conditions by the City Engineer, a
19 Stormwater Control Permit for Erosion and Sediment Control will be issued as
20 set forth in the Development Process Manual. The permit shall specify the
21 time period covered by the permit, as set by the City Engineer in the manner
22 established in the Development Process Manual, but such time period may not
23 extend beyond the acceptance of the Notice of Termination unless otherwise
24 specifically identified in the Stormwater Control Permit. An owner's or his/her
25 agent's failure to properly maintain or extend a Stormwater Control Permit for
26 Erosion and Sediment Control shall subject that owner to the penalty
27 provisions of this ordinance.

28 (B) Stormwater Control Permit for Erosion and Sediment Control
29 inspections and quality controls shall include:

30 (1) Self-inspections by permittee. At a minimum a routine
31 compliance self- inspection is required to review onsite and immediately
32 adjacent property vegetation, erosion and sediment control measures, and
33 other protective measures identified in the Erosion and Sediment Control Plan

1 and the associated Stormwater Permit for Erosion and Sediment Control, if
2 any. Until the site construction has been completed and the Stormwater
3 Control Permit for Erosion and Sediment Control closed out and the Notice of
4 Termination approved under the General Construction Permit, the owner or
5 his/her agent shall make a thorough inspection of the stormwater
6 management system as established by the Erosion and Sediment Control
7 Plan. These inspections' frequency shall be based on site conditions and
8 project circumstances as noted in the site's Erosion and Sediment Control
9 Plan. Regardless of the planned frequency, inspections shall occur after each
10 precipitation event of ¼ inch or greater. Reports of these inspections shall be
11 kept by the person or entity authorized to direct the construction activities on
12 the site and shall be conducted during progress of the work, during work
13 suspensions, and until final acceptance of site stabilization by the city. An
14 owner's or his/her agent's failure to properly maintain records as required by
15 Erosion and Sediment Control Plan shall subject that owner to the penalty
16 provisions of this ordinance.

17 (2) City Compliance Inspections. The city will require compliance
18 inspections in accordance with the permittee's Erosion and Sediment Control
19 Plan, conducting annual compliance inspections of all construction projects
20 cumulatively disturbing one acre or more. Site inspections will be followed by
21 any necessary compliance or enforcement action to ensure corrective
22 maintenance has occurred. All projects will be inspected at completion for
23 confirmation of stabilization prior to the submittal of the Notice of Termination
24 under the General Construction Permit.

25 (a) Erosion and Sediment Control Compliance. If the city
26 finds that erosion and sediment controls are not preventing accelerated
27 erosion and removing sediment and waste prior to the drainage leaving the
28 construction site, the city may direct the owner or his/her agent by written
29 order to implement additional erosion control measures to prevent said soil
30 erosion and sediment and waste migration. If immediate additional erosion
31 and sediment control or repair is necessary, the owner or his/her agent shall
32 be verbally notified with a follow-up written confirmation occurring later. It
33 shall be the duty of the owner or his/her agent to immediately take all

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1 necessary steps to prevent such migration of sediment and waste off the
2 premises or from entering receiving waters. Delivery of an order by the city to
3 the owner or his/her agent shall be deemed to be notice thereof, and binding
4 upon the owner. An owner's or his/her agent's failure to substantially comply
5 with the order shall subject that owner to the penalty provisions of this
6 ordinance.

7 (b) Maintenance of Temporary Control Measures. The
8 property owner or the owner's agent carrying out the soil erosion and
9 sediment control measures shall maintain all temporary control measures,
10 retaining walls, structures, plantings, and other protective devices. Should
11 the applicant, or any other subsequent property owners fail to maintain the
12 temporary control facilities, retaining walls, structures, plantings, and other
13 protective devices, the city reserves the authority to enter affected property,
14 provide needed maintenance, and to charge the owner for the work performed
15 by the city or its contractors and to place a lien on the property to cover the
16 costs of said actions. Such municipal lien shall be a statutory lien against the
17 real property. This provision is in addition to the city's ability to assess
18 penalties or pursue any other remedies as necessary to effectuate the purpose
19 of this ordinance.

20 1. The maintenance of temporary facilities
21 constructed at private expense on public property is the responsibility of the
22 owner or owner's agent until permanent facilities are in place.

23 2. The developer shall be responsible for maintaining
24 or replacing temporary crossing structures for a period of six years or until a
25 permanent structure is built, whichever comes first. The city shall maintain
26 temporary crossings which are designed and built such that they may be
27 directly incorporated into the ultimate facilities.

28 (3) The city will utilize sanctions and penalties to enforce upon
29 violations of permit requirements. Progressive enforcement escalation
30 procedures will be used and strictly enforced for recalcitrant or repeat
31 offenders.

32 (C) Post-Construction Maintenance shall be performed as follows:

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1 **(1) Except as otherwise noted herein, all Public Stormwater**
2 **Facilities shall be maintained by the city or other public body. The**
3 **maintenance of multiple use facilities to which the general public is denied**
4 **access shall be the responsibility of the owners and shall be performed to City**
5 **Engineer standards. The City Engineer may allow private maintenance within**
6 **public right-of-way or easement provided that adequate guarantees and**
7 **indemnifications are supplied.**

8 **(2) Private Stormwater Facilities shall be maintained by the**
9 **facilities' owner to standards established by the City Engineer and published**
10 **in the Development Process Manual. Periodic inspection and certifications of**
11 **facilities are hereby required and shall be reported to the City Engineer on**
12 **forms established by the city. Inspections and Certifications by a New Mexico**
13 **Professional Engineer shall occur not less frequently than once every 3 years**
14 **from the date the Notice of Termination is signed. Ongoing Stormwater**
15 **Control Permit obligations may be required as to Stormwater Control**
16 **Measures.**

17 **(3) Maintenance and operation necessitated by the discharge of**
18 **any groundwater cleanup flow to any public storm drainage, flood control,**
19 **stormwater control, or erosion facility shall be the responsibility of the**
20 **originator of such a discharge. Groundwater cleanup flow discharges shall**
21 **only be allowed by special agreement.]**

22 **§ 14-5-2-12 GENERAL ADMINISTRATION.**

23 **(A) The design, construction and maintenance of all drainage control,**
24 **flood control**~~[, stormwater control,]~~ **and erosion control facilities within the**
25 **city shall be performed in accordance with procedures, criteria and standards**
26 **formulated by the City Engineer and in accordance with the policies**
27 **established in §§ 14-5-2-1 et seq.**

28 **(B) All construction activities within the jurisdiction of the city shall**
29 **conform to the requirements of the City Engineer with respect to drainage**
30 **control, flood control**~~[, stormwater control,]~~ **and erosion control. [Original**
31 ~~construction and modifications and/or additions to existing structures~~
32 ~~constituting less than 500 square feet, in plan view, are excluded.]~~

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1 **(1) Structures constituting less than 1,000 square feet, in plan**
2 **view, are excluded.]**

3 **[(4)][(2)]** Construction, grading or paving on any lot within the
4 jurisdiction of the city shall not increase the damage potential to upstream,
5 downstream or adjacent properties or public facilities. Damages shall
6 be defined as those caused by flooding from the 100-year design storm and all
7 smaller storms and from erosion and sedimentation resulting from the 10-year
8 design storm and all smaller storms.

9 **[(2)][(3)]** During the ~~[months of July, August or September,]~~
10 **[period of May 1 through October 31,]** any grading within or adjacent to a
11 ~~[watercourse defined as a major facility shall provide for erosion control]~~
12 **[facility that conveys a minimum of 50 cfs or holds 2.0 acre-feet must provide**
13 **for stormwater control, erosion control,]** and the safe passage of the 10-year
14 design storm runoff during the construction phase.

15 **[(3)][(4)]** Grading, cut, fill or importation of material in excess of
16 500 cubic yards or grading of any area of one acre or more shall conform to
17 drainage control, flood control~~[, stormwater control,]~~ and erosion control
18 policies and to standards, criteria and procedures established by the City
19 Engineer with respect to drainage, flood control~~[, stormwater control,]~~ and
20 erosion control. A grading permit, issued by the City Engineer, shall be
21 required for projects involving more than 500 cubic yards of material or one
22 acre or more in area. Applications for development of areas known to have
23 been sanitary landfills shall be accompanied by a report which discusses
24 potential health and soil mechanics problems and their solutions. Such
25 reports shall be prepared by a New Mexico Professional Engineer competent
26 in soil mechanics.

27 **[(5) Where practicable, active construction sites shall utilize non-**
28 **structural controls, such as phased construction, dust control, good**
29 **housekeeping practices, and spill prevention and response.**

30 **(6) Sites with less than one acre of total land disturbance shall be**
31 **required to obtain a Stormwater Control Permit—Erosion and Sediment**
32 **Control if:**

33 **(a) The site is part of a larger common plan of development;**

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1 **(b) The site is identified as having a significant potential for**
2 **erosion, based on observation or site characteristics including very steep**
3 **topography;**

4 **(c) The site is known to contain contaminated soils; or**

5 **(d) The site is directly adjacent to receiving waters such as**
6 **directly connected storm drains, directly connected concrete arroyos or the**
7 **Rio Grande.**

8 **(7) Underground utilities, street reconstruction, drainage-way**
9 **improvements, and landscaping construction projects shall obtain a**
10 **Stormwater Control Permit—Erosion and Sediment Control if the entire project**
11 **will disturb the soil in an area of one acre or more.]**

12 **[(4)][(8)] Paving an area larger than [1,000] [2,000] square feet [other**
13 **than right-of-way] shall require a paving permit. Applications for paving**
14 **permit[s] shall be accompanied by a [drainage] [grading] plan [and Erosion**
15 **and Sediment Control Plan] if deemed necessary by [the] City Engineer.**
16 **Repaving of [existing paved areas in which no grading is planned] [right-of-**
17 **way] is excluded.**

18 **[(5)][(9)] The City Engineer shall not issue a grading [or] [permit,] paving**
19 **permit[, or Stormwater Control Permit-Erosion and Sediment Control]** unless
20 the proposed **[grading or paving] [permit]** is in compliance with the policies of
21 §§ 14-5-2-1 et seq. and the standards and criteria of the City Engineer as
22 provided for by § 14-5-2-13.

23 **[(10) Permit Fees. Permit fees shall be established by the Mayor.]**

24 **(C) The city may participate with the private sector, and other public**
25 **bodies and agencies operating within the jurisdiction of this policy in order to**
26 **accomplish the goals and implement the policies adopted in §§ 14-5-2-1 et**
27 **seq. This includes, but shall not be limited to, the development and [adoption]**
28 **[approval] of master plans [for flood control, drainage and stormwater**
29 **control], participation in the construction of projects and exercising control**
30 **through the planning, platting, zoning, and permitting processes. Projects**
31 **involving city funding shall be prioritized, funded and scheduled within the**
32 **guidelines of the CIP and with CIP Projects.**

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1 (D) It shall be the responsibility of the City Engineer to produce, approve,
2 make and retain records of all drainage plans, drainage reports, design
3 analyses, design drawings, as-built drawings, and maintenance schedules
4 related to all drainage control, flood control[, stormwater control,] and erosion
5 control facilities constructed within city rights-of-way or easements.

6 (E) Applications for all land use changes shall address drainage control,
7 flood control[, stormwater control,] and erosion control in terms of the
8 interactions of these parameters with other requirements and needs produced
9 by the proposed land use changes.

10 (F) Requests for the platting of land for the purpose of subdivision or
11 development shall be accompanied by appropriate drainage control, flood
12 control[, stormwater control,] and erosion control information.

13 (G) [(4)] The City Engineer shall not approve any plan or report pertaining
14 to proposed construction, platting or other development where the proposed
15 activity or change in the land affected would result in downstream capacity
16 being exceeded [and for which stormwater control has not been addressed in
17 compliance with this ordinance and standards established by the City
18 Engineer in the Development Process Manual].

19 [(2)(a)][(1)] Downstream capacity is determined based on the
20 assumption of fully developed watersheds. This assumption prevents "the
21 first come, first served" approach where downstream development unduly
22 constrains upstream development. Parameters used in the determination of
23 downstream capacity include, but are not limited to:

- 24 [1-][(a)] Channel stability.
- 25 [2-][(b)] Crossing structure hydraulic capacity.
- 26 [3-][(c)] Reservoir capacity.
- 27 [4-][(d)] Hydraulic capacity of street, storm sewer, or channel.
- 28 [5-][(e)] Public [health and] safety.
- 29 [6-][(f)] Maintenance constraints.

30 [(b)][(2)] Planned public storm drainage facilities are assumed as in
31 place in determining downstream capacity, provided that construction funds
32 are available and design has progressed to the point where capacity can be
33 ascertained.

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1 (H) Temporary facilities are only allowed [~~and/or required~~] on a case-by-
2 case basis as determined by the City Engineer. The level of protection to be
3 provided by temporary facilities shall be determined by considering:

- 4 (1) The likelihood and consequences of a failure.
- 5 (2) Length of time until permanent facilities will be in place.
- 6 (3) The acceptance of maintenance responsibilities and legal
7 liabilities.

8 (I) Requests for approvals of development and/or platting proposals to
9 the City Engineer shall be accompanied by drainage control, flood control[,
10 stormwater control,] and erosion control information and/or commitments.

11 The particular nature, location and scope of the proposed development
12 defines the degree of detail. One or more of the following levels of submittal
13 may be required based on the following:

14 (1) Conceptual Grading and Drainage Plan. A graphic representation
15 of existing and proposed grading, drainage, flood control and erosion control
16 information. The information should be of sufficient detail to determine
17 project feasibility. The purposes of this plan are to check the compatibility of
18 the proposed development within grading, drainage, flood hazard and erosion
19 control constraints as dictated by on-site physical features as well as adjacent
20 properties, streets, alleys and channels. Modifications to the Comprehensive
21 Plan and the development of area plans, sector plans, site development plans
22 and landscaping plans on tracts of five acres or more are appropriate
23 applications of conceptual grading and drainage plans.

24 (2) Drainage Plan. A short detailed presentation required for approval
25 of small, simple development approvals. Drainage plans are prepared with or
26 on the detailed grading plan and address both on-site and off-site drainage
27 control, flood control[, stormwater control,] and erosion control issues.

28 Drainage plans are required for building permits, site development plans and
29 landscaping plans for developments involving less than five acres.

30 (3) Drainage Report.

31 (a) A drainage report is a comprehensive analysis of the drainage
32 control, flood control[, stormwater control,] and erosion control constraints on

1 and impacts resulting from a proposed platting, development or construction
2 project.

3 (b) Drainage reports are required for subdivisions containing more
4 than ten lots or constituting five acres or more, platting or construction within
5 a designated flood hazard area and for any platting or development adjacent
6 to a major arroyo.

7 (4) Erosion [and Sediment] Control Plan. ~~[An erosion control plan is~~
8 ~~usually incorporated into the drainage plan or drainage report.]~~ Erosion [and
9 Sediment C]ontrol plan[s] address all phases of each project from initial
10 grading through and including final occupancy [and periodic post
11 construction maintenance]. Phased projects require special attention. All
12 construction projects, both public and private, within the jurisdiction of §§ 14-
13 5-2-1 et seq. unless specifically excluded require an approved [E]rosion [and
14 Sediment C]ontrol plan prior to start of construction.

15 ~~[(J)—Drainage control considerations specifically address safety,~~
16 ~~convenience and economic for both private property and public facilities.]~~

17 ~~[(K) (1)]~~[(J)] The Albuquerque 100-year design storm is the 100-year 6-hour
18 storm as defined by the National Oceanic Atmospheric Administration (NOAA)
19 and by the storm distributions for time and areas as developed by the City
20 Engineer. The 100-year storm has a 1% probability of occurring in any year.
21 Watersheds with times of concentration greater than six hours will require the
22 use of the 100-year 24-hour storm volumes and distributions. Detention
23 basins ~~[with longer than six-hour evacuation times shall use a 24-hour or~~
24 ~~longer storm volume and distribution]~~ [within which at least 90% of the design
25 storage volume is not evacuated within 6 hours measured from the time the
26 peak storage volume is reached, shall use a 24-hour or longer storm volume
27 and distribution. Design circumstances may require larger or smaller storm
28 volumes. The sources for the rainfall data are current NOAA publications and
29 the City Engineer. When the need for other design storms is apparent, the
30 City Engineer will provide requirements concerning appropriate storms,
31 frequencies and durations.]

32 ~~[(2)—Design circumstances may require larger or smaller storm~~
33 ~~volumes; Examples are emergency spillways for dams and erosion control~~

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1 ~~plans respectively. The sources for rainfall data are current NOAA~~
2 ~~publications and the City Engineer. When the need for other design storms is~~
3 ~~apparent, the City Engineer will provide requirements concerning appropriate~~
4 ~~storms, frequencies and durations.]~~

5 [(L)][(K)] The City Engineer shall, within [14 to] 30 calendar days after the
6 submission to him[/her] of a request in writing for [the] [an] approval [of a plat,
7 development plan, drainage submittal or exemption,] [under the Drainage
8 Ordinance,] approve or deny the request and [mail] [provide] a copy of
9 his[/her] decision to the applicant. If the request is denied, the reasons for
10 such denial shall be stated in writing. Appeal of such decisions is as provided
11 in § 14-5-2-15.

12 [(M)][(L)] Discharge of any groundwater cleanup flows to [any public
13 storm drainage or flood control facility, whether natural or constructed, shall
14 only be allowed by means of special agreement according to rules established
15 by the Mayor. A specific regulation governing discharges resulting from
16 groundwater cleanup activities shall be established by the Mayor] [the city's
17 storm drainage and flood control system shall not normally be permitted,
18 however, when such discharge of groundwater cleanup flow is by special
19 agreement permitted, the entity responsible for such groundwater cleanup
20 flow discharge shall also be responsible for all costs of installing, operating
21 and removing the means of such discharges and shall provide public liability
22 protection as required. The discharger of such groundwater cleanup flows
23 shall also be responsible for payment of such permit fees, user fees, and
24 effluent sampling fees according to an agreement with the city.] All discharges
25 to public storm drainage and flood control facilities shall comply with adopted
26 local and applicable state and federal water quality requirements.

27 § 14-5-2-13 ADMINISTRATIVE PROCEDURES, CRITERIA AND STANDARDS.

28 (A) Rules concerning procedures, criteria and standards shall be
29 adopted, amended or abolished in compliance with the policies of §§ 14-5-2-1
30 et seq. and as provided by the procedures of this section.

31 (B) Proposed rule changes relating to procedures, criteria and standards
32 pursuant to §§ 14-5-2-1 et seq. are initiated by the City Engineer or any person
33 may submit such proposed rule changes to the City Engineer. If a person

1 other than an official of the city submits such a proposal, there may be a
2 processing fee [~~of up to \$50~~] set by a rule of the City Engineer.

3 (C) Prior to the adoption, amendment or repeal of any rule pursuant to §§
4 14-5-2-1 et seq. (hereafter, "rule change"), the City Engineer shall:

5 (1) Publish summary notice of the proposed rule change and solicit
6 comments in a daily newspaper of general circulation in the city and also
7 where appropriate in trade, industrial, or professional publications as will
8 reasonably give public notice to interested persons.

9 (2) Send the proposed rule change to all [applicable] city departments
10 [, as determined by the City Engineer,] and AMAFCA and solicit written
11 comments.

12 (3) Send the proposed rule change to any person or group filing
13 written request for notice of all such rule changes. A fee may be charged
14 those requesting notices to cover reasonable city costs.

15 (4) Solicit written comment on proposed rule changes for a period of
16 30 days from the date of their distribution and consider all comments before
17 ruling on proposed rule changes.

18 (5) Upon adoption of a contested rule change, issue a concise
19 statement of his/her] principal reasons for the rule change and statement of
20 positions rejected in adopting the rule change together with the reasons for
21 the rejection. All persons who submit any writing to be considered in
22 connection with the proposed rule change shall promptly be given a copy of
23 the decision, by mail or otherwise.

24 (D) If a proposed rule change is approved by the City Engineer after
25 receiving comments, notice shall be posted in a conspicuous place in City Hall
26 and a reasonable effort shall be made to notify all interested parties.

27 Proposed rule changes shall not take effect sooner than 30 days from posting
28 of notice or sooner than 90 days from original distribution for comment.

29 (E) In the event of an emergency, the Mayor may direct that rules
30 concerning procedures, criteria or standards take effect immediately upon
31 their posting and distribution. The Mayor's finding of an emergency and brief
32 statement of the reasons for this finding shall be incorporated in the
33 emergency rule change. Upon adoption of an emergency rule change which

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1 change shall remain in effect for longer than 60 days, notice to the public shall
2 be given within seven days and opportunity for public comment shall be given
3 in the manner required in this section for proposed rules.

4 (F) Appeal of the City Engineer's rule-making decisions is as provided in
5 § 14-5-2-15. Regular rules, adopted under division (D) of this section, do not
6 take ~~[affect]~~ [effect] until an appeal is decided if they are appealed prior to
7 taking effect. Emergency rules adopted under division (E) of this section and
8 regular rules which have taken effect prior to appeal are in effect until such
9 time as they may be reversed by appeal action.

10 (G) Regulation relating to groundwater cleanup flows discharged to
11 public storm drainage and flood control facilities shall be executed from the
12 provisions of this section. ~~[Regulations]~~ [Requirements] relating to
13 groundwater cleanup flows shall be ~~[formulated by the Mayor]~~ [established by
14 the City Engineer on a case by case basis.] based on public health and safety
15 needs, operations needs, and state and federal regulatory compliance
16 requirements current at time of promulgation. ~~[Such rules may be changed by~~
17 ~~the Mayor as necessary to accommodate changes in foregoing needs and~~
18 ~~requirements. The regulations shall also establish requirements for provision~~
19 ~~of public liability protection for groundwater cleanup flow connections.~~
20 ~~Regulations and amendments to regulations proposed pursuant to this~~
21 ~~division (G) shall be enacted only by publishing legal notice of hearing once a~~
22 ~~week for two consecutive weeks prior to a hearing held to receive comments~~
23 ~~on the proposed regulations. A hearing officer appointed by the CAO shall~~
24 ~~conduct such hearings and make findings, conclusions and recommendations~~
25 ~~to the Mayor after considering all city and public comments.]~~ [The
26 requirements and conditions shall include provisions for public liability
27 protection from groundwater cleanup flow discharges to the city's systems.]

28 § 14-5-2-14 ENFORCEMENT.

29 (A)~~(1)~~ [Inspection Procedures.]

30 (1) Whenever [it is] necessary to make an inspection to enforce any
31 of the provisions of §§ 14-5-2-1 et seq., the City Engineer or his/[her]
32 authorized representative may enter such premises at all reasonable times to
33 inspect the same or to perform any duty imposed upon him by §§ 14-5-2-1 et

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1 seq.; provided that if such premises be occupied, he~~[/she]~~ shall first present
2 proper credentials and demand entry; and if such premises be unoccupied, he
3 shall first make a reasonable effort to locate the owner or other persons
4 having charge or control of the premises and demand entry. If entry is refused
5 or if the owner or other responsible person is not found, the City Engineer or
6 his~~[/her]~~ authorized representative shall proceed to obtain a search warrant by
7 filing a complaint made in the Metropolitan Court or District Court upon oath
8 or affirmation. The complaint shall:

9 (a) Set forth the particular premises, or portion thereof sought to be
10 inspected;

11 (b) State that the owner or occupant of the premises, or portion
12 thereof, has refused entry;

13 (c) State that inspection of the premises, or portion thereof is
14 necessary to determine whether it complies with the requirements of §§ 14-5-
15 2-1 et seq.;

16 (d) Set forth the particular provisions of §§ 14-5-2-1 et seq. sought
17 to be enforced;

18 (e) Set forth any other reason necessitating the inspection,
19 including knowledge or belief that a particular condition exists in the
20 premises, or portion thereof which constitutes a violation of §§ 14-5-2-1 et
21 seq.; and

22 (f) State that the complainant is authorized by the city to make the
23 inspection.

24 (2) Each inspector shall be furnished with ~~[an]~~ [a City of
25 Albuquerque] identification card ~~[signed by the City Engineer and by the~~
26 ~~Mayor indicating his authority]~~ and must present same to ~~[the Metropolitan~~
27 ~~Court or District Court for the purpose of this division (A) and to]~~ other
28 persons, when requested to do so during the performance of his~~[/her]~~ duty.
29 No owner or occupant or any other person having charge, care or control of
30 any premises shall fail or neglect, after proper demand is made as herein
31 provided, to promptly permit entry therein by the authorized inspector for the
32 purpose of inspection and examination pursuant to §§ 14-5-2-1 et seq.

1 (B) Where, after investigation, an order has been issued by the City
2 Engineer to the owner of the property on which a violation has occurred and
3 the order is not complied with within thirty (30) days, or such longer
4 reasonable time as may be prescribed by the City Engineer, or if the
5 responsible party or violator cannot be found or determined, the ~~[City Engineer~~
6 ~~may cause such remedies as are necessary to be made. The reasonable cost~~
7 ~~of such remedies shall constitute a lien against the property on which the~~
8 ~~violation occurred and was remedied. The lien shall be imposed and~~
9 ~~foreclosed in the manner provided in Sections 3-36-1 through 3-36-6 NMSA~~
10 ~~1978]~~ violator shall be subject to the penalty provisions set forth in § 1-1-99 of
11 this code of ordinances up to \$500 per day. Each day of violation is
12 considered a separate offense.

13 (C) In addition to any fines or penalty provisions set forth in §§ 14-5-2-1
14 et seq. and § 1-1-99 of this code, the city may enforce this ordinance through
15 any other legal or equitable actions deemed necessary and appropriate by the
16 City Engineer. Fines, costs of remedial action, damages, or any other
17 expenses attributable to an owner under this ordinance may be enforced by
18 the city as a lien against the property as provided in § 3-36-2 NMSA 1978. Such
19 municipal lien shall attach to the property and be subject to foreclosure as
20 provided in §§ 3-36-1 to -7 NMSA 1978.]

21 § 14-5-2-15 APPEALS; TECHNICAL STANDARDS COMMITTEE.

22 (A) Any applicant aggrieved by a decision as to actions provided for in §§
23 14-5-2-6, 14-5-2-12 and 14-5-2-13 of the City Engineer or absence of such
24 decision, may appeal such decision to the Technical Standards Committee of
25 the city. Such appeal shall be made by notice of appeal in writing addressed
26 to the Chairperson of the Technical Standards Committee and delivered to the
27 office of the City Engineer within 30 days after the date the decision was
28 mailed to the applicant. The Chairperson of the Technical Standards
29 Committee shall notify the applicant and the City Engineer of the date, time,
30 and place of the appeal hearing at least five days prior to the hearing date.
31 Such hearing shall be conducted not earlier than ten days nor later than 30
32 days after the filing of the notice of appeal. At the hearing, the Technical
33 Standards Committee may consider such facts, exhibits, and engineering

1 principles as may be presented by the appellant or the City Engineer or
2 his[her] designee, or of which the members may have knowledge or
3 experience, and may affirm, reverse or modify the decision appealed from, and
4 attach as conditions to their decision such requirements as in their opinion
5 may be necessary or appropriate in compliance with the policies of §§ 14-5-2-1
6 et seq. to safeguard persons and property from stormwater runoff. Each
7 decision of the Technical Standards Committee shall be in writing and shall
8 state reasons therefore. A copy of the decision shall be promptly mailed to
9 the applicant and to the City Engineer.

10 (B) The City Engineer or applicant aggrieved by any decision of the
11 Technical Standards Committee may appeal such decision to the City
12 Council. Such appeal shall be requested by notice of appeal in writing
13 addressed to the President of the City Council and delivered to the office of
14 the City Council within 30 days after the date a copy of the decision was
15 mailed to the applicant. Such appeal shall be heard after notice at the first
16 available meeting of the City Council. The City Council may affirm, reverse, or
17 modify the decision of the Technical Standards Committee.

18 (C) There is hereby created a Technical Standards Committee, consisting
19 of five members who shall be appointed by the Mayor with the advice and
20 consent of the City Council, and who shall serve without pay. Two members
21 shall serve for a term ending August 1, 1983, one member shall serve for a
22 term ending August 1, 1984, and two members shall serve for terms ending
23 August 1, 1985. Subsequent terms shall be for three years. Four of such
24 members shall be registered in this state as professional engineers, be
25 competent in the science of surface water hydrology, and have experience in
26 solving surface drainage problems. The members shall select one member to
27 serve as Chairperson, and their decisions shall be by majority vote of the
28 members attending a hearing. A quorum shall consist of three members. The
29 Technical Standards Committee shall hear and determine all appeals as
30 provided by this section. The Committee may from time to time recommend
31 modifications of §§ 14-5-2-1 et seq. to the Mayor. The City Engineer shall
32 provide such facilities, supplies, and services, including postage, stationery
33 and secretarial assistance, as may be required by the Committee.

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1 ~~[(D) Matters relating to groundwater cleanup flows discharged to public~~
2 ~~storm drainage shall be excluded from the provisions of this section and shall~~
3 ~~be governed by regulations as promulgated by the Mayor and other normal~~
4 ~~administrative appeal procedures.]~~

5 § 14-5-2-16 INTERPRETATION.

6 In the interpretation and application of §§ 14-5-2-1 et seq. all provisions
7 shall be:

- 8 (1) Considered as minimum requirements;
- 9 (2) Liberally construed in favor of the city;
- 10 (3) Deemed neither to limit nor repeal any other powers granted under
11 state statutes;
- 12 (4) Not deemed to repeal or limit any other ordinance adopted by the
13 City Council unless expressly so stated herein.

14 § 14-5-2-17 WARNING AND DISCLAIMER OF LIABILITY.

15 The degree of flood protection required by §§ 14-5-2-1 et seq. is considered
16 reasonable for regulatory purposes and is based on scientific and engineering
17 considerations. Larger floods can and will occur on rare occasions. Flood
18 heights may be increased by manmade or natural causes. Sections 14-5-2-1 et
19 seq. do not imply that land outside flood hazard areas or uses permitted within
20 such areas will be free from flooding or flood damages. Sections 14-5-2-1 et
21 seq. shall not create liability on the part of the city or on any officer or
22 employee thereof for any flood damages that result from reliance on §§ 14-5-2-
23 1 et seq. or any administrative decision lawfully made thereunder.

24 ~~§ 14-5-2-99 PENALTY.~~

25 ~~A person who violates any provisions of §§ 14-5-2-1 et seq. shall be subject~~
26 ~~to the penalty provisions set forth in § 1-1-99 of this code of ordinances. Each~~
27 ~~day of violation is considered a separate offense.]~~

28 SECTION 2. SEVERABILITY CLAUSE. If any section, paragraph, word or
29 phrase of this ordinance is for any reason held to be invalid, or unenforceable
30 by any court of competent jurisdiction, such decision shall not affect the
31 validity of the remaining provisions of this ordinance. The Council hereby
32 declares that it would have passed this ordinance and each section,

1 paragraph, sentence, clause, word or phrase thereof irrespective of any
2 provision being declared unconstitutional or otherwise invalid.
3 **SECTION 3. COMPILATION.** This ordinance shall be incorporated in and
4 made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.
5 **SECTION 4. EFFECTIVE DATE.** This ordinance shall take effect five days
6 following publication by title and general summary.

7

8 legislation\amendments\fs(2) O-13-47

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