CITY of ALBUQUERQUE
TWENTY-THIRD COUNCIL

COUNCIL BILL NO. ____O-18-2_____ ENACTMENT NO. _____

SPONSORED BY: Trudy E. Jones

ORDINANCE

AMENDING CHAPTER 14, ARTICLE 5, PART 2, ROA 1994, THE DRAINAGE ORDINANCE, TO IMPLEMENT BEST PRACTICES FOR THE MANAGEMENT OF NEW RUNOFF ASSOCIATED WITH LAND DEVELOPMENT.

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

SECTION 1. Chapter 14, Article 5, Part 2, Section 3 "Statement of Purpose and Intent" is amended to add subsection 'F' as follows:

"§ 14-5-2-3 STATEMENT OF PURPOSE AND INTENT.

It is the purpose of §§ 14-5-2-1 et seq. to promote the public health, safety, and general welfare; to minimize public and private losses due to flooding; and where practicable, to ensure that runoff from certain storm events is mitigated to acceptable levels by provisions designed:

. . .

[(F) As to stormwater quality to:

(1) Address construction and post-construction stormwater quality management within the limits of New Mexico water law and within flood control agency authorities and limitations.

(2) Work cooperatively with the MRGCD, AMAFCA, and the County of Bernalillo and other co-permittees, to best manage the discharge of storm runoff into co-permittee facilities, maximize efficient use of stormwater facilities, and minimize impact on downstream water quality and storm drainage facilities.]"

SECTION 2. Chapter 14, Article 5, Part 2, Section 4 "Definitions" is hereby amended to add or change the following definitions; new definitions are to be

inserted alphabetically with existing definitions (all other definitions to remain unless specifically repealed or amended herein):

"§ 14-5-2-4 DEFINITIONS.

[COOPERATOR / COOPERATIVE AGREEMENT means any arrangement, organization, or joint functioning of the co-permittees, or in combination with other governmental agencies, which works constructively with the City to address mutual stormwater issues. The cooperation, agreements and functionality will be formally documented through written agreement, contracts, joint planning documents, or ordinances.]

[80TH PERCENTILE STORM EVENT. The runoff from a precipitation event that is less than or equal to 80 percent of all rainfall events. The 80th Percentile storm event applies to projects where developed land is being redeveloped. The volume to be managed is stated in the Development Process Manual.]

EROSION AND SEDIMENT CONTROL. **Treatment measures for the prevention of damages due to soil movement and to deposition from the 2-year[, 24 hour] design storm runoff.**

EROSION AND SEDIMENT CONTROL PLAN. **A plan prepared by a licensed New Mexico Professional Engineer [or Certified Professional in Erosion and Sediment Control (CPESC)] submitted to ensure that minimum design standards are met to reduce potential pollutants that may result from demolition and construction activities.**

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

[GI/LID, Green Infrastructure (GI), Low Impact Development (LID) means any array of products, technologies, and practices that preserve or use natural systems, or engineered systems that mimic natural processes and systems, to enhance overall environmental quality and more specifically that provide treatment resulting in stormwater quality improvement, as specified in the DPM.]

[MANAGED ON SITE means to control, direct, and treat the stormwater quality design volume on the property, or if from an area of common development, then at an alternate location designed for stormwater management or as otherwise approved by the City Engineer. The control and treatment will be for water quality and/or flood volume purposes prior to discharge of the stormwater to the City's MS4. Nothing in this definition shall be construed to require an action which is contrary to state law, or to any state agency guidance regarding flood control or surface water capture, or which requires acquisition or amendment of a water right to legally implement.]

90TH PERCENTILE *STORM EVENT.* The [runoff from a] precipitation event that is less than or equal to ninety percent of all rainfall events [~~in a calendar year based on available precipitation records for a region. For purposes of §§ 14-5-2-1 et seq., the 90th percentile storm event is 0.44 inches~~. The 90th percentile storm event applies to projects on previously undeveloped land. The volume to be managed is stated in the Development Process Manual].

[*OFFSITE MITIGATION*. Approved management of the stormwater quality volume or a portion of the stormwater quality volume at any approved offsite location. The offsite location may be an existing facility or the facility may be constructed or modified to manage the stormwater quality volume.

***PAYMENT*-IN-LIEU. A payment made to the City for Public stormwater quality improvements in lieu of on-site capture or off-site mitigation. Public stormwater quality improvements are construction projects on, or in addition to, existing Public drainage systems to improve stormwater quality.]**

[*STORMWATER QUALITY VOLUME*. See 80th Percentile and 90th Percentile storm events.]

SECTION 3. Chapter 14, Article 5, Part 2, Section 5 "Jurisdiction" is amended as follows:

"§ 14-5-2-5 JURISDICTION.

Sections 14-5-2-1 et seq. shall apply to all lands within the city and, with respect to planning and platting matters, it shall also apply to all lands within its extraterritorial planning and platting jurisdiction.[~~ This jurisdiction is~~

~~not exclusive; in particular, in matters of flood control AMAFCA shares jurisdiction.~~]

SECTION 4. Chapter 14, Article 5, Part 2, Section 6 "General Provisions" is amended as follows:

"§ 14-5-2-6 GENERAL PROVISIONS.

(A) The city is and shall remain an active participant in the National Flood Insurance Program. The city endorses the program goal of flood damage reduction through the regulation of development within flood hazard areas and the preservation of floodways. Sections 14-5-2-1 et seq. are intended to complement and supplement the Flood Hazard Ordinance set forth in §§ 14-5-1-1 et seq. of this article and shall be administered in concert therewith.

(B) All developed land within the city shall be provided with adequate drainage control, flood control, stormwater control, and erosion control facilities. The protection of life, health, and property shall be considered the primary function in the planning, design, construction and maintenance of drainage control, flood control, stormwater control, and erosion control facilities. However, other concerns, not limited to the following, shall be addressed: channel capacity, watershed characteristics, channel stability, maintenance, transitions between treatment types, multiple use goals, and appearance. The needs of the community in transportation, utility services, recreation, and open space shall be considered in planning, design, construction, and maintenance–particularly in the selection of channel treatment measures. These needs shall always be considered subsidiary to the primary functions of the drainage control, flood control, stormwater control, and erosion control facilities.

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

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

(E) All facilities receiving water from public facilities and rights-of-way shall be constructed within dedicated rights-of-way or recorded drainage

easements granted to and accepted by the proper public authority or a private entity with an agreement for operations and maintenance.

(F) All facilities which receive only runoff from private property shall be constructed on private property unless otherwise authorized by the City Engineer. The use of individual on-lot ponding shall be governed by the standards established by the City Engineer in the Development Process Manual.

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

**(H) All [~~new~~] development projects shall, where practicable, manage the [~~runoff from precipitation from 90th Percentile Storm Events, utilizing appropriate techniques such as the following, to detain, retain and/or dispose of said runoff: infiltration into soil, extended filtration procedures, water harvesting, evapotranspiration or other appropriate techniques under the circumstances, and any combination of these practices. Generally it shall not be deemed "practicable", in the context above, in site development cases that include but are not limited to: (i) cases of conflicts with water rights appropriations requirement, (ii) cases where post-development drainage planning that does not and/or cannot practically connect to the River, and (iii) cases where appropriate public or private drainage facilities are available 'offsite' and will be be used in a manner consistent with the goals of this Ordinance to manage the Project runoff from precipitation from 90 Percentile Storm Events.~~ <u>stormwater quality volume by ponding and infiltrating the volume on-site, payment-in-lieu, or offsite mitigation. The Best Management Practices (BMPs) shall be appropriate for the specific circumstances. To the greatest extent possible, on-site mitigation solutions shall be landscaped or</u>

otherwise utilize required landscape areas within the site. Any management method requiring waivers to state water law or acquisition of water rights to implement shall be deemed "not practicable" and will not be required to manage the stormwater on site. Management on site will not be required if the City determines that stormwater quality can be effectively controlled using offsite structures or existing regional stormwater management infrastructure or facilities that are available to control storm water pollution by Cooperator or by a Cooperative Agreement. The basis for requesting payment-in-lieu or offsite mitigation is to be clearly demonstrated on the drainage plan. Site conditions justifying payment-in-lieu or offsite mitigation include: (i) the lot being too small to allow for infiltration capacity while also accommodating the full plan of development; (ii) the soil is not stable; (iii) the site use is inconsistent with the capture and reuse of stormwater; (iv) other physical conditions exist where compliance with on-site stormwater quality control requirement leaves insufficient area; (v) off-site facilities provide an opportunity to effectively accomplish the mitigation requirements of this ordinance; (vi) there is an opportunity to develop a project to replenish regional ground water supplies at an offsite location; or (vii) the applicant proposes an alternative proposal to the U.S. EPA to manage stormwater that meets the MS4 permit requirements or as otherwise approved by City Engineer.

(I) Payment-in-Lieu will not be required for sites where offsite mitigation is implemented, or for projects that satisfy the infill or redevelopment objectives of the Comprehensive Plan, including in Metropolitan Redevelopment Areas. In cases where the stormwater quality volume cannot be met in total, Payment-in-Lieu is required for the difference between the amount met and the total required, unless the stormwater quality volume is managed by private offsite facilities to control storm water pollution. Determination of the amount of payment-in-lieu will be described in the DPM.]

([~~I~~J]) Where practicable, Stormwater Control Measures shall be designed to manage [~~first flush runoff~~ the stormwater quality volume] and control runoff generated by contributing area impervious surfaces.

([~~J~~K]) The City Engineer is responsible for establishing criteria, procedures and standards for design and construction of flood control, drainage control, stormwater control, and erosion control improvements within the city. The city standards for design and construction are published in the Development Process Manual (DPM) and the Standard Specifications for Public Works Construction (latest versions). The City Engineer shall provide for variance from normal criteria and standards when appropriate. When a variance is required or requested, the City Engineer shall document the justification for his/her decision and retain as public records such actions and justifications. Appeal of the City Engineer's variance decisions is as provided in § 14-5-2-15. The City Engineer is also the designated flood control official for the city in accordance with the requirements of the Federal Insurance Administration.

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

SECTION 5. Chapter 14, Article 5, Part 2, Section 7 "Surface Use of Streets for Drainage and Flood Control Purposes" is amended as follows:

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

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

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

(C) The 10-year design storm runoff shall not exceed a depth of 0.5 feet in any arterial street and shall flow such that one driving lane in each direction is free of flowing or standing water. The 10-year design storm runoff shall not exceed a depth of 0.5 feet in any collector street. Arterial and collector streets

that are in the state highway system may require more stringent drainage criteria.

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

(E) The discharge of nuisance waters to public streets [~~shall be discouraged~~ is prohibited]. Arterial and collector streets shall be protected from damages to the pavement surface and from the safety hazards created by surface flow of nuisance waters across them.

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

SECTION 6. Chapter 14, Article 5, Part 2, Section 10 "Multiple Use Rights-of-Way and Easements" is amended as follows:

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

(A) Multiple use is encouraged for drainage rights-of-way and drainage easements including, but not limited to, utility corridors, recreation trails, and parks. Where multiple use is planned by the city, another public agency, or a public utility, the city may require that dedication statements include language which permits said specified multiple uses in addition to the primary drainage function, flood control, stormwater control, or erosion control. However, land required to be dedicated for drainage related rights-of-way shall be limited to those land areas necessary for drainage control, flood control, stormwater quality control, and erosion control and necessary appurtenances.

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

SECTION 7. Chapter 14, Article 5, Part 2, Section 11 "Stormwater Control Permitting for Erosion and Sediment Control, Inspection and Maintenance Responsibility" is amended as follows:

"§ 14-5-2-11 [~~STORMWATER CONTROL PERMITTING FOR EROSION AND SEDIMENT CONTROL, INSPECTION, AND MAINTENANCE RESPONSIBILITY.~~ CONSTRUCTION SITE RESPONSIBILITY BY PROPERTY OWNER]

(A) [~~A current Stormwater Control Permit for Erosion and Sediment Control is required for all construction, demolition clearing, and grading operations within the City of Albuquerque that disturbs the soil on one acre or more of land.~~ For projects that disturb one acre or more, or less than one acre but are part of a larger common plan of development, the property owner is to provide the Construction General Permit (CGP) Electronic Notice of Intent (eNOI) documentation that contains the property owner name and contact information a minimum of 14 days prior to earth disturbance and prior to obtaining Work Order or Building Permit approval. To be accepted, the eNOI is to be properly filled out and certified. If the eNOI is a Low Erosivity Waiver by the contractor, then an Erosion and Sediment Control Permit per paragraph § 14-5-2-11(B) is to be approved by the City.

(B) For projects that are less than one acre and are not part of a larger common plan of development, but meet the criteria as specified in section 14-5-2-12(B)(6), an approved Erosion and Sediment Control Permit is required prior to earth disturbance, Work Order approval and Building Permit approval.]

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

(2) [~~Upon~~ An Erosion and Sediment Control Permit will be approved only upon] approval of plans and conditions by the City Engineer[~~, a Stormwater Control Permit for Erosion and Sediment Control will be issued as set forth in the Development Process Manual. The permit shall specify the time period covered by the permit, as set by the City Engineer in the manner established in the Development Process Manual, but such time period may not extend beyond the acceptance of the Notice of Termination unless otherwise specifically identified in the Stormwater Control Permit. An owner's or his/her~~

~~agent's failure to properly maintain or extend a Stormwater Control Permit for Erosion and Sediment Control shall subject that owner to the penalty provisions of this ordinance~~].

[~~(B) Stormwater Quality Permit for Erosion and Sediment Control~~ (C) Construction site] inspections and quality controls shall include:

(1) Self-inspections by permittee. At a minimum a routine compliance self-inspection is required to review onsite and immediately adjacent property vegetation, erosion and sediment control measures, [construction site waste(s)] and other protective measures [~~identified in the Erosion and Sediment Control Plan and the associated Stormwater Quality Permit for Erosion and Sediment Control~~ weekly and after any precipitation event of ¼ inch or greater]. [~~Until the site construction has been completed and the Stormwater Control Permit for Erosion and Sediment Control closed out~~] and the ~~Notice of Termination approved under the General Construction Permit, the owner or his/her agent shall make a thorough inspection of the stormwater management system as established by the Erosion and Sediment Control Plan. These inspections' frequency shall be based on site conditions and project circumstances as noted in the site's Erosion and Sediment Control Plan. Regardless of the planned frequency, inspections shall occur after any precipitation event of ¼ inch or greater.~~] Reports of these inspections shall be kept by the person or entity authorized to direct the construction activities on the site and shall be conducted during progress of the work, during work suspensions, and until final acceptance of site stabilization by the city. An owner's or his/her agent's failure to properly maintain records [~~as required by Erosion and Sediment Control Plan~~] shall subject that owner to the penalty provisions of this ordinance.

(2) City Compliance Inspections. The city will [~~require compliance inspections~~ conduct routine compliance inspections to review onsite and immediately adjacent property vegetation, erosion and sediment control measures, construction site waste(s) and other protective measures] in accordance with [~~the permittee's Erosion and Sediment Control Plan,~~ this ordinance. The City will also be] conducting [~~annual~~ routine] compliance inspections of all construction projects cumulatively disturbing one acre or

more [or as specified in section 14-5-2-12(B)(6)]. Site inspections will be followed by any necessary compliance or enforcement action to ensure corrective maintenance has occurred. [Corrective maintenance is to be completed within seven days or the owner is subject to escalation per this ordinance.] All projects will be inspected at completion for confirmation of stabilization [~~prior to the submittal of the Notice of Termination under the General Construction Permit~~].

(a) Erosion and Sediment Control [and construction site waste(s)] Compliance. If the city finds that erosion [~~and~~,] sediment[, and construction site waste(s)] controls are not preventing accelerated erosion and removing sediment[,] and [construction site] waste[(s)] prior to [~~the drainage~~] leaving the construction site [by means of drainage, wind or human forces], the city may direct the owner or his/her agent by written order to implement additional erosion[, sediment and construction site waste(s)] control measures to prevent said soil erosion and sediment[, ~~and waste~~ construction site waste(s)] migration. [If the City finds that a property owner has caused sediment or construction site wastes to leave a site, the City may direct the owner or his/her agent by written order to remove the sediment and construction site waste(s).] If immediate additional erosion and sediment [~~control or repair~~ controls and construction site waste(s) containment] is necessary, the owner or his/her agent shall be verbally notified with a follow-up written confirmation occurring later. It shall be the duty of the owner or his/her agent to immediately take all necessary steps to prevent such migration of sediment and waste off the premises or from entering receiving waters. Delivery of an order by the city to the owner or his/her agent shall be deemed to be notice thereof, and binding upon the owner. An owner's or his/her agent's failure to substantially comply with the order shall subject that owner to the penalty provisions of this ordinance.

(b) Maintenance of Temporary Control Measures. The property owner or the owner's agent carrying out the soil erosion and sediment control measures shall maintain all temporary control measures, retaining walls, structures, plantings, and other protective devices. Should the applicant, or any other subsequent property owners fail to maintain the

temporary control facilities, retaining walls, structures, plantings, and other protective devices, the city reserves the authority to enter affected property, provide needed maintenance, and to charge the owner for the work performed by the city or its contractors and to place a lien on the property to cover the costs of said actions. Such municipal lien shall be a statutory lien against the real property. This provision is in addition to the city's ability to assess penalties or pursue any other remedies as necessary to effectuate the purpose of this ordinance.

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

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

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

([~~C~~D]) Post-Construction Maintenance shall be performed as follows:

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

(2) Private Stormwater Facilities [~~shall be maintained by the facilities' owner to standards established by the City Engineer and published in the Development Process Manual. Periodic inspection and certifications of facilities are hereby required and shall be reported to the City Engineer on forms established by the city. Inspections and Certifications by a New Mexico~~

~~Professional Engineer shall occur not less frequently than once every 3 years from the date the Notice of Termination is signed. Ongoing Stormwater Control Permit obligations may be required as to Stormwater Control Measures.~~**:**

a) Maintenance of Drainage Facility – The Owner shall maintain the Drainage Facility at the Owner's cost in accordance with this Ordinance.

b) City Inspection Schedule – the City shall keep track of all private facilities dedicated to on or off-site mitigation and publish annually on its website a proposed inspection schedule for each facility for the convenience of the respective facility managers. Notwithstanding, nothing herein prevents the City from perform an unscheduled inspection when reasonably necessary to implement the goals and requirements of this ordinance.

c) City's Right of Entry – No owner, occupant or any other person having charge, care or control of any building or premises shall fail or neglect, after proper request is made, as herein provided, to promptly permit entry herein by authorized City official for the purpose of inspection and investigation pursuant to the ordinance and to provide maintenance or repair of the Drainage Facilities as it deems appropriate, without liability to the City. In the event that the City is denied reasonable entry for purposes of inspection on a voluntary basis, the authorized City official shall obtain a proper inspection warrant or other remedy provided by law to secure entry. In the event of an emergency, where immediate entry is necessary to protect life or property, the City has the right to enter and perform inspections, maintenance or repair of the Drainage Facilities as it deems appropriate, without liability to the City.

c) Demand for Construction or Repair – The City may send written notice ("Notice") to the Owner requiring maintenance, construction, or repair to the Drainage Facility within thirty (30) days ("Deadline") of receipt of the Notice, and the Owner, at their expense, must comply with the requirements of the Notice by the Deadline provided.

d) Failure to Perform by Owner and Emergency Work by City – If the Owner fails to comply with the terms of the Notice by the Deadline, or if the City determines that an emergency condition exists, the City may perform the work itself. The City may assess the Owner for the cost of the work and for any other expenses or damages, which result from Owner's failure to perform. The Owner shall pay the City the amount assessed. If the Owner fails to pay the City within thirty (30) days after the City gives the Owner written notice of the amount due, the City may impose a lien against Owner's Property for the total resulting amount.

e) Liability of City for Repair after Notice or as a Result of Emergency – The City shall not be liable to the Owner for any damages resulting from the City's maintenance or repair following Notice to the Owner as required in this Ordinance, or in an emergency, unless the damages are the result of the reckless conduct or gross negligence of the City.

f) Indemnification – The City, its officials, agents and employees are indemnified and shall be held harmless from all claims, actions, suits and proceedings, whether known or unknown arising out of, or resulting from the Owner's negligent maintenance, construction, repair or use of the Drainage Facility. Such indemnification shall encompass actions are brought by third parties against any non-City party when such actions related to the aforementioned Drainage Facility. Furthermore, and notwithstanding the provisions of Section 56-7-1 NMSA 1978 (if applicable), such indemnification specifically extends to liability, for all claims, whether known or unknown, damages, losses or expenses, including attorneys' fees, arising out of: (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications (except those created by the City or its agents or employees); or (2) the giving of or the failure to give directions or instructions by the City.

g) This ordinance is not intended to replace, supersede, undermine or otherwise alter or replace any existing covenant or other written agreement between the City and any property owner. To the extent that the provisions herein conflict with the covenant or other agreement's language, then the covenant language or other agreement's language shall apply.]

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

SECTION 7. Chapter 14, Article 5, Part 2, Section 12 "General Administration" is amended as follows:

"§ 14-5-2-12 GENERAL ADMINISTRATION.

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

(B) All construction activities within the jurisdiction of the city shall conform to the requirements of the City Engineer with respect to drainage control, flood control, stormwater control, and erosion control.

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

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

(3) During the period of May 1 through October 31, any grading within or adjacent to a facility that conveys a minimum of 50 cfs of holds 2.0 acre-feet must provide for stormwater control[,] erosion control, and the safe passage of the 10-year design storm runoff during the construction phase.

(4) Grading, cut, fill or importation of material in excess of 500 cubic yards or grading of any area of one acre or more shall conform to drainage control, flood control, stormwater control, and erosion control policies and to standards, criteria and procedures established by the City Engineer with respect to drainage, flood control, stormwater control, and erosion control. A

grading permit, issued by the City Engineer, shall be required for projects involving more than 500 cubic yards of material or one acre or more in area. Applications for development of areas known to have been sanitary landfills shall be accompanied by a report which discusses potential health and soil mechanics problems and their solutions. Such reports shall be prepared by a New Mexico Professional Engineer competent in soil mechanics.

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

(6) Sites with less than one acre of total land disturbance [and that are not part of a larger common plan of development] shall be required to obtain [~~a Stormwater Quality Permit –~~ an] Erosion and Sediment Control [Permit] if:

[~~(a) The site is part of a larger common plan of development;~~

([~~b~~a]) The site is identified as having a significant potential for erosion, based on observation or site characteristics including very steep topography;

([~~c~~b]) The site is known to contain contaminated soils; or

([~~d~~c]) The site is directly adjacent to receiving waters such as directly connected storm drains, directly connected concrete arroyos or the Rio Grande.

[(d) The site contains a building to be demolished and the building is 20,000 square feet or larger and was built or renovated prior to January 1, 1980.]

(7) Underground utilities, street reconstruction, drainage-way improvements, and landscaping construction projects shall obtain a Stormwater Quality Permit [~~–~~for] Erosion and Sediment Control if the entire project will disturb the soil in an area of one acre or more.

(8) Paving an area larger than [~~2,000~~ 20,000] square feet other than right-of-way shall require a paving permit. Applications for paving permits shall be accompanied by a grading plan and Erosion and Sediment Control Plan if deemed necessary by the City Engineer. Repaving of right-of-way is excluded.

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

(10) Permit Fees. Permit fees shall be established by the Mayor.

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

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

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

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

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

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

(a) Channel stability.

(b) Crossing structure hydraulic capacity.

(c) Reservoir capacity.

(d) Hydraulic capacity of street, storm sewer, or channel.

(e) Public health and safety.

(f) Maintenance constraints.

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

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

(1) The likelihood and consequences of a failure.

(2) Length of time until permanent facilities will be in place.

(3) The acceptance of maintenance responsibilities and legal liabilities.

([~~I~~H]) Requests for approvals of development and/or platting proposals to the City Engineer shall be accompanied by drainage control, flood control, stormwater control, and erosion control information and/or commitments. The particular nature, location and scope of the proposed development defines the degree of detail. One or more of the following levels of submittal may be required based on the following:

(1) Conceptual Grading and Drainage Plan. A graphic representation of existing and proposed grading, drainage, flood control and erosion control information. The information should be of sufficient detail to determine project feasibility. The purposes of this plan are to check the compatibility of the proposed development within grading, drainage, flood

hazard and erosion control constraints as dictated by on-site physical features as well as adjacent properties, streets, alleys and channels. Modifications to the Comprehensive Plan and the development of area plans, sector plans, site development plans and landscaping plans on tracts of five acres or more are appropriate applications of conceptual grading and drainage plans.

(2) Drainage Plan. A short detailed presentation required for approval of small, simple development approvals. Drainage plans are prepared with or on the detailed grading plan and address both on-site and off-site drainage control, flood control, stormwater control, and erosion control issues. Drainage plans are required for building permits, site development plans and landscaping plans for developments involving less than five acres.

(3) Drainage Report.

(a) A drainage report is a comprehensive analysis of the drainage control, flood control, stormwater control, and erosion control constraints on and impacts resulting from a proposed platting, development or construction project.

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

(4) Erosion and Sediment Control Plan. Erosion and Sediment Control plans address all phases of each project from initial grading through and including final occupancy [~~and periodic post construction maintenance~~]. Phased projects require special attention. All construction projects, both public and private, within the jurisdiction of §§ 14-5-2-1 et seq.[,] unless specifically excluded[,] require an approved Erosion and Sediment Control plan prior to start of construction. [An Erosion and Sediment Control Plan is required for sites that meet the criteria specified in § 14-5-2-11(A), § 14-5-2-11(B) and § 14-5-2-12(B)(6).]

(J) The Albuquerque 100-year design storm is the 100-year 6-hour storm as defined by the National Oceanic Atmospheric Administration (NOAA) and by the storm distributions for time and areas as developed by the City Engineer.

The 100-year storm has a 1% probability of occurring in any year. Watersheds with times of concentration greater than six hours will require the use of the 100-year 24-hour storm volumes and distributions. Detention basins within which at least 90% of the design storage volume is not evacuated within 6 hours measured from the time the peak storage volume is reached, shall use a 24-hour or longer storm volume and distribution. Design circumstances may require larger or smaller storm volumes. The sources for the rainfall data are current NOAA publications and the City Engineer. When the need for other design storms is apparent, the City Engineer will provide requirements concerning appropriate storms, frequencies and durations.

(K) The City Engineer shall, within 30 calendar days after the submission to him/her of a request in writing for an approval under the Drainage Ordinance, approve or deny the request and provide a copy of his/her decision to the applicant. If the request is denied, the reasons for such denial shall be stated in writing. Appeal of such decisions is as provided in § 14-5-2-15.

(L) Discharge of any groundwater cleanup flows to the city's storm drainage and flood control system shall not normally be permitted, however, when such discharge of groundwater cleanup flow is by special agreement permitted, the entity responsible for such groundwater cleanup flow discharge shall also be responsible for all costs of installing, operating and removing the means of such discharges and shall provide public liability protection as required. The discharger of such groundwater cleanup flows shall also be responsible for payment of such permit fees, user fees, and effluent sampling fees according to an agreement with the city. All discharges to public storm drainage and flood control facilities shall comply with adopted local and applicable state and federal water quality requirements."

SECTION 8. Chapter 14, Article 5, Part 2, Section 13 "Alternative Compliance for Post Construction Due to Infeasibility" is added as follows:

"[§ 14-5-2-13 ALTERNATIVE COMPLIANCE FOR POST-CONSTRUCTION DUE TO INFEASIBILITY

The applicant may submit to the City Engineer a request for a determination of infeasibility for on-site management of all or a portion of the stormwater quality volume. The City Engineer shall approve such requests where based on the limitations provided in Section 14-5-2-6(H) above, or

otherwise within the reasonable discretion of the City Engineer. If the request is approved, an alternate compliance strategy acceptable to the City Engineer shall be implemented to manage the stormwater quality volume. The procedures and process for this determination shall be described in the DPM.]"

SECTION 9. Chapter 14, Article 5, Part 2, Section 13 "Administrative Procedures, Criteria and Standards" is renumbered and subsection 'G' is amended as follows:

"§ 14-5-2-[~~13~~14] ADMINISTRATIVE PROCEDURES, CRITERIA AND STANDARDS.

. . .

(G) Regulation relating to groundwater cleanup flows discharged to public storm drainage and flood control facilities shall be [~~executed~~ exempted] from the provisions of this section. Requirements relating to groundwater cleanup flows shall be established by the City Engineer on a case by case basis, based on public health and safety needs, [~~operations~~ operational] needs, and state and federal regulatory compliance requirements current at time of promulgation. The requirements and conditions shall include provisions for public liability protection from groundwater cleanup flow discharges to the city's systems."

SECTION 10. Chapter 14, Article 5, Part 2, Section 14 "Enforcement" is renumbered and subsection 'B' is amended as follows:

"§ 14-5-2-[~~14~~15] ENFORCEMENT.

(B) Where, after investigation, an order has been issued by the City Engineer to the owner of the property on which a violation has occurred and the order is not complied with within thirty (30) days [for post-construction violations and within seven (7) days for construction violations], or such longer reasonable time as may be prescribed by the City Engineer, or if the responsible party or violator cannot be found or determined, the violator shall be subject to the penalty provisions set forth in § 1-1-99 of this code of ordinances up to $500 per day. Each day of violation is considered a separate offense."

SECTION 11. Chapter 14, Article 5, Part 2, Sections 15 "Appeals, Technical Standards Committee," 16, "Interpretation," and 17, "Warning and Disclaimer of Liability" are renumbered as subsections 16, 17, and 18 respectively.

SECTION 12. SEVERABILITY CLAUSE. If any section, paragraph, word or phrase of this ordinance is for any reason held to be invalid, or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

SECTION 13. COMPILATION. Sections 1 through 10 of this ordinance shall amend, be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

SECTION 14. RE-EVALUATION. The City shall coordinate with cooperators and stakeholders within eighteen-months of adoption of this ordinance to evaluate other alternatives to on-site mitigation that may be advanced through by better utilization of existing or planned public drainage infrastructure.

SECTION 15. EFFECTIVE DATE. This ordinance shall take effect five days following publication by title and general summary.