

CITY of ALBUQUERQUE

TWENTY-THIRD COUNCIL

COUNCIL BILL NO. C/S O-18-2 ENACTMENT NO. _____

SPONSORED BY: Trudy E. Jones

1 **ORDINANCE**

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

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

7 **SECTION 1. Chapter 14, Article 5, Part 2, Section 3 “Statement of Purpose**
8 **and Intent” is amended to add subsection ‘F’ as follows:**

9 **“§ 14-5-2-3 STATEMENT OF PURPOSE AND INTENT.**

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

14 **...**

15 **[(F) As to stormwater quality to:**

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

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

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

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2 unless specifically repealed or amended herein):

3 “§ 14-5-2-4 DEFINITIONS.

4 ***BMPs. Best Management Practices.*** ~~[Those practices described in § 14-5-~~
5 ~~2-6(H), those best management practices described within the MS4 Permit.]~~

6 ***[CONSTRUCTION GENERAL PERMIT. The National Pollutant Discharge***
7 ***Elimination System General Permit for Discharges from Construction***
8 ***Activities, most current version.***

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

12 ***COOPERATOR / COOPERATIVE AGREEMENT*** Any arrangement,
13 organization, or joint functioning of the co-permittees, or in combination with
14 other governmental agencies, which works constructively with the City to
15 address mutual stormwater and/or stormwater quality issues.]

16 ***[80TH PERCENTILE STORM EVENT.*** The runoff from a precipitation event
17 that is less than or equal to 80 percent of all rainfall events. The 80th
18 Percentile storm event applies to projects where developed land is being
19 redeveloped. The volume to be managed is stated in the Development Process
20 Manual.]

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

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

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

1 [GI/LID, GREEN INFRASTRUCTURE (GI), LOW IMPACT DEVELOPMENT
2 (LID). Any array of products, technologies, and practices that preserve or use
3 natural systems, or engineered systems that mimic natural processes and
4 systems, to enhance overall environmental quality and more specifically that
5 provide treatment resulting in stormwater quality improvement, as specified in
6 the DPM.]

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

16 NEW DEVELOPMENT. The process of adding improvements to a parcel of
17 land, such as grading, subdivisions, drainage, access, roadway/street
18 improvements, impervious driving surfacing and utilities. This applies to
19 parcels of lands with little to no previous human-caused disturbances, or
20 otherwise in a natural condition.]]

21 90TH PERCENTILE STORM EVENT. The [runoff from a] precipitation event
22 that is less than or equal to ninety percent of all rainfall events [in a calendar
23 year based on available precipitation records for a region. For purposes of §§
24 14-5-2-1 et seq., the 90th percentile storm event is 0.44 inches. The 90th
25 percentile storm event applies to new development. The volume to be
26 managed is stated in the Development Process Manual.]

27 [PAYMENT-IN-LIEU FOR PUBLIC OFF-SITE MITIGATION ("Payment in
28 Lieu"). A payment collected and used by the City, or collected by the city and
29 distributed to a cooperator for its use pursuant to an agreement with the City,
30 for purposes the maintenance, retrofit, or upgrade of public drainage
31 infrastructure for stormwater quality improvements, and made in lieu of
32 management on-site or private off-site mitigation.]

1 **PRIVATE OFFSITE MITIGATION.** Approved management of the stormwater
2 **quality volume or a portion of the stormwater quality volume at a private**
3 **offsite location. The private offsite location may be an existing facility or the**
4 **facility may be constructed or modified to manage the stormwater quality**
5 **volume.**

6 **[REDEVELOPMENT.** Improvements made to a parcel of land that was
7 **previously developed (see “new development”).**

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

10 SECTION 3. Chapter 14, Article 5, Part 2, Section 5 “Jurisdiction” is
11 amended as follows:

12 “§ 14-5-2-5 JURISDICTION.

13 Sections 14-5-2-1 et seq. shall apply to all lands within the city and, with
14 respect to planning and platting matters, it shall also apply to all lands within
15 its extraterritorial planning and platting jurisdiction.~~[This jurisdiction is not~~
16 ~~exclusive; in particular, in matters of flood control AMAFCA shares~~
17 ~~jurisdiction.]~~

18 SECTION 4. Chapter 14, Article 5, Part 2, Section 6 “General Provisions” is
19 amended as follows:

20 “§ 14-5-2-6 GENERAL PROVISIONS.

21 (A) The city is and shall remain an active participant in the National Flood
22 Insurance Program. The city endorses the program goal of flood damage
23 reduction through the regulation of development within flood hazard areas
24 and the preservation of floodways. Sections 14-5-2-1 et seq. are intended to
25 complement and supplement the Flood Hazard Ordinance set forth in §§ 14-5-
26 1-1 et seq. of this article and shall be administered in concert therewith.

27 (B) All developed land within the city shall be provided with adequate
28 drainage control, flood control, stormwater control, and erosion control
29 facilities. The protection of life, health, and property shall be considered the
30 primary function in the planning, design, construction and maintenance of
31 drainage control, flood control, stormwater control, and erosion control
32 facilities. However, other concerns, not limited to the following, shall be
33 addressed: channel capacity, watershed characteristics, channel stability,

1 maintenance, transitions between treatment types, multiple use goals, and
2 appearance. The needs of the community in transportation, utility services,
3 recreation, and open space shall be considered in planning, design,
4 construction, and maintenance—particularly in the selection of channel
5 treatment measures. These needs shall always be considered subsidiary to
6 the primary functions of the drainage control, flood control, stormwater
7 control, and erosion control facilities.

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

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

13 (E) All facilities receiving water from public facilities and rights-of-way
14 shall be constructed within dedicated rights-of-way or recorded drainage
15 easements granted to and accepted by the proper public authority or a private
16 entity with an agreement for operations and maintenance.

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

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

31 (H) All new development [and redevelopment] projects shall~~[, where~~
32 ~~practicable, apply best management practices to]~~ manage ~~[the runoff from~~
33 ~~precipitation from 90th Percentile Storm Events, utilizing appropriate~~

1 ~~techniques such as the following, to detain, retain and/or dispose of said~~
2 ~~runoff: infiltration into soil, extended filtration procedures, water harvesting,~~
3 ~~evapotranspiration or other appropriate techniques under the circumstances,~~
4 ~~and any combination of these practices. Generally it shall not be deemed~~
5 ~~“practicable”, in the context above, in site development cases that include but~~
6 ~~are not limited to: (i) cases of conflicts with water rights appropriations~~
7 ~~requirement, (ii) cases where post-development drainage planning that does~~
8 ~~not and/or cannot practically connect to the River, and (iii) cases where~~
9 ~~appropriate public or private drainage facilities are available ‘offsite’ and will~~
10 ~~be be used in a manner consistent with the goals of this Ordinance to manage~~
11 ~~the Project runoff from precipitation from 90 Percentile Storm Events.~~
12 stormwater quality volume by management on-site, or payment-in-lieu, or
13 private offsite mitigation. The Best Management Practices (BMPs) shall be
14 appropriate for the specific circumstances. On-site mitigation solutions shall
15 be landscaped or otherwise utilize required landscape areas within the site.
16 The basis for requesting payment-in-lieu or private offsite mitigation is to be
17 clearly demonstrated on the drainage plan. Management on site shall not be
18 required where stormwater quality can be effectively controlled through private
19 off site mitigation, or through an arrangement to utilize a cooperator’s existing
20 regional stormwater management infrastructure or facilities that are available
21 to control stormwater quality, and where:
22 (i) the lot is too small to accommodate management on site while
23 also accommodating the full plan of development;
24 (ii) the soil is not stable;
25 (iii) the site use is inconsistent with the capture and reuse of
26 stormwater;
27 (iv) other physical conditions exist where compliance with on-site
28 stormwater quality control requirement leaves insufficient area;
29 (v) public or private off-site facilities provide an opportunity to
30 effectively accomplish the mitigation requirements of this ordinance;
31 (vi) there is an opportunity to develop a project to replenish regional
32 ground water supplies at an offsite location; or

1 (vii) . A waiver to state water law or acquisition of water rights would
2 be required in order to implement management on site.

3 (l) In new development and redevelopment cases where the stormwater
4 quality volume cannot be met in total through either management on site or
5 private off site mitigation, payment-in-lieu is required for the difference
6 between the amount met and the total required. Determination of the of
7 payment-in-lieu is described in the DPM; except that payment in lieu that would
8 be otherwise owed is waived for both new development and redevelopment in
9 Metropolitan Redevelopment Areas or within the City of Albuquerque
10 Annexation Boundary of 1950-1959 (per Figure 4-1: Growth Through
11 Annexation Over Time in Albuquerque of the Albuquerque/Bernalillo County
12 Comprehensive Plan).]

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

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

29 **([LK])** The introduction of groundwater cleanup flow to either natural or
30 constructed storm drainage and flood control facilities shall be prohibited
31 except as herein provided.

1 SECTION 5 Chapter 14, Article 5, Part 2, Section 7 “Surface Use of Streets
2 for Drainage and Flood Control Purposes” and Section 8 “Crossings” is
3 amended as follows:

4 “§ 14-5-2-7 SURFACE USE OF STREETS FOR DRAINAGE AND FLOOD
5 CONTROL PURPOSES.

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

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

15 (C) The 10-year design storm runoff shall not exceed a depth of 0.5 feet in
16 any arterial street and shall flow such that one driving lane in each direction is
17 free of flowing or standing water. The 10-year design storm runoff shall not
18 exceed a depth of 0.5 feet in any collector street. Arterial and collector streets
19 that are in the state highway system may require more stringent drainage
20 criteria.

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

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

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

33 § 14-5-2-8 CROSSINGS.

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

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

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

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

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

19 [(F) The maintenance of facilities constructed at private expense on
20 public property is the responsibility of the owner or owner's agent until
21 permanent facilities are in place.

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

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

29 “§ 14-5-2-10 MULTIPLE USE RIGHTS-OF-WAY AND EASEMENTS.

30 (A) Multiple use is encouraged for drainage rights-of-way and drainage
31 easements including, but not limited to, utility corridors, recreation trails, and
32 parks. Where multiple use is planned by the city, another public agency, or a
33 public utility, the city may require that dedication statements include language

1 which permits said specified multiple uses in addition to the primary drainage
2 function, flood control, stormwater [or stormwater quality] control, or erosion
3 control. However, land required to be dedicated for drainage related rights-of-
4 way shall be limited to those land areas necessary for drainage control, flood
5 control, stormwater quality control, and erosion control and necessary
6 appurtenances.

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

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

14 “§ 14-5-2-11 ~~[STORMWATER CONTROL PERMITTING FOR EROSION AND~~
15 ~~SEDIMENT CONTROL, INSPECTION, AND MAINTENANCE RESPONSIBILITY.~~

16 CONSTRUCTION SITE RESPONSIBILITY BY PROPERTY OWNER]

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

29 (B) For projects that are less than one acre and are not part of a larger
30 common plan of development, but meet the criteria as specified in section 14-
31 5-2-12(B)(6), an approved Erosion and Sediment Control Permit is required
32 prior to earth disturbance, Work Order approval and Building Permit approval.]

(1) The ~~[Stormwater Control Permit for]~~ Erosion and Sediment Control ~~[Permit or eNOI]~~ 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 A project will be approved for earth disturbance, work order, or building permit 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 and other protective measures, identified in the Erosion and Sediment Control Plan and the associated Stormwater Quality Permit for Erosion and Sediment Control the project for compliance with the Construction General Permit once every 14 days and after any precipitation even of ¼ inch or greater. Until 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~~

1 ~~planned frequency, inspections shall occur after any precipitation event of 1/4~~
2 ~~inch or greater~~ Site determined as stabilized by the City]. Reports of these
3 inspections shall be kept by the person or entity authorized to direct the
4 construction activities on the site and shall be conducted during progress of
5 the work, during work suspensions, and until final acceptance of site
6 stabilization by the city. An owner's or his/her agent's failure to properly
7 maintain records ~~[as required by Erosion and Sediment Control Plan]~~ shall
8 subject that owner to the penalty provisions of this ordinance.

9 (2) City Compliance Inspections. The city will ~~[require compliance~~
10 ~~inspections in accordance with the permittee's Erosion and Sediment Control~~
11 ~~Plan, conduct routine compliance inspections of projects for compliance with~~
12 ~~the Construction General Permit. The City will]~~ conduct[ing annual routine]
13 compliance inspections of all construction projects cumulatively disturbing
14 one acre or more [or as specified in section 14-5-2-12(B)(6) for compliance
15 with the Construction General Permit]. Site inspections will be followed by any
16 necessary compliance or enforcement action to ensure corrective
17 [maintenance action] has occurred. [Corrective action is to be completed
18 within seven days or the owner is subject to escalation per this ordinance.]
19 All projects will be inspected at completion for confirmation of stabilization
20 ~~[prior to the submittal of the Notice of Termination under the General~~
21 ~~Construction Permit]~~.

22 (a) ~~[Erosion and Sediment Control~~ Construction Site]
23 Compliance. If the City finds that ~~[erosion sediment controls are not~~
24 ~~preventing accelerated erosion and removing sediment and waste prior to the~~
25 ~~drainage leaving the construction site, the site is not in compliance with the~~
26 Construction General Permit and that stormwater controls will not prevent
27 sediment and waste from entering the City's drainage system and/or leaving
28 the 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~~ come into compliance]. If
31 ~~[immediate additional erosion and sediment control or repair is necessary~~
32 deficiencies are required to be mitigated], the owner or his/her agent shall be
33 verbally notified with a follow-up written confirmation occurring later. It shall

1 be the duty of the owner or his/her agent to immediately take all necessary
2 steps to prevent such migration of sediment and waste off the premises or
3 from entering receiving waters. Delivery of an order by the city to the owner
4 or his/her agent shall be deemed to be notice thereof, and binding upon the
5 owner. An owner's or his/her agent's failure to substantially comply with the
6 order shall subject that owner to the penalty provisions of this 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~~ Construction General Permit requirements] shall
10 maintain all [~~temporary~~] control measures, retaining walls, structures,
11 plantings, and other protective devices. Should the applicant, or any other
12 subsequent property owners fail to maintain the temporary control facilities,
13 retaining walls, structures, plantings, and other protective devices, the city
14 reserves the authority to enter affected property, provide needed maintenance,
15 and to charge the owner for the work performed by the city or its contractors
16 and to place a lien on the property to cover the costs of said actions. Such
17 municipal lien shall be a statutory lien against the real property. This
18 provision is in addition to the city's ability to assess penalties or pursue any
19 other remedies as necessary to effectuate the purpose of this ordinance.

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

23 2. The developer shall be responsible for maintaining or
24 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 ([GD]) Post-Construction Maintenance shall be performed as follows:

1 (1) Except as otherwise noted herein, all Public Stormwater Facilities
2 shall be maintained by the city or other public body. The maintenance of
3 multiple use facilities to which the general public is denied access shall be the
4 responsibility of the owners and shall be performed to City Engineer
5 standards. The City Engineer may allow private maintenance within public
6 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 a) Maintenance of Drainage Facility – The Owner shall
18 maintain the Drainage Facility at the Owner's cost in accordance with this
19 Ordinance.

20 b) City Compliance Inspections – The City's post-construction
21 inspection program will begin routine compliance inspections of projects at
22 three (3) years after final acceptance of the BMP's. Notwithstanding, nothing
23 herein preclude the City from performing an unscheduled inspection when
24 reasonably necessary to implement the goals and requirements of this
25 ordinance.

26 c) City's Right of Entry – No owner, occupant or any other
27 person having charge, care or control of any building or premises shall fail or
28 neglect, after proper request is made, as herein provided, to promptly permit
29 entry by authorized City officials for the purpose of inspection and
30 investigation pursuant to this ordinance, or to provide maintenance or repair
31 of the Drainage Facilities as it deems appropriate without liability to the City.
32 In the event that the City is denied reasonable entry for purposes of inspection
33 on a voluntary basis, the authorized City official shall obtain a proper

1 inspection warrant or other remedy provided by law to secure entry. In the
2 event of an emergency, where immediate entry is necessary to protect life or
3 property, the City has the right to enter and perform inspections, maintenance
4 or repair of the Drainage Facilities as it deems appropriate, without liability to
5 the City.

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

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

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

25 f) Indemnification – The City, its officials, agents and
26 employees are indemnified and shall be held harmless from all claims,
27 actions, suits and proceedings, whether known or unknown arising out of, or
28 resulting from the Owner’s negligent maintenance, construction, repair or use
29 of the Drainage Facility. Such indemnification shall encompass actions are
30 brought by third parties against any non-City party when such actions related
31 to the aforementioned Drainage Facility. Furthermore, and notwithstanding
32 the provisions of Section 56-7-1 NMSA 1978 (if applicable), such
33 indemnification specifically extends to liability, for all claims, whether known

1 or unknown, damages, losses or expenses, including attorneys' fees, arising
2 out of: (1) the preparation or approval of maps, drawings, opinions, reports,
3 surveys, change orders, designs or specifications (except those created by
4 the City or its agents or employees); or (2) the giving of or the failure to give
5 directions or instructions by the City.

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

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

16 SECTION 8 Chapter 14, Article 5, Part 2, Section 12 “General
17 Administration” is amended as follows:

18 “§ 14-5-2-12 GENERAL ADMINISTRATION.

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

24 (B) All construction activities within the jurisdiction of the city shall
25 conform to the requirements of the City Engineer with respect to drainage
26 control, flood control, stormwater control, [stormwater quality control,] and
27 erosion control.

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

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

1 from erosion and sedimentation resulting from the 10-year design storm and
2 all smaller storms.

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

7 (4) Grading, cut, fill or importation of material in excess of 500 cubic
8 yards or grading of any area of one acre or more shall conform to drainage
9 control, flood control, stormwater control, and erosion control policies and to
10 standards, criteria and procedures established by the City Engineer with
11 respect to drainage, flood control, stormwater control, and erosion control. A
12 grading permit, issued by the City Engineer, shall be required for projects
13 involving more than 500 cubic yards of material or one acre or more in area.
14 Applications for development of areas known to have been sanitary landfills
15 shall be accompanied by a report which discusses potential health and soil
16 mechanics problems and their solutions. Such reports shall be prepared by a
17 New Mexico Professional Engineer competent in soil mechanics.

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

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

25 ~~[(a) The site is part of a larger common plan of development;~~
26 ~~[(b)]~~ The site is identified as having a significant potential for
27 erosion, based on observation or site characteristics including very steep
28 topography;
29 ~~[(c)]~~ The site is known to contain contaminated soils; or
30 ~~[(d)]~~ The site is directly adjacent to receiving waters such as
31 directly connected storm drains, directly connected concrete arroyos or the
32 Rio Grande.

1 [(d) The site contains a building to be demolished and the
2 building is 10,000 square feet or larger and was built or renovated prior to
3 January 1, 1980.

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

8 ~~(8)(7)~~ Paving an area larger than ~~[2,000~~ 10,000 square feet other
9 than right-of-way shall require a paving permit. Applications for paving
10 permits shall be accompanied by a grading plan and Erosion and Sediment
11 Control Plan if deemed necessary by the City Engineer. Repaving of right-of-
12 way is excluded.

13 ~~[(9)(8)]~~ The City Engineer shall not issue a grading permit, paving
14 permit, [Work Order,] or ~~[Stormwater Quality Permit Erosion and Sediment~~
15 ~~Control~~ Building Permit] unless the proposed ~~[permit project]~~ is in compliance
16 with the policies of §§ 14-5-2-1 et seq. ~~[and the standards and criteria of the~~
17 ~~City Engineer as provided for by § 14-5-2-13.]~~

18 ~~[(10)(9)]~~ Permit Fees. Permit fees shall be established by the
19 Mayor.

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

29 (D) It shall be the responsibility of the City Engineer to produce, approve,
30 make and retain records of all drainage plans, drainage reports, design
31 analyses, design drawings, as-built drawings, and maintenance schedules
32 related to all drainage control, flood control, stormwater control, [stormwater

quality 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) 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.]~~

([GE]) 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.

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

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

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

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

28 (3) Drainage Report.

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

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

5 (4) Erosion and Sediment Control Plan. Erosion and Sediment
6 Control plans address all phases of each project from initial grading through
7 and including final occupancy ~~[and periodic post construction maintenance]~~.
8 Phased projects require special attention. All construction projects, both
9 public and private, within the jurisdiction of §§ 14-5-2-1 et seq.[,] unless
10 specifically excluded[,], require an approved Erosion and Sediment Control
11 plan prior to start of construction. [An Erosion and Sediment Control Plan is
12 required for sites that meet the criteria specified in § 14-5-2-11(A), § 14-5-2-
13 11(B) and § 14-5-2-12(B)(6).]

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

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

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

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

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

16 . . .

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

26 SECTION 10 Subsection 'B' of Chapter 14, Article 5, Part 2, Section 14
27 "Enforcement" is amended as follows:

28 "§ 14-5-2-14 ENFORCEMENT.

29 . . .

30 (B) Where, after investigation, an order has been issued by the City
31 Engineer to the owner of the property on which a violation has occurred and
32 the order is not complied with within thirty (30) days [for post-construction
33 violations and within seven (7) days for construction violations], or such

1 longer reasonable time as may be prescribed by the City Engineer, or if the
2 responsible party or violator cannot be found or determined, the violator shall
3 be subject to the penalty provisions set forth in § 1-1-99 of this code of
4 ordinances up to \$500 per day. Each day of violation is considered a separate
5 offense.”

6 SECTION 11. SEVERABILITY CLAUSE. If any section, paragraph, word or
7 phrase of this ordinance is for any reason held to be invalid, or unenforceable
8 by any court of competent jurisdiction, such decision shall not affect the
9 validity of the remaining provisions of this ordinance. The Council hereby
10 declares that it would have passed this ordinance and each section,
11 paragraph, sentence, clause, word or phrase thereof irrespective of any
12 provision being declared unconstitutional or otherwise invalid.

13 SECTION 12. COMPILATION. Sections 1 through 10 of this ordinance shall
14 amend, be incorporated in and made part of the Revised Ordinances of
15 Albuquerque, New Mexico, 1994.

16 SECTION 13. RE-EVALUATION. The City shall coordinate with cooperators
17 and stakeholders within eighteen-months of adoption of this ordinance to
18 evaluate other alternatives to on-site mitigation that may be advanced through
19 by better utilization of existing or planned public drainage infrastructure.

20 SECTION 14. EFFECTIVE DATE. This ordinance shall take effect five days
21 following publication by title and general summary.