CITY of ALBUQUERQUE
TWENTY SEVENTH COUNCIL

COUNCIL BILL NO. O-26-26 ENACTMENT NO. _____

SPONSORED BY: Klarissa J. Peña, by request

ORDINANCE

Adopting A New Article In The Revised Ordinances Of Albuquerque 1994, Chapter 6, Adding Article 12, To Be Known As The “Storm Water Utility Ordinance;” Amending Chapter 6, Article 11 Storm Water Quality Ordinance, Section 2, Definitions, To Include A Definition Of Arid Adapted Green Stormwater Infrastructure, And Adding A New Section 15 (Peña, by request)

ADOPTING A NEW ARTICLE IN THE REVISED ORDINANCES OF ALBUQUERQUE 1994, CHAPTER 6, ADDING ARTICLE 12, TO BE KNOWN AS THE “STORM WATER UTILITY ORDINANCE;” AMENDING CHAPTER 6, ARTICLE 11 STORM WATER QUALITY ORDINANCE, SECTION 2, DEFINITIONS, TO INCLUDE A DEFINITION OF ARID ADAPTED GREEN STORMWATER INFRASTRUCTURE, AND ADDING A NEW SECTION 15.

WHEREAS, the United States Environmental Protection Agency (EPA) has issued a watershed-based National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) permit (Permit No. NMR04A014) pursuant to the federal Clean Water Act, 33 U.S.C. § 1251 et seq., which obligates the City of Albuquerque to comply with all conditions of its MS4 permit and may be subject to enforcement actions, penalties, and liabilities for noncompliance, and to develop, implement, and enforce a comprehensive stormwater management program, including the use of green stormwater infrastructure (GSI) and low impact development (LID) approaches to the maximum extent practicable to reduce pollutants in stormwater discharges and protect water quality within the watershed; and

WHEREAS, stormwater runoff causes nuisance flooding within the City and conveys

pollutants including sediment, E. coli, heavy metals, and hydrocarbons to arroyos, the Rio Grande, and other receiving waters, degrading water quality and posing risks to public health, safety, welfare, and infrastructure; and

WHEREAS, the New Mexico Legislature, through NMSA 1978, § 3-23-1 and § 3-23-11 (2025), has expressly authorized municipalities to establish stormwater utilities by ordinance and to impose equitable service charges, fees, or assessments to provide for storm water services, including the collection, treatment, storage or disposal of storm water; and

WHEREAS, the City of Albuquerque is authorized pursuant to its home rule powers under Article X, Section 6 of the New Mexico Constitution and the Albuquerque City Charter to adopt ordinances necessary to protect public health, safety, and welfare, and the City has recognized green stormwater infrastructure as a best practice through adoption of Chapter 6, Article 5, Part 6 ROA 1994, the Complete Streets Ordinance, which supports the integration of green infrastructure into the planning, design, and construction of public rights-of-way including medians, stormwater bumpouts, chicanes, and buffer or parkway strips; and

WHEREAS, additional funding sources for stormwater management will support meeting the water quality regulatory requirements and equitable expansion and maintenance of both gray and green stormwater infrastructure; and

WHEREAS, the establishment of a stormwater utility, including a Green Stormwater Infrastructure Program, and dedicated fund supported through user-based fees proportionate to system demand, is necessary to provide sustainable financing, support regulatory compliance, improve water quality, reduce nuisance flooding, and protect public infrastructure, and promote environmental stewardship for current and future residents of Albuquerque.

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

SECTION 1. A new Article 12 of Chapter 6 of the Revised Ordinances of Albuquerque, 1994, is hereby created as follows:

§ 6-12-1 CREATION OF A STORMWATER UTILITY:

(A) The City hereby establishes a Stormwater Utility, including a Green Stormwater Infrastructure (GSI) Program and associated fund, within the Department of Municipal Development (DMD).

(B) The Stormwater Utility shall be responsible for planning, design, construction, operation, maintenance, and regulatory compliance of stormwater systems, including both gray and green infrastructure.

(C) The Stormwater Utility may create passive or active rainwater harvesting incentive, credit or rebate programs and collaborate with other agencies such as the Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA), Bernalillo County, and the Albuquerque Bernalillo County Water Utility Authority (ABCWUA) Xeriscape Program to incentivize the use of green stormwater infrastructure practices, conserve potable water, and enhance ecosystem services. The Department of Municipal Development shall propose such incentive, credit, or rebate programs to Council for review and approval within two years of enactment of this Ordinance.

(D) The Administration shall submit to City Council annually a report on the Stormwater Management Fund and the Green Stormwater Infrastructure Management Program.

§ 6-12-2 DEFINITIONS:

ACTIVE RAINWATER HARVESTING. A method of capturing rainwater from rooftops or other impervious areas in a container such as a rain barrel, cistern, or tank to be redistributed at a later point in time, typically for supplemental irrigation, thereby reducing the volume of stormwater runoff. All projects that capture rainwater must comply with applicable State of New Mexico laws and regulations regarding management of water resources.

ECOSYSTEM SERVICES. Anthropocentric term referring to the benefits that humans receive from an ecosystem.

GRAY STORMWATER INFRASTRUCTURE. Traditional stormwater infrastructure in the built environment designed to collect, convey, and manage stormwater runoff from developed areas, including but not limited to gutters, drains, inlets, pipes, culverts, tanks, channels, pump stations, and retention basins.

GREEN STORMWATER INFRASTRUCTURE (GSI). A term referring to constructed features that leverage the ecological functions of living, natural systems to provide ecosystem services, such as capturing, cleaning, and infiltrating stormwater, creating wildlife habitat, shading and cooling streets and buildings, and calming traffic.

IMPERVIOUS SURFACE. Refers to any surface that prevents or significantly impedes infiltration of stormwater.

INFILTRATION. The movement of water from the land's surface into the soil.

LOW IMPACT DEVELOPMENT (LID). LID is an approach to land development (or re-development) that works with nature to manage stormwater runoff as close to its source as possible. LID employs principles such as preserving and recreating natural landscape features

and minimizing effective imperviousness to create functional and appealing site drainage that treats stormwater as a resource rather than a waste product. In arid climates, the techniques and applications of LID are different than in other climates.

NONPOINT SOURCE POLLUTION. Pollution that comes from diffuse sources like auto oil, pet waste, herbicides, and sediment. It is picked up by stormwater flowing over roofs, driveways, lawns, and streets, and is carried to streams and rivers.

STORMWATER MANAGEMENT FUND. A non-reverting fund created by this Ordinance. Resources from this fund may be used for the design, construction, management, maintenance and operation of the Stormwater Utility, including the Green Stormwater Infrastructure Program.

STORMWATER RUNOFF. Water from rain or melting snow that is not absorbed into the ground. Areas with higher proportions of impervious surface, such as streets, parking lots, and buildings, generate more stormwater runoff.

STORMWATER UTILITY. A municipal utility housed in the Department of Municipal Development, created by this Ordinance, which is established to manage stormwater quality, drainage, discharge, and regulatory compliance through a combination of gray and green stormwater infrastructure.

XERISCAPE. Xeric or xeriscape refers to a landscaping technique that uses regionally adapted or native plants with low water demand to reduce supplemental watering and overall water use.

§ 6-12-3 STORMWATER MANAGEMENT FUND:

(A) A dedicated Stormwater Management Fund is hereby established.

(B) All revenues collected pursuant to this Ordinance shall be deposited into the Fund. The Fund shall be non-reverting to the General Fund and shall not be commingled with the General Fund. The fund shall be managed by the Department of Municipal Development (DMD).

(C) Revenues shall be used solely for stormwater management-related purposes, such as but not limited to street sweeping, trash and debris diversion and removal, storm drainage inlet/outlet cleaning, maintenance of pervious pavements, and including design, construction, operation, inspection, and maintenance of stormwater infrastructure; retention and infiltration infrastructure; Green Stormwater Infrastructure (GSI) Program management, projects and public education and outreach; and stormwater quality regulatory compliance and monitoring.

§ 6-12-4 FEE FOR SERVICE:

(A) A stormwater service fee is hereby established.

(B) The fee will be assessed to all properties within the City limits that are Albuquerque

Bernalillo County Water Utility Authority (ABCWUA) customers.

(C) The fee structure will be based on potable water usage as a proxy for stormwater runoff generated by each property, subject to subsection (D) below. Each customer will initially pay a rate of $0.35 per unit or CCF (748 gallons) of water used, into the Stormwater Management Fund. The rate will increase by $0.01 each fiscal year until such time that a new fee structure is implemented consistent with subsection (D) below.

(D) The Department of Municipal Development (DMD) will acquire necessary data and establish the procedure for quantifying stormwater runoff from each parcel based on impervious square footage within two (2) years of the enactment date of this Ordinance. Upon review of that data and the overall operations of the stormwater utility, DMD shall propose an adjustment of the fee assessment structure based on the volume of runoff each property discharges to the storm drainage system. Any adjustment in fee assessment structure is subject to Administration and Council approval. If the Administration and City Council do not approve an adjustment in fee assessment structure within three (3) years of the effective date of this Ordinance, the stormwater service fee shall sunset at the end of the following fiscal year.

(E) It is further provided that a low-income credit of 15% per month shall apply to owner occupied residences who qualify under the current United States Office of Management and Budget income guidelines. The Administration shall establish procedures regarding certification for the above-mentioned credit and shall periodically make administrative changes to the income guidelines, as circumstances require.

(F) Responsibility of Payments. The charges provided for herein are the personal responsibility of the owner of the property served; any fee, payment, or fee shifting arrangement with a tenant or any other person is a third-party arrangement between the owner and the other person or entity and is not binding on the City.

(G) The fee established and assessed by subsection (C) may be substituted for a flat rate, assessed yearly, if a commercial property owner provides documentation of the commercial property's water use that indicates that the commercial property:

(1) Has high potable water usage; and

(2) Generates no substantial runoff.

DMD will administer and manage applications to flat rate assessment in lieu of the fee established and assessed in subsection (C).

§ 6-12-5 GREEN STORMWATER INFRASTRUCTURE PROGRAM:

(A) The City shall establish and maintain a Green Stormwater Infrastructure (GSI) Program. The GSI Program shall be administered by a GSI Program Manager or designated employee within the Department of Municipal Development.

(B) The GSI Program must include additional staff members to manage the design, construction, inspection, and maintenance of green stormwater infrastructure projects. A minimum of 40% of the annual revenue deposited to the Stormwater Management Fund must be spent on the GSI Program including relevant administrative costs, and the remainder will be spent on gray stormwater infrastructure and associated costs.

(C) Site selection for GSI capital projects will be prioritized based on:

(1) Social vulnerability index scores;

(2) Known water quality or nuisance flooding issues or large upstream areas contributing runoff;

(3) Higher percentage of heat vulnerable populations;

(4) Lower percentage of existing tree canopy; and

(5) Cost effectiveness (i.e., leverages other City departmental project funding or external funding for project design and construction).

(D) The GSI Program may use the Stormwater Management Fund to support GSI capital projects that may be managed or led by other City Departments, to meet best practices and industry standards through site selection, design, construction and ongoing maintenance of GSI features. Such GSI capital projects managed or led by other City Departments must meet the same prioritization criteria in subsection (C), above.

SECTION 2. Chapter 6, Article 11, of the Revised Ordinances of Albuquerque, 1994, is hereby amended to insert new definitions in

§ 6-11-2 definitions:

***ARID ADAPTED GREEN STORMWATER INFRASTRUCTURE (GSI)*. A set of practices adapted to arid and semi-arid climates that mimic natural processes to retain and use stormwater. By promoting infiltration, evapotranspiration, green stormwater infrastructure preserves and restores the natural hydrologic cycle.**

***LOW IMPACT DEVELOPMENT (LID)*. LID is an approach to land development (or re-development) that works with nature to manage stormwater runoff as close to its source as possible. LID employs principles such as preserving and recreating natural landscape**

features and minimizing effective imperviousness to create functional and appealing site drainage that treats stormwater as a resource rather than a waste product. In arid climates, the techniques and applications of LID are different than in other climates.

SECTION 3. Chapter 6, Article 11, of the Revised Ordinances of Albuquerque, 1994, is hereby amended to insert new SECTION 15 is hereby created as follows:

§ 6-11-15 REQUIRED USE OF ARID-ADAPTED GREEN STORMWATER INFRASTRUCTURE AND LOW IMPACT DEVELOPMENT:

(A) To the maximum extent practicable, all stormwater management activities undertaken or funded by the City shall incorporate green stormwater infrastructure and low impact development practices designed to improve stormwater quality and reduce pollutant discharges to the municipal separate storm sewer system (MS4) and receiving waters.

(B) Green stormwater infrastructure and low impact development practices shall be designed and implemented using arid-adapted and drought-tolerant approaches appropriate to the climatic conditions of the Albuquerque region, including the use of native or desert adapted (non-invasive) vegetation, water harvesting techniques, and soil-based infiltration systems.

(C) Stormwater management practices shall prioritize surface-based, distributed systems that promote infiltration, support drought-tolerant landscaping, and enable on-site stormwater capture, where feasible, in order to reduce reliance on conventional conveyance systems and potable water resources for landscape irrigation.

(D) The Department of Municipal Development, in coordination with the City Engineer, is authorized to develop and adopt technical standards, design criteria, guidance documents, and approval process to implement the requirements of this section consistent with the City's MS4 permit and best available science.

(E) The requirements of this section shall apply to City-funded capital projects to the extent allowable under applicable law, and shall be implemented in a manner consistent with existing City ordinances, including, but not limited to, the Storm Water Utility Ordinance, Street Tree Ordinance, Drainage Control Ordinance, and Complete Streets policies.

SECTION 4. SEVERABILITY. If any section, paragraph, sentence, clause, 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 5. COMPILATION. SECTION 1 of this Ordinance is to be compiled as a new Article 12 of Chapter 6, of the Revised Ordinances of Albuquerque, New Mexico, 1994, titled "Stormwater Utility Ordinance." SECTION 2 of this Ordinance is to be compiled as an amendment to Section 2 of Chapter 6, Article 11, of the Revised Ordinances of Albuquerque, 1994. SECTION 3 of this Ordinance is to be compiled as a new Section 15 of Chapter 6, Article 11, of the Revised Ordinances of Albuquerque, 1994.

SECTION 6. EFFECTIVE DATE. This Ordinance takes effect 60 days after publication by title and general summary of this Ordinance or July 1, 2026, whichever is later.

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