



Legislation Text

File #: O-13-47, Version: 4

CITY of ALBUQUERQUE
TWENTIETH COUNCIL

COUNCIL BILL NO. F/S(2) O-13-47 ENACTMENT NO. _____

SPONSORED BY: Trudy E. Jones, by request

ORDINANCE

F/S(2) Amending Chapter 14, Article 5, Part 2, ROA 1994, The Drainage Ordinance, To Implement Best Practices For The Management Of New Runoff Associated With New Land Development
(Jones, by request)

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

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

SECTION 1. Chapter 14, Article 5, Part 2, ROA 1994, is amended to read:

"PART 2: DRAINAGE CONTROL

§ 14-5-2-1 SHORT TITLE.

Sections 14-5-2-1 et seq. may be cited as "The Drainage Ordinance" and referred to elsewhere herein as "§§ 14-5-2-1 et seq."

§ 14-5-2-2 AUTHORITY.

Sections 14-5-2-1 et seq. are adopted pursuant to the Home Rule authority set forth in Article 1 of the Charter of the City of Albuquerque, which was adopted at a special election on June 29, 1971, pursuant to Article X, Section 6, of the Constitution of the State of New Mexico and also pursuant to Sections 3-18-7, 3-41-1 through 3-41-5 NMSA 1978 as may be amended from time to time and any other applicable statutory authority.

§ 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:

(A) To establish policies, procedures, criteria and requirements that complement and supplement the Flood Hazards Ordinance set forth in §§ 14-5-1-1 et seq. of this article for the assistance and guidance of city officials, city staff and all persons and entities within the jurisdiction of the city.

(B) As to flood control, to:

- (1) Prevent harm to human life.
- (2) Minimize flood damages to public and private property.
- (3) Provide for timely and effective construction and maintenance of flood control facilities.
- (4) Preserve the capacity of flood control and storm drainage facilities to accept, convey or store drainage flows by limiting the introduction of groundwater cleanup flows to such flood control and storm drainage facilities.

(C) As to storm drainage, to:

- (1) Prevent the creation of public safety hazards and seek to eliminate existing problems.
- (2) Minimize the discharge of storm runoff from public facilities onto private property.
- (3) Minimize damage to private property caused by storm runoff from other private property.
- (4) Provide a reasonable level of public health and convenience at reasonable cost.
- (5) Provide for timely and effective construction and maintenance of storm drainage facilities.
- (6) Preserve the capacity of flood control and storm drainage facilities to accept, convey or store flows by limiting the introduction of groundwater cleanup flows to such flood control and storm drainage facilities.

(D) As to stormwater control, sediment and erosion control, to:

- (1) Help protect the hydraulic capacity of flood control and storm drainage facilities from losses due to sedimentation, trash, debris, and other such stormwater constituents, and degradation.
- (2) Preserve public health, safety and convenience from jeopardy due to quality

impairment, erosion and sedimentation in private and public facilities of all types.

(3) Preserve the quality of the surface runoff.

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

§ 14-5-2-4 DEFINITIONS.

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

AMAFCA. The Albuquerque Metropolitan Arroyo Flood Control Authority.

BMPs. Best Management Practices. Those practices described in Section 14-5-2-6(H) of this Ordinance.

CHANNEL. Any natural or constructed drainage facility, including but not limited to an arroyo, stream, swale, ditch, diversion, or water course that conveys storm runoff.

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

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

CIP. The city's Capital Improvement Program.

CITY ATTORNEY. The chief legal counsel for the city or his/her designee.

CITY ENGINEER. The chief administrative engineer of the Engineering Division of the Planning Department of the city or his/her designee.

CITY HYDROLOGIST. A staff Professional Engineer designated by the City Engineer to exercise primary responsibility for drainage control, flood control and erosion control matters assigned to the office of the City Engineer.

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

CONCEPTUAL GRADING AND DRAINAGE PLAN. A plan prepared in graphical format showing existing and proposed grading, drainage control, flood control, runoff management and

erosion control information in sufficient detail to determine project feasibility.

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

DESIGN STORM. A storm which deposits a specific amount of precipitation within a specified period over a defined area. Used in calculating storm runoff and in designing structural and operational measures for drainage, flood, stormwater control, and erosion control.

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

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

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

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

DRAINAGE. Storm drainage.

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

DRAINAGE MANAGEMENT PLAN. A comprehensive drainage analysis and report which covers a large area or an entire basin or watershed. A Drainage Management Plan may include descriptions of infrastructure needed to solve existing or anticipated drainage and flood control problems and may establish allowable discharge rates and/or volumes and stormwater controls for future development within the boundaries of the plan.

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

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

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

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

EROSION AND SEDIMENT CONTROL PLAN. A plan prepared by a licensed New Mexico Professional Engineer submitted to ensure that minimum design standards are met to reduce potential pollutants that may result from demolition and construction activities.

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

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.

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

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

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

FREEBOARD. The additional height in a drainage or flood control facility above the design water surface elevation available for storage or flow capacity.

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

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

GROUNDWATER CLEANUP. The process necessary to remove contaminants, as defined by

state and/or federal groundwater standards, from groundwater for the purpose of restoring the water quality of the aquifer.

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

MAINTENANCE. The cleaning, shaping, grading, repair and minor replacement of drainage, flood control and erosion control facilities, but not including the cost of power consumed in the normal operation of pump stations.

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

MASTER PLANNED FACILITY. Any drainage control, flood control or erosion control facility recommended in the adopted "Albuquerque Master Drainage Plan" (1981), amendments thereto, or any approved Drainage Management or Drainage Master Plan, or any voter approved general obligation bond financed drainage control, flood control or erosion control facility.

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

90TH PERCENTILE STORM EVENT. The 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 the purposes of this ordinance the 90th Percentile Storm Event is 0.44 inches.

NUISANCE WATERS. Those waters leaving a site and entering a public street that do not result from precipitation. Examples include landscape over-watering or car washing.

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

PRIVATE STORMWATER FACILITY. A stormwater facility on private property.

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

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

STORMWATER CONTROL MEASURE (SCM). Any Best Management Practice, or combination thereof, aimed at reducing pollutants from entering the Rio Grande.

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

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

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

TRAFFIC ENGINEER. A staff Professional Engineer designated by the City Engineer to exercise primary responsibility for transportation matters assigned.

§ 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.

§ 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 techniques appropriate 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 requirements, (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 used in a manner consistent with the goals of this Ordinance to manage the Project runoff from precipitation from 90th Percentile Storm Events.

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

(J) 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.

(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.

§ 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, 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. 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.

§ 14-5-2-8 CROSSINGS.

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

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

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

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

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

§ 14-5-2-9 FINANCIAL RESPONSIBILITY.

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

(B) The city may participate in the costs of channel crossing structures on arterial and collector streets which are required for sole access to a development. The developer's share shall not exceed the cost required to meet the minimum street width standards established by the Traffic Engineer.

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

(D) All drainage control, flood control, stormwater control, and erosion control facilities which

directly result from a proposed land use change are the responsibility of the developer. Developer financed facilities include all those within the boundaries of the development, those required for development adjacent to a major arroyo or within a flood hazard area and, all temporary and permanent off-site drainage facilities. Master planned facilities shall be the responsibility of the city and in some instances AMAFCA. However, if such facilities are not programmed and funded at the time of development, the developer shall construct the master planned facilities or provide for temporary facilities, constructed to City Engineer standards within a temporary or permanent drainage easement until such time that the city or AMAFCA constructed facilities are in place. If the construction of such facilities is a condition of plat approval or building permit issuance, then financial guarantees of such construction satisfactory to the City Engineer shall also be provided as a prerequisite. The City Engineer shall coordinate the construction and location of temporary facilities with AMAFCA and other city departments. If the ultimate on-site drainage control, flood control, stormwater control, or erosion control facilities require permanent rights-of-way or easements, such rights-of-way or easements shall be dedicated at the time of platting or building permit issuance, whichever occurs first.

(E) Except as allowed by AMAFCA Resolution 81-8 and amendments thereto, the dedication of land for public purposes does not relieve a developer of responsibilities for the construction of drainage control, flood control, stormwater control, and erosion control facilities that would otherwise be necessary. The dedication of rights-of-way or easements for drainage control, flood control, stormwater control, or erosion control facilities does not relieve a developer of responsibilities that would otherwise exist for the construction of other public infrastructure.

§ 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 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 control, or erosion control function.

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

(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.

(1) The Stormwater Control Permit for Erosion and Sediment Control 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 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 Control Permit for Erosion and Sediment Control 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 Permit for Erosion and Sediment Control, if any. 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 each 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 in accordance with the permittee's Erosion and Sediment Control Plan, conducting annual compliance inspections of all construction projects cumulatively disturbing one acre or more. Site inspections will be followed by any necessary compliance or enforcement action to ensure corrective maintenance has occurred. 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 Compliance. If the city finds that erosion and sediment controls are not preventing accelerated erosion and removing sediment and waste prior to the drainage leaving the construction site, the city may direct the owner or his/her agent by written order to implement additional erosion control measures to prevent said soil erosion and sediment and waste migration. If immediate additional erosion and sediment control or repair 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) 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.

(3) Maintenance and operation necessitated by the discharge of any groundwater cleanup flow to any public storm drainage, flood control, stormwater 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.

§ 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 or 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 shall be required to obtain a Stormwater Control Permit-Erosion and Sediment Control if:

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

(b) The site is identified as having a significant potential for erosion, based on

observation or site characteristics including very steep topography;

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

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

(7) Underground utilities, street reconstruction, drainage-way improvements, and landscaping construction projects shall obtain a Stormwater Control Permit-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 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, or Stormwater Control Permit-Erosion and Sediment Control unless the proposed permit 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) 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) 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) 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) 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.

(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.

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

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

(B) Proposed rule changes relating to procedures, criteria and standards pursuant to §§ 14-5-2-1 et seq. are initiated by the City Engineer or any person may submit such proposed rule changes to the City Engineer. If a person other than an official of the city submits such a proposal, there may be a processing fee set by a rule of the City Engineer.

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

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

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

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

costs.

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

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

(D) If a proposed rule change is approved by the City Engineer after receiving comments, notice shall be posted in a conspicuous place in City Hall and a reasonable effort shall be made to notify all interested parties. Proposed rule changes shall not take effect sooner than 30 days from posting of notice or sooner than 90 days from original distribution for comment.

(E) In the event of an emergency, the Mayor may direct that rules concerning procedures, criteria or standards take effect immediately upon their posting and distribution. The Mayor's finding of an emergency and brief statement of the reasons for this finding shall be incorporated in the emergency rule change. Upon adoption of an emergency rule change which change shall remain in effect for longer than 60 days, notice to the public shall be given within seven days and opportunity for public comment shall be given in the manner required in this section for proposed rules.

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

(G) Regulation relating to groundwater cleanup flows discharged to public storm drainage and flood control facilities shall be executed 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 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.

§ 14-5-2-14 ENFORCEMENT.

(A) Inspection Procedures.

(1) Whenever it is necessary to make an inspection to enforce any of the provisions of §§ 14-5-2-1 et seq., the City Engineer or his/her authorized representative may enter such premises at all reasonable times to inspect the same or to perform any duty imposed upon him by §§ 14-5-2-1 et seq.; provided that if such premises be occupied, he/she shall first present proper credentials and demand entry; and if such premises be unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the premises and demand entry. If entry is refused or if the owner or other responsible person is not found, the City Engineer or his/her authorized representative shall proceed to obtain a search warrant by filing a complaint made in the Metropolitan Court or District Court upon oath or affirmation. The complaint shall:

- (a) Set forth the particular premises, or portion thereof sought to be inspected;
- (b) State that the owner or occupant of the premises, or portion thereof, has refused entry;
- (c) State that inspection of the premises, or portion thereof is necessary to determine whether it complies with the requirements of §§ 14-5-2-1 et seq.;
- (d) Set forth the particular provisions of §§ 14-5-2-1 et seq. sought to be enforced;
- (e) Set forth any other reason necessitating the inspection, including knowledge or belief that a particular condition exists in the premises, or portion thereof which constitutes a violation of §§ 14-5-2-1 et seq.; and
- (f) State that the complainant is authorized by the city to make the inspection.

(2) Each inspector shall be furnished with a City of Albuquerque identification card and must present same to other persons, when requested to do so during the performance of his/her duty. No owner or occupant or any other person having charge, care or control of any premises shall fail or neglect, after proper demand is made as herein provided, to promptly permit entry therein by the authorized inspector for the purpose of inspection and examination pursuant to §§ 14-5-2-1 et seq.

(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, 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.

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

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

(A) Any applicant aggrieved by a decision as to actions provided for in §§ 14-5-2-6, 14-5-2-12 and 14-5-2-13 of the City Engineer or absence of such decision, may appeal such decision to the Technical Standards Committee of the city. Such appeal shall be made by notice of appeal in writing addressed to the Chairperson of the Technical Standards Committee and delivered to the office of the City Engineer within 30 days after the date the decision was mailed to the applicant. The Chairperson of the Technical Standards Committee shall notify the applicant and the City Engineer of the date, time, and place of the appeal hearing at least five days prior to the hearing date. Such hearing shall be conducted not earlier than ten days nor later than 30 days after the filing of the notice of appeal. At the hearing, the Technical Standards Committee may consider such facts, exhibits, and engineering principles as may be presented by the appellant or the City Engineer or his/her designee, or of which the members may have knowledge or experience, and may affirm, reverse or modify the decision appealed from, and attach as conditions to their decision such requirements as in their opinion may be necessary or appropriate in compliance with the policies of §§ 14-5-2-1 et seq. to safeguard persons and property from stormwater runoff. Each decision of the Technical Standards Committee shall be in writing and shall state reasons therefore. A copy of the decision shall be promptly mailed to the applicant and to the City Engineer.

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

Committee.

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

§ 14-5-2-16 INTERPRETATION.

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

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the city;
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes;
- (4) Not deemed to repeal or limit any other ordinance adopted by the City Council unless

expressly so stated herein.

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

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

SECTION 2. 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 3. COMPILATION. This ordinance shall be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

SECTION 4. EFFECTIVE DATE. This ordinance shall take effect five days following publication by title and general summary.

X:\CITY COUNCIL\SHARE\CL-Staff\Legislation\Twenty\O-47fs2final.docx