



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: May 23, 2022

TO: President Heather Graham and Members of City Council

CC: Nicholas A. Gradisar, Mayor

VIA: Marisa Stoller, City Clerk

FROM: Jeff Hawkins, Director of Stormwater

SUBJECT: AN ORDINANCE AMENDING SECTION 16-12-10 OF CHAPTER 12 OF TITLE XVI OF THE PUEBLO MUNICIPAL CODE RELATING TO AND AUTHORIZING THE STORMWATER DIRECTOR TO ACCEPT DRAINAGE AND STORMWATER EASEMENTS AND TO EXECUTE MAINTENANCE AGREEMENTS REQUIRED PURSUANT TO SAID SECTION

SUMMARY:

This Ordinance amends the Pueblo Municipal Code authorizing the Stormwater Director to accept and execute, on behalf of the City, any drainage and stormwater easements and execute any stormwater facility maintenance agreements with the City of Pueblo for the purpose of ensuring the water quality control measure is in proper working condition in accordance with the approved operation and maintenance manual.

PREVIOUS COUNCIL ACTION:

On September 23, 2019, Council passed Ordinance No. 9560, amending chapter 5 of title VII, chapters 4 and 6 of title XII, and chapter 12 of title XVI of the Pueblo Municipal code relating to needed amendments to meet the minimum requirements of the MS4 permit. .

BACKGROUND:

The City of Pueblo has had a Municipal Separate Storm Sewer System (MS4) Permit with the Colorado Department of Public Health & Environment since 2003. This permit regulates stormwater runoff within the city limits of Pueblo and authorizes the discharge into the state waters.

Every five years a new MS4 permit is issued to the City that contains new requirements from the previous permit. One of the new tasks that was required to be in place by July 1st, 2019, per a compliance schedule, was a Long-Term Operation and Post Construction Oversight plan. The City was required to implement written procedures to ensure adequate long-term operation and maintenance of control measures. The City is required to enforce that the owner or operator of a stormwater facility implement and maintain control measures when necessary. The easements and stormwater facility maintenance agreement meet this requirement and provide assurances that the water quality facility continues to function properly.

Currently, all maintenance agreements and easements must be approved through the City ordinance process. The recent surge in development of commercial sites and subdivisions is expected to triple the number of maintenance agreements and easements that must be approved this year.

A significant amount of time will be saved for both developers and Stormwater Utility staff by allowing the Director of Stormwater to sign off on these stormwater easements and maintenance agreements. These easements and agreements will still be reviewed and approved by the City Attorney.

FINANCIAL IMPLICATIONS:

There are no financial implications for the City.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

Alternatives No. 1 – No action

Under this alternative, the easements and maintenance agreements will still be reviewed and approved by City council through the lengthy ordinance process.

RECOMMENDATION:

Approval of the Ordinance.

ATTACHMENTS:

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 16-12-10 OF CHAPTER 12 OF TITLE XVI OF THE PUEBLO MUNICIPAL CODE RELATING TO AND AUTHORIZING THE STORMWATER DIRECTOR TO ACCEPT DRAINAGE AND STORMWATER EASEMENTS AND TO EXECUTE MAINTENANCE AGREEMENTS REQUIRED PURSUANT TO SAID SECTION

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that: (brackets indicate matter being deleted, underscoring indicates new matter being added)

SECTION 1.

Section 16-12-10 of Chapter 12 of Title XVI of the Pueblo Municipal Code is amended to read as follows:

Sec. 16-12-10. - Developer's obligation.

(a) Post-construction Stormwater Best Management Practices; Requirement.

(1) Applicable development sites must incorporate permanent stormwater quality best management practices. These requirements shall apply unless the City approves and documents an allowable exclusion according to policy adopted by the Director of the stormwater utility enterprise having been approved by City Council. Each developer of real property within the City shall provide all necessary stormwater facilities to ensure adequate drainage and control of runoff to, on and from such real property including, without limitation, the construction and installation of all on-site and off-site stormwater facilities including major stormwater facilities:

a. In conformity and compliance with the base design standards established by the Storm Drainage Criteria and Policies including without limitation the referenced Urban Drainage Flood Control District Technical Criteria Manual; and

b. Meeting the requirements of the official master drainage plan of the City and, until adoption of the official master drainage plan of the City, meeting the requirements of the developer's master drainage plan for the real property being developed and approved by the Director.

(2) Site Plans.

a. Requirement. Developer must include design details for all structural BMPs, narrative reference for all non-structural BMPs if applicable, documentation of operation and maintenance procedures to ensure the long term observation, maintenance, and operation of the control measures, and documentation regarding easements in accordance with Section 12-4-7 or other legal means for access of BMPs for operation, maintenance, and inspection.

b. Review. The City shall review development plans prior to approving construction to confirm that control measures satisfy base design standards and include all information required by the City for site plans.

(3) Easement. No owner of real property being developed through which a natural drainage way flows or a regional stormwater treatment BMP is designed as shown on the master drainage plan shall obtain a building permit to develop the real property, unless the owner first grants to the City at no charge a permanent easement to construct, maintain, repair, and reconstruct the stormwater drainage channel along the drainage way or the regional stormwater treatment BMP location. **The Stormwater Director is authorized to accept on behalf of City any such easement or any other easement necessary to ensure performance of developer's obligation under subsection (a) of this Section. Any such easement shall be approved as to form by the City Attorney and recorded in the office of the Pueblo County Clerk and Recorder.**

(4) Construction inspection and acceptance shall be conducted by the City prior to issuing a valid certificate of occupancy for an applicable development site or equivalent authorization to use the development site in accordance with the approved site plan. Inspections must confirm the completed stormwater BMP operates in accordance with the approved site plan.

(b) Construction Stormwater Best Management Practices; Requirement.

(1) Owner or operator of applicable construction activity must implement adequate construction stormwater best management practices (BMPs) to control erosion, sediment-laden runoff and waste from the site. These requirements shall apply unless the City approves and documents an allowable exclusion according to policy adopted by the Director of the stormwater utility enterprise having been approved by City Council. Each developer of real property within the City must implement construction stormwater BMPs for all stages of construction to final stabilization:

a. In conformity and compliance with the base design standards established by the Storm Drainage Criteria and Policies including without limitation the referenced Urban Drainage Flood Control District Technical Criteria Manual; and

b. To control erosion, sediment and waste, including but not limited to discarded building materials, concrete truck washout, chemicals, litter, sanitary waste and other non-stormwater discharges, including construction de-watering and wash water, at the construction site that may cause adverse impacts to water quality.

c. All temporary construction stormwater BMPs shall be removed and properly disposed of within thirty (30) days after final site stabilization or after the temporary BMPs are no longer needed as determined by the Director.

(2) Construction Site Plans.

a. Requirement. Developer shall prepare and submit site plans that locate (if applicable) and identify all structural and nonstructural BMPs for the applicable construction activities. The site plans must contain installation and implementation specifications, or a reference to the document with the installation and implementation specifications, for all structural control measures. A narrative description of nonstructural control measures must be included in the site plans. Pollutant sources associated with the applicable construction activity shall be addressed in the site plan.

b. Review. The City shall review site plans for all applicable construction activities prior to the start of construction activities. Initial site plan review shall include the following:

1. Confirmation that the site plan includes appropriate control measures for all stages of construction, including final stabilization; and

2. Confirmation that the control measures selected satisfy municipal requirements for control measures.

(3) Developer shall provide City officials with access to applicable development sites for the purpose of conducting site inspections and documenting required corrective actions associated with municipal standards and criteria for stormwater control measures, pollutant sources, and discharge locations.

(c) Enforcement. Failure to adequately implement or maintain BMPs described on approved site plans in operational condition or for any person to make, conduct, engage in or knowingly permit or suffer to exist any illegal discharge, including unauthorized discharges from approved land disturbing activities, to the City's storm drainage system or for any person to make, use, maintain or continue existence of any illicit connection to the City's storm drainage system may be subject to one (1) or more of the following actions:

(1) Notice of violation.

(2) Nuisance abatement in accordance with the procedures set forth in Chapter 1, Title VII of this Code, except that the Director of the stormwater utility enterprise is hereby granted concurrent authority with the Health Officer to issue any orders, take action and perform abatements pursuant to said Chapter.

(3) Issuance of summons and complaint.

(4) The enforcement remedies set forth in this Subsection and Chapter are expressly declared to be cumulative, and the exercise of any one (1) or more of them is not dependent upon the exercise of any other remedy, nor does the exercise of any one (1) or more of them constitute any bar or limitation to the exercise of any other.

(d) Upon the completion of the design of all detention facilities and permanent stormwater quality BMPs, the developer will submit documentation outlining the terms of facility maintenance certified as accurate by a licensed qualified engineer who shall ensure proper working order of the facility and maintenance access. This documentation will be included in the drainage report and incorporated in a maintenance agreement, if appropriate. **The Stormwater Director is authorized to accept and execute on behalf of City any such maintenance agreement as required under this Section. Any such maintenance agreement shall be approved as to form by the City Attorney and recorded in the office of the Pueblo County Clerk and Recorder at the time of recording of the related plat, or if none, at the time of issuance of the building permit; provided, however, the Stormwater Director may defer the recording required for issuance of a building permit for a period up to but not later than issuance of the certificate of occupancy.** The proposed maintenance program for the facilities shall be structured as follows:

(1) Detention facilities and permanent stormwater quality BMPs serving solely commercial or industrial sites will be privately owned and maintained. If these facilities are maintained to the standards outlined by the maintenance agreement, the property will qualify for a reduction in stormwater utility service charges pursuant to

Paragraph 16-12-6(a)(2).

(2) Detention facilities and permanent stormwater quality BMPs serving residential lots will be maintained by the homeowners' association (HOA) when an established HOA operates and/or maintains common interest. If these facilities are maintained to the standards outlined by the maintenance agreement, the property will qualify for a reduction in stormwater utility service charges pursuant to Paragraph 16-12-6(a)(2).

(3) Detention facilities and permanent stormwater quality BMPs serving residential lots when an HOA does not exist to operate and/or maintain common interests will be maintained by the City, and reduction in stormwater utility service charges will not be given.

(4) Existing noncommercial/industrial detention facilities designed with or without permanent stormwater quality BMPs serving residential development under private ownership will be accepted by the City if the facility is in proper working order and qualifies under the required maintenance standards and maintenance access. Reduction in stormwater utility service charges will not be given.

(5) The City will encourage joint use and regional facilities which will be maintained by the Parks Department, with the stormwater utility paying a prorated share of maintenance costs.

(6) Detention facilities and permanent stormwater quality BMPs implemented during construction will be maintained by the developer until proper working order is established and approved by the City. In the case of phased development or construction, the developer will be responsible for sediment removal until eighty percent (80%) of the last phase of the development or construction is complete.

(7) The City has the authority to inspect all detention facilities and permanent stormwater quality BMPs to ensure proper maintenance is being implemented. Information collected during an inspection may be used to support requirements for the owner to complete routine or functional maintenance necessary to continue reduction in stormwater utility service charges pursuant to Section 16-12-6. Failure to perform maintenance required following an inspection may be enforced in accordance with this Subsection (e) above.

SECTION 2.

The officers and staff of the City are authorized to perform any and all acts consistent with the intent of this Ordinance to implement the policies and procedures described herein.

SECTION 3.

This Ordinance shall become effective on the date of final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on _____.

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

- Approved on _____.
- Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

- Council did not act to override the Mayor's veto.
- Ordinance re-adopted on a vote of _____, on _____
- Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST

City Clerk