

CITY OF RALEIGH – STORMWATER DRAINAGE ASSISTANCE POLICY

RESOLUTION NO. (2022) 430

A RESOLUTION TO AMEND THE CITY OF RALEIGH DRAINAGE ASSISTANCE POLICY

WHEREAS, the City Council of the City of Raleigh has adopted a Storm Drainage Policy and has amended the same on several occasions beginning with Resolution No. 1970-742 and last amended by Resolution No. 2016-327, collectively called the “City of Raleigh Drainage Assistance Policy”; and

WHEREAS, the City has recently developed updated criteria for evaluating and prioritizing drainage assistance projects that optimize public benefits from resources allocated by City Council for stormwater improvement projects within the corporate limits of the City; and

WHEREAS, clarification and updates are necessary to define the basis and process for providing drainage assistance; and

WHEREAS, for most urban drainage system improvement projects, including pipes on private property and most city streets, where achievable, the City will strive to adequately convey a minimum 10-year design storm event (ten percent annual chance storm event) and, where practical, the 25-year design storm event (four percent annual chance storm event), as per typical urban stormwater design practices; and

WHEREAS, additional clarification and updates are necessary related to the establishment of permanent public drainage easements to protect the City’s drainage improvements for beneficial public purposes including maintenance of stormwater system improvements made by the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RALEIGH:

That the former City of Raleigh Drainage Assistance Policy is hereby repealed in its entirety and in lieu thereof the following resolution is enacted, and that this resolution shall be referred to as the “City of Raleigh Stormwater Drainage Assistance Policy.”

Section 1. Overview and Purpose.

The City of Raleigh’s Stormwater Management Program is responsible for managing stormwater to preserve and protect life, support healthy natural resources, and complement sustainable growth within Raleigh. Through the steps outlined herein for an enhanced drainage assistance program administered by the Stormwater Management Division within the City’s Engineering Services Department, the City will prioritize drainage improvements for qualifying drainage assistance projects to assist in reducing flood hazards from urban stormwater runoff, to help protect and improve water quality in local streams and other receiving surface waters, and to maintain stormwater infrastructure for public purposes.

Section 2. Drainage Assistance Definitions.

Permanent Drainage Easement (PDE) - a permanent easement granted by a landowner to the City for the acceptance, containment and transmittal of stormwater runoff and surface water drainage from adjacent properties, including the public streets, and specifically including the right, privilege and easement to access, construct, install, reconstruct, improve, inspect, repair, maintain, operate and use culverts, ditches, swales, impoundments, subsurface piping and other drainage control facilities, together with the perpetual right to clear and keep clear the full width of the PDE area. Such City maintenance activities within a PDE area include, but are not limited to, removing trees from the PDE area that may endanger the proper maintenance and operation of the stormwater infrastructure located within the PDE, clearing storm drain pipes, replacing broken stormwater infrastructure and repairing severe erosion that is threatening stormwater infrastructure.

Temporary Construction Easement (TCE) - a temporary easement granted by a landowner to the City to allow the City, its employees and contractors to use a portion of the property in order to perform construction work related to a public stormwater drainage improvement project. Such uses and purposes include, but are not limited to, the removal of existing pavement as necessary; clearing; grading; the excavation of soils and other materials; use of the area for access; equipment and materials storage; construction staging; installation of stormwater drain pipes or other drainage facilities; and similar purposes. Areas that are disturbed are restored in accordance with generally accepted landscaping and engineering practices.

Rights-of-Entry (ROE) - a revocable license provided by a landowner to the City to allow the City, its employees, contractors and consultants to use a portion of the property for access or otherwise to perform design and construction work related to a public stormwater drainage improvement project with such permitted work and the expiration date of the revocable license expressly described in the ROE agreement. Areas that are disturbed are restored in accordance with generally accepted landscaping and engineering practices.

Riparian Buffer- a vegetated area bordering a body of water, such as a stream, lake or pond. The vegetated area closest to the body of water stabilizes the streambank and provides shade and habitat for aquatic life. The vegetation also acts as a filter and sponge to remove, transform, or store nutrients and other pollutants. The outer reaches of the vegetated buffer slow and spread out the flow of water over the land, trapping sediment and attached pollutants.

Intermittent Stream- a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table. The flow may be heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the conveyance of water.

Perennial Stream- a well-defined channel that contains water year-round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial

stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

Conservation Easement (CE) - a permanent easement granted by a landowner to the City for the purpose of permanently protecting natural areas and water quality on and within a streamside or wetland parcel or buffer by establishing use prohibitions and restrictions as covenants that encumber the conservation easement area in order to maintain or establish natural vegetation within such parcel or buffer area.

Severe Erosion –unstable land that is actively losing soil and/or other earthen material due to persistent and/or high velocity stormwater runoff flows. Sites may vary, but the most common locations include stream banks, stormwater channels, and/or stormwater drainage outfalls. Common types of severe erosion include active material loss on steep, vertical stream banks, undercut stream banks, significant sloughing of stream banks, or significant loss of soil material around and affecting a permanent drainage structure, all due to erosive stormwater flows.

Structural Flooding – Crawlspace, finished floor, garage and/or basement flooding caused by concentrated stormwater flows and not groundwater infiltration. Structural flooding also occurs in sheds and outbuildings on a permanent, enclosed foundation that cannot be easily moved. Sheds and outbuildings not on permanent, enclosed foundations or that can be easily moved and where moving the structure is the least cost alternative to prevent flood damage to the structure, are not defined as having structural flooding. Structural flooding does not include those portions of residential and commercial structures located in a floodplain area and designed and constructed to flood or a commercial structure that has a City approved floodproofing plan. *This definition of Structural Flooding comes from Article 12.2 of the City of Raleigh Unified Development Ordinance.*

Street Flooding – flooding that occurs when the existing drainage system does not meet the storm frequency requirements in Section 1.2.2 of the City of Raleigh Stormwater Management Design Manual. In general, the majority of all street and local drainage systems should be designed to safely convey the 10-year design storm, at a minimum, with an objective to analyze and meet the 25-year storm event level of service where achievable and practical.

The City – as referred to in this policy and defined as the City of Raleigh, North Carolina.

Section 3. Drainage Assistance Eligibility Criteria and Prioritization.

Requests for drainage assistance and investigation into stormwater drainage issues shall first be reviewed by the City’s Stormwater staff to ensure that basic eligibility criteria are met. These include all of the following:

1. The project must be located within the corporate limits of Raleigh and, to the extent the project involves properties that are stormwater rate paying customers, such stormwater rate paying properties must have no outstanding balances on their stormwater utility; and

2. The project must receive and/or convey runoff that includes stormwater from public street right(s)-of-way and/or publicly-owned properties or facilities.

Drainage issues will be evaluated and prioritized based upon criteria that represent the severity of the issue. Projects will be implemented based on the amount of available funding and the availability of other City resources. The City will utilize an objective, priority-based ranking method developed in partnership with the Stormwater Management Advisory Commission to rank the most urgent stormwater needs and determine a cost-effective and equitable use of the City's stormwater funds to address the identified drainage problems and needs. Projects will be regularly ranked based upon pre-determined, objective, and weighted criteria, including but not limited to: public health and safety, flood hazard reduction benefits, regulatory mandates and compliance, water quality benefits, watershed management benefits, equitable project distribution, community support, and implementation complexity, among others.

Drainage assistance projects will be subject to the following guidelines:

1. All projects will be authorized and funded based on a project priority ranking system and available City funding.
2. Property owners shall grant to the City appropriate easement(s) across (his)(her)(their) property(ies) for the purpose of performing all necessary investigation and construction activities. These may include, but not be limited to, Temporary Construction Easements (TCE), Rights-of-Entry (ROE) agreements and Permanent Drainage Easements (PDE). Signed easements and/or right-of-entry agreements must be obtained before any construction of drainage system improvements will commence on private property.
3. Design and construction of drainage solutions will meet or exceed City design standards when practical.
4. Any pre-existing pipe or other drainage system installed along the public drainage system without proper City approval may need to be removed and will not be maintained by the City (for example, unpermitted piping of roadside swales).
5. This drainage assistance program is not for new construction or redevelopment. Nothing herein shall be construed or applied in such a manner as to aid or assist in the subdivision or development of property in the City. The policy set out herein shall be applicable only to those properties for which no new subdivisions, preliminary development plans, or development plans are anticipated. Properties either subject to new development plans with associated Site Permitting Review (SPR) or mass grading plans shall not be eligible for the drainage assistance program until after two years from the issuance of a certificate of occupancy (C/O) for a development or redevelopment with an SPR plan or two years after a mass grading plan has been stabilized, whichever shall first occur. For properties subject to SPR plans, the two years after the issuance of a C/O requirement will only apply to those lots requesting drainage assistance through the City's drainage assistance program. If other lots in a subdivision that are not part of a request for drainage assistance are still within two years of having received a C/O or have not yet received a C/O, then the status of these other lots will not preclude the lots that have sought drainage assistance from participating in the City's drainage assistance program so long as the requesting lots have met all of the requirements for participation that are set forth in this Stormwater Drainage Assistance

Policy. Highest priority will be given to drainage issues that most greatly impact public health and safety (such as flooding of a public street right-of-way, structural flooding such as the finished floor of a permanent structure, or severe erosion of a stream threatening a structure). The City reserves the right to re-evaluate and review drainage assistance projects at any time.

Section 4. Application of the Stormwater Drainage Assistance Policy.

- City staff will evaluate all drainage requests to determine whether the site and location receives public or private runoff.
- Participation in drainage assistance projects by the City, its agents and contractors shall be limited to the extent to which City funds and resources are available for such purpose.
- The purpose of this Stormwater Drainage Assistance Policy is to maintain proper flow and conveyance of public stormwater runoff within the conveyance system for the purpose of protecting water quality, reducing the threat of structural flooding and for the protection of public safety. It is not the intent or the practice of the City of Raleigh's drainage assistance program to monetarily or aesthetically enhance public or private property.
- The City Manager or his/her designee is given administrative authority for assigning staff responsibility for the receipt, review and evaluation of projects under the City's Stormwater Drainage Assistance Policy.
- No work shall be performed until projects are approved by the City Council. Recommendations for projects shall be made by City staff with periodic review and concurrence from the City's Stormwater Management Advisory Commission.
- For open conveyance systems (such as grass swales, ditches, streams, and wetland areas), priority for repairs shall be given to active channel erosion that poses a dangerous threat to structures and/or public safety.
- Mowing, litter removal and other routine maintenance, where allowed, is the responsibility of the property owner.
- Upgrading/relocation of existing stormwater infrastructure for the purpose of new development or redevelopment shall be at the developers'/owners' expense. The owner of property must obtain City approval before construction.
- Projects must be reasonably permissible for purposes of all applicable local, state and federal regulations (e.g. not for cases where individual permits or significant mitigation efforts may be required for project approval).
- The City will not participate in projects or repairs if the issue is caused by unlawful action or willful misconduct by a property owner or petitioner.
- The policy of the City of Raleigh with respect to replacing inadequate storm drainage facilities causing public nuisances shall be as follows:
 - Nuisances caused by the standing of water, described more specifically in Section 12-6002(l)(n) of the City Code shall be abated by the City pursuant to City Code 12-6003 (a)(b)(c) and the costs of such abatement shall be assessed according to the provisions of City Code Section 12-6003(d) relating to the same.
- If there exists a common interest in a project, repair or improvement with another government agency (such as NCDOT, Wake County, etc.), the City may enter into an agreement with the other government agency for a sharing of expenses.

Section 5. Easements.

Generally, drainage assistance projects will be constructed within Permanent Drainage Easements dedicated to the City for such purposes or within public street right(s)-of-way.

Easements necessary for work on drainage assistance projects must be donated by property owners prior to disturbance of the property within the dedicated easement limits and all easements (with the exception of those deemed “temporary” as necessary for access and construction) will be permanent. The City will not purchase easements for the purpose of implementing drainage assistance projects.

When an owner refuses to donate any easement necessary for the system improvement, the drainage assistance project will be placed on hold indefinitely until the necessary easement(s) are donated or the site conditions change thereby eliminating the need for the drainage assistance project.

Temporary Construction Easements and Right-of-Entry agreements shall expire upon City acceptance of drainage assistance projects, generally one year from completion of construction activities.

Existing private drainage easements shall remain as such until Permanent Drainage Easements to the City are executed and recorded. Until a Permanent Drainage Easement to the City has been executed and recorded in the applicable county Register of Deeds office, maintenance of any portion of a storm drainage system on private property remains the legal responsibility of the property owner. The City shall be responsible only for the portions of the stormwater drainage system which are in City-maintained public street rights-of-way and Permanent Drainage Easements conveyed or dedicated to and accepted by the City. Repairs and improvements to the drainage system shall be in accordance with established City standards, policies, and schedules. Construction on a drainage assistance project cannot begin until all applicable, dedicated easement(s) to the City are of record in the applicable county Register of Deeds office.

Upon the dedication of a Permanent Drainage Easement to the City associated with a particular drainage assistance project, certain restrictions will apply to the Permanent Drainage Easement area so that the area can function to meet the design objectives of the project. It also should be noted that the dedication of Permanent Drainage Easements to the City for drainage assistance projects and/or the construction or repair by the City of the drainage facilities located within such Permanent Drainage Easements does not constitute a warranty against stormwater hazards, including, but not limited to, flooding, erosion, or standing water.

Encroachments within a Permanent Drainage Easement may include:

- Trees whose root systems are not a threat to the performance or maintenance of the drainage system;
- Shrubs and flowers; and

- Standard paved asphalt or concrete driveways and parking lots for underground storm drainage facilities, provided such driveways and parking lots meet the requirements of the City's Unified Development Ordinance.

Items not allowed within a Permanent Drainage Easement may include, but not be limited to:

- Trees planted over stormwater pipes;
- Tennis courts, swimming pools, dams or anything else that may block the flow of water;
- Permanent structures (such as structures made of brick, block or concrete);
- Sheds or other buildings; and
- Fences, unless approved by the Engineering Services Director.

Reference: City of Raleigh Unified Development Ordinance Section 7.2.8 for more details on drainage easements.

In general, **within a dedicated Permanent Drainage Easement**, the City will only perform the necessary maintenance activities and repairs to ensure the proper functionality of the public drainage system located within. This includes:

- Removing fallen trees and large debris from creeks when those obstructions create a qualifying drainage problem;
- Clearing storm drain pipes, catch basins and culverts;
- Repairing or replacing broken storm drainage infrastructure or systems; and
- Controlling severe creek bank erosion whenever necessary to protect water quality and adjacent properties.

Activities that the City will not perform within these Permanent Drainage Easements:

- Cleaning up sticks, leaves or debris on private property after heavy rain or flooding;
- Repairing or replacing private property damaged by stormwater runoff or flooding, including, but not limited to, indoor damages, air conditioners, heating units, fences, gardens, lawns, shrubs, mail boxes, and dog houses;
- Clearing out incidental debris from creeks and drainage ditches such as trash, leaves, grass clippings or small tree branches;
- Clearing out/cutting vegetation from creek banks as part of routine maintenance;
- Mowing a ditch or Permanent Drainage Easement on private property;
- Re-grading or re-seeding a Permanent Drainage Easement after project warranty period; and
- Other actions that do not prohibit or impact the functionality of the public drainage system.

Conditions set forth in Permanent Drainage Easements shall be binding on the heirs, successors, assigns and grantees of the properties impacted. The owner and his or her successors, tenants, assigns and heirs agree to hold the City, its officers and employees, harmless from any damage or claim whatsoever arising from the work associated with a drainage assistance project. All claims

for liability shall be made against the contractors doing the work on the drainage assistance projects.

Section 6. That all resolutions, orders, actions, and other policies in conflict herewith, are repealed to the extent of such conflict. This resolution shall not apply to drainage projects already approved or completed under the old policy.

Section 7. That this resolution shall become effective immediately upon its adoption.

Section 8. That this resolution may be altered, amended, or repealed in the complete and utter discretion of the City Council; provided, no such action shall, in any way, abrogate, repeal or waive the conditions attached to any improvement already made hereunder.

Adopted: November 1, 2022

Effective: November 1, 2022

Distribution: Department Heads