

**ORDINANCE AMENDING CHAPTERS 2 AND 75
OF THE CODE OF THE CITY OF WINSTON-SALEM**

BE IT ORDAINED, by the Mayor and City Council of the City of Winston-Salem, North Carolina that the Code of the City of Winston-Salem is hereby, amended as follows:

Section 1. Sec. 2-3. Disqualification of contractors to bid on construction or repair contracts. is hereby amended to read as follows:

“Sec. 2-3. Disqualification of contractors to bid on construction or repair contracts.

- (a) *Authority of city manager; grounds.* The city manager or his designee may disqualify a contractor(s) from bidding on city construction or repair contracts for any of the reasons listed below using the procedures outlined in subsection (c). For purposes of this section, the term "city" includes any city department, city board, agency, commission or a joint (interlocal) board, agency or commission which the city administers.
- (1) Unsatisfactory progress in completing work within contract time limits and/or meeting required quality levels.
 - (2) Defaulting on current or past contracts.
 - (3) Current uncompleted contracts which would hinder or prevent the timely completion of additional work.
 - (4) The submission of more than one bid from an individual, partnership, joint venture, limited liability company or corporation under the same or different names for the same work.
 - (5) Evidence of collusion among bidders. Each participant in such collusion would be disqualified.
 - (6) Failure to furnish a non-collusion affidavit upon request.
 - (7) Failure to comply with current or past contract requirements, including, but not limited to, those contained in project special provisions, bid documents, specifications and drawings, general and supplementary conditions, Division 0 and Division 1 general requirements, instructions and special instructions to bidders, warranties, and any other contract documents, as well as failure to make timely payments to subcontractors, on more than one occasion within a five year period looking back from the current failure, with the same or a different subcontractor and on the same or a different city project, without a reasonable basis, as determined by the city, for withholding or delaying such payments.
 - (8) The contractor becomes bankrupt or insolvent; or files, or has filed against it, in any court pursuant to any statute, either of the United States or of any state, a petition for bankruptcy or insolvency, or for reorganization, or for any arrangement or for appointment of a receiver or trustee for its affairs; or a receiver, guardian, trustee, or liquidator is appointed to administer the contractor's affairs; or the contractor makes an assignment for the benefit of creditors.
 - (9) Failure to comply with a written order of the city engineer as provided in the specifications if such failure is of sufficient magnitude to warrant disqualification.
 - (10) Failure to satisfy contractual M/WBE requirements.
 - (11) If the city has not received the amount due under a bid bond forfeited by the contractor.
 - (12) Failure to return overpayments when directed by the city.
 - (13) Failure to submit documents as required by the contract.
 - (14) Lack of evidence of ability or experience to perform the type of work required by the contract.
 - (15) The assessment of liquidated damages against the bidder on more than one contract with any public entity within three years from the city's project bid opening.

- (16) Participation in any outstanding lawsuit or claim against the city on any other project within three years of the city's project bid opening provided the lawsuit or claim or the city's response thereto raises an issue(s) regarding the contractor's skill, judgment, integrity or ability to perform a city contract.
 - (17) Establishment, by a criminal or civil proceeding, of the contractor's:
 - a. Commission of fraud in connection with obtaining, attempting to obtain, or performing a public contract or subcontract;
 - b. Violation of federal or state antitrust statutes relating to the submission of bids;
 - c. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, tax evasion, making false statements or receiving stolen property; or
 - d. Commission of any other offense or action indicating a lack of business integrity or business honesty that materially affects the present responsibility of a contractor or subcontractor.
 - (18) A violation of the city's ethics policy.
 - (19) A violation of any local, state or federal law, ordinance, or regulation applicable to the contract or the services rendered or provided in accordance therewith.
 - (20) Debarment by a federal, state or local government, a public authority or other agency or entity subject to public procurement laws.
 - (21) Unauthorized payments, gifts or other valuable consideration to any person having any official duties, direct or indirect, in connection with the bidding upon, awarding of or performing of city contracts in violation of the city's ethics policy.
 - (22) Discrimination in the bidder's or contractor's employment or business practices on the basis of race, color, creed, national origin, disability, ~~or~~ sex, ethnicity, religion, sexual orientation, gender identity, gender expression, pregnancy, veteran status, age, marital status, familial status, protected hairstyle or political affiliation in violation of the city's nondiscrimination ordinance, state or federal law.
 - (23) Failure to maintain the insurance coverage required by the contract.
- (b) *Prequalification with state agency.* In addition to subsection (a) of this section, the city manager or his designee may disqualify contractors from bidding on construction contracts of the city, if the contractor has been removed, for any reason, from the list of prequalified bidders for the North Carolina Department of Transportation or any other state agency.
 - (c) *Notice to contractor; filing of appeal.* If any of the factors listed in subsection (a) or (b) of this section apply to a contractor, the city manager or his designee may in his discretion, disqualify such contractor from bidding on city construction contracts. Any contractor disqualified from bidding on city construction contracts shall be so notified in writing by certified mail or personal delivery by the city manager or his designee. Upon receipt of the notification, as evidenced by the certified mail return receipt or affidavit describing personal delivery, the disqualified contractor shall have ten days to appeal in writing its disqualification to the city council. The city manager or his designee shall notify the city council of the contractor's disqualification. The decision of the city manager or his designee to disqualify a contractor from bidding shall become final if there is not timely appeal to the city council.
 - (d) *Hearing by city council; disqualification period.* After proper appeal, the matter shall be placed for hearing on the city council's agenda. The council shall then review the disqualification of the contractor consistent with the factors set forth in subsections (a) and (b) of this section. Notice of the hearing date before the council shall be sent to the contractor at least ten days before the hearing by first class mail at the contractor's last known address. At the hearing before the council, the city manager or his designee will present the factual basis for his determination based upon the factors set forth in subsections (a) and (b) of this section. The contractor will be offered an opportunity to present evidence showing that the factors resulting in disqualification have been removed, changed or become inapplicable. The contractor

may also present evidence related to his ability to perform satisfactorily. The council shall, at that meeting or at a subsequent meeting, make a decision on the contractor's appeal. The council can either affirm, reduce or reverse the disqualification decision of the city manager or his designee. The council's decision will be final. The disqualification period shall be for up to three years from the date of notification to the contractor by the city manager or his designee.

- (e) *Request for requalification.* The disqualified contractor may seek requalification before the expiration of the disqualification period by contacting the city manager or his designee in writing and showing how the disqualifying action or cause has been removed, changed or become inapplicable. Appeal from the decision of the city manager or his designee concerning requalification is to the city council in the manner described in subsection (d) of this section. A disqualified contractor may request requalification only once absent special circumstances.
- (f) *Responsible for conduct of another.* The fraudulent, criminal, or other improper conduct of:
 - (1) Any officer, director, shareholder, partner, employee, or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence;
 - (2) A contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct; and
 - (3) One contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence."

Section 2: Sec. 2-40. Ordinances, resolutions and motions. is hereby amended to read as follows:

"Sec. 2-40. Ordinances, resolutions and motions.

- (a) *Ordinances and resolutions to be in writing; placement on agenda.* All ordinances or resolutions offered for adoption shall be in writing. It shall be the policy of the city council to consider only those items on the agenda prepared and set out for delivery to the council members at least 36 hours prior to the meeting as required under the provisions of section 2-33(e). This policy, generally referred to as the "36-hour rule," shall be waived upon motion as to specific items, but such waiver shall not permit action on any item at the meeting without unanimous consent of those present.
- (b) *Unanimous consent for consideration.* No ordinance, resolution or motion shall be acted upon after being proposed unless by the unanimous consent of those present, but such ordinance or resolution shall be acted upon at the next regular or special meeting of the council, or otherwise if directed by the city council.
- (c) *Effective date.* Every ordinance, resolution or motion shall be in force from its passage unless otherwise provided therein.
- (d) *Official copy of ordinances.* The city clerk shall keep a bound copy of all ordinances, which shall be the official copy.
- (e) *Objection to consideration (item "No Considered" or "No Consideration").* The unanimous consent required for consideration of an item, as specified in subsections (a) and (b) of this section, shall be conclusively presumed to exist unless a member announces that he does not consent to consideration. The procedural tool of "No Consideration" shall not be utilized on any item that requires a public hearing.

When a member of the city council wishes to object to the consideration of an item, the member must express that objection after the item is introduced for consideration and the mayor's call for discussion but prior to a vote for approval or disapproval of the item. A motion to continue an item or send an item back to a committee, and a vote on the same is not considered a vote for approval or disapproval of the item. An item that has been continued or sent back to committee may be "no considered" at the next or any subsequent city council meeting where the item is being considered. An item may be "no considered" only once. Before being acted upon, any item that is no considered may be discussed at the next meeting scheduled in accordance with subsection (a), provided a majority of the council consents to said discussion. Otherwise the item will be considered without further discussion. If no member objects to consideration prior to such vote, the right of the member to object shall be deemed to be waived.

(f) *Required vote for approval of ordinance.*

- (1) If the question before the council is the adoption of an ordinance on its first introduction, a favorable vote of two-thirds or more of all the members of the council shall constitute approval of the ordinance; a favorable vote of a majority of the members present, but less than two-thirds of all the members, shall constitute automatic continuance of the ordinance to the next regular or special meeting of the council, unless the council directs a different time; and a favorable vote of less than a majority shall constitute defeat of the ordinance. Before being acted upon, any ordinance so continued may be discussed at the next meeting scheduled, in accordance with this subsection, provided a majority of the council consents to said discussion. Otherwise, the item will be considered without further discussion.
- (2) If the council is passing on the question of the adoption of an ordinance, and the ordinance has been considered at a prior meeting, the affirmative vote of the majority of the members of the council present and voting shall constitute adoption of the ordinance if the ordinance received an affirmative vote by a majority of all the members of the council upon first reading. If the ordinance on first reading received a favorable vote of a majority of the members present and voting, but not a majority of all of the members of the council, the ordinance shall be deemed to have failed unless it receives on second reading an affirmative vote of a majority of all the members of the council.
- (3) With regard to: (a) the annual budget appropriation and tax levy ordinance, ~~and~~ (b) a special use permit, and (c) an ordinance on which a public hearing must be held pursuant to G.S. 160D-601, a majority of those present and voting shall be sufficient on first consideration to adopt the ordinance."

Section 3. Sec. 2-285. Officers; chairperson emeritus and honorary chairperson. is hereby amended to read as follows:

“Sec. 2-285. Officers; chairperson emeritus and honorary chairperson.

The mayor pro tempore shall designate the initial chairperson of the outstanding women leaders program committee from the five appointed members for a one-year term. Afterward, the committee shall elect its own chairperson from its five members to serve a one-year term. The committee shall elect from its number a vice-chairperson who shall serve as chair person in the chairperson's absence. The vice-chairperson initially shall serve a one-year term. After the initial term, both officers are eligible to serve multiple terms as long as they are members of the committee. The City Manager's Office shall serve as secretary to the committee and provide staff support and meeting place to the committee as needed.

~~Councilmember Vivian H. Burke,~~ The mayor pro tempore shall serve as chairperson emeritus. Each year before the annual event, the sitting mayor pro tempore shall designate an honorary chairperson to serve in said capacity for the annual event for the year which the honorary chairperson was designated.”

Section 4. Sec. 75-404. Stormwater structural best management practice (“BMP”). is hereby amended to read as follows:

“Sec. 75-404. - Stormwater structural best management practice (“BMP”) Stormwater Control Measure (“SCM”) replacement fund.

- (a) *Creation and management of a ~~stormwater structural best management practice~~ Stormwater Control Measure (“~~BMP~~SCM”) replacement fund.*
- (1) The ~~stormwater structural best management practice~~ *Stormwater Control Measure* (“~~BMP~~SCM”) replacement fund (“the ~~F~~und”) shall be created and maintained by the city to receive payments made pursuant to subsection 75-404(b), below, by any owner of a commercial development or redevelopment (as such terms are defined in section 75-107 of this article). The term "commercial development" and "commercial redevelopment", as used in this section 75-404, shall not include developments and redevelopments constructed by any city department or by State of North Carolina ("state") and Forsyth County ("county") agencies, such as the state public university system and the Forsyth County Board of Education. State and county agencies shall, instead, be subject to the funding requirements outlined in subsection 75-404(i), hereof, provided that if any state or county agency elects to pay into the fund, then it shall be subject to all the remaining provisions of this section 75-404. City departments shall, instead, be subject to the funding requirements outlined in subsection 75-404(j).
 - (2) The city may pool all payments made to the fund, but shall keep the payments separate from, and shall not commingle the payments with, other stormwater funds and non-stormwater funds.
 - (3) Monies in the fund may be invested in the manner allowed in G.S. 159-30 for the investment of other public monies. All income/interest derived, therefrom, shall be returned to the fund. Monies in the fund shall only be used to defray the cost of capital expenses associated with the design, construction, reconstruction, and repair of structural best management practices ("BMPs"), as such term and its abbreviation are defined in section 75-107 of this article.
- (b) *Payments to the stormwater structural BMP replacement fund.* The city shall require payment to the fund prior to the issuance of a stormwater management permit for a commercial development or redevelopment, in order to ensure that the BMP is installed/constructed by the owner, as required by the approved stormwater management plan, and maintained, as required by the operation and maintenance agreement. Payment required, hereunder, shall equal four percent of the construction cost of the BMP. The payment may be calculated in accordance with guidelines issued by the stormwater director, which may include the use of a sealed engineer's estimate of construction costs or a construction bid tab. The payment may also be calculated in accordance with an alternate method approved by city council.
- (c) *Loans from fund—Eligibility for, use of, and terms of repayment.*
- (1) Any owner of a BMP, for which money has already been paid into the fund, and who has executed an operation and maintenance agreement with the city, per section 75-402, and to whom the city has approved the issuance or transfer of a stormwater management permit, may apply for a loan from the fund, provided that:
 - a. The BMP has failed;
 - b. The owner does not have the financial resources to repair the BMP; and
 - c. The owner is not currently delinquent in the repayment of any monies previously borrowed from the city.
 - (2) The city shall determine, in its reasonable discretion, whether the owner meets the standards set forth above.
 - (3) The owner shall repay any loan from the fund in accordance with the city's policy for the payment of assessments, at an interest rate not to exceed the maximum authorized by G.S. 160A-233.
 - (4) As security for the repayment of the loan, the owner shall grant to the city a contractual lien, via the operation and maintenance agreement, on all of the property subject to the stormwater management permit. This lien shall be imposed only if the owner defaults on its repayment obligation. Said lien

shall be in addition to the lien required by subsection 75-402(a) of this article, to guarantee the costs of construction, reconstruction, maintenance, and repair of the BMP.

- (d) *Agreements to repay loans from the fund.* Agreements to repay loans from the fund shall be recorded establishing the obligation of all future transferees of the property under the stormwater management permit to repay any loans from the fund. These agreements shall run with the land, protect the city, and provide that the city has the right to enforce the agreements. Failure to comply with the agreements shall be deemed a violation of this article.
- (e) *Plats.* The final plat for any commercial development or commercial redevelopment subject to a stormwater management permit and developed under the stormwater quality management provisions of this article shall contain a legend referencing the agreement to repay any loans from the fund.
- (f) *Disclosure statement.* The continuous ongoing obligation of all subsequent property owners of commercial developments or commercial redevelopments to repay any loans from the fund shall be disclosed in all deeds of conveyance. Deeds for the property or any part, thereof, subsequently presented for recording to the office of the register of deeds, shall contain a full disclosure regarding the obligation to repay any potential loans from the fund, together with the agreements and any liens pertaining to the repayment of said loans.
- (g) *City use of fund monies for BMP repairs.* The city may use monies in the fund to design, construct, reconstruct, and repair BMPs located on property which is subject to foreclosure or bankruptcy proceedings or on which the owner has been unwilling to make repairs.
- (h) *Substitution of payment into the fund for performance security.* Any owner who submitted to the city a bond, letter of credit, cash escrow, or other performance security, under the previous version of this section 75-404, which performance security is still in effect, may elect to pay into the fund, in lieu of maintaining the performance security. After the city receives payment into the fund, as per the requirements in section 75-404(b), above, the city will release, cancel, and/or extinguish the performance security which the payment into the fund is meant to replace.
- (i) *State and county agency earmarks and interlocal agreements.* Any state or county agency may, in lieu of paying into the fund, earmark funds equal to four (4) percent of the cost of construction, to secure the installation and maintenance of a BMP, in accordance with the approved stormwater management plan and the operation and maintenance agreement pertaining, thereto. The sum to be earmarked shall be calculated in accordance with guidelines issued by the stormwater director or by city council, and may include use of a sealed engineer's estimate or construction bid tab. The city shall require, and the state or county agency shall provide, evidence that the funds have been earmarked, prior to the issuance of a stormwater management permit. Such evidence shall include: 1) copies of any capital projects bonds that state or county voters have approved, appropriating money for the construction of the state or county development or redevelopment, and its attendant BMPs, 2) a letter from the state or county agency's finance director, indicating the sum of money/bond proceeds set aside for the installation and maintenance of the BMP, 3) a copy of a resolution by the state or county agency's governing board, authorizing the sequestration or earmarking of funds for the installation and maintenance of the BMP and the execution of an interlocal agreement guaranteeing the sequestration, and 4) a properly pre-audited and executed interlocal agreement, per the requirement in the previous subsection. Every fiscal year following the initial submission of a state or county agency's governing board's resolution, the state or county agency shall provide the city proof, within 30 calendar days of the board's approval of the current fiscal year's budget, that the requisite sum has, once again, been encumbered for maintenance, repair, and replacement of the BMP.
- (j) *City earmarks.* A City department, in lieu of paying into the Fund, shall earmark funds sufficient to provide for the annual operation, maintenance, inspection, and repair of the SCM, in accordance with the approved stormwater management plan and the operation and maintenance agreement pertaining thereto. For wet ponds, stormwater wetlands, sand filters, bio-retention devices in clay soils, and bio-retention devices in sandy soils, the sum to be earmarked shall be calculated in accordance with "Table 6. Summary of Construction Cost Curves, Annual Maintenance Cost Curves and Surface Area for five Stormwater BMPs in North Carolina...", in a document entitled "The Economics of Structural Stormwater BMPs in North

Carolina”, authored by Ada Wossink and Bill Hunt and published in 2003, a copy of which is kept on file in the City’s stormwater department. For all other manner of SCM, the sum to be earmarked shall be calculated in accordance with a sealed engineer’s estimate or construction bid tab, received at the time of the city department’s application for a stormwater management permit, and indicating the annual cost of operation, maintenance, inspection, and repair of the SCM. The City department shall provide evidence to the City’s stormwater department that funds have been earmarked in the City department’s annual operating budget for operation, maintenance, inspection, and repair of the SCM. Every ensuing fiscal year following the initial earmark, the City department shall provide the City’s stormwater department proof, within 30 calendar days of the City Council’s approval of the current fiscal year’s budget, that the requisite sum has, once again, been encumbered for operation, maintenance, inspection, and repair of the SCM.

Section 5. All references to the terms “stormwater structural best management practice” or “stormwater structural best management practices” in Chapter 75 shall be replaced with the terms “Stormwater Control Measure” or “Stormwater Water Control Measures”, as appropriate. All references to the acronyms “BMP” or “BMPs” in Chapter 75 shall be placed with the acronyms “SCM” or “SCMs”, as appropriate.

Section 6. This ordinance shall be effective upon adoption.