

**RESOLUTION NO. 2016-11-\_\_\_\_ (R)**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCKINNEY,  
TEXAS, ADOPTING THE DRAINAGE MAINTENANCE POLICY**

**WHEREAS**, the City Council of the City of McKinney, Texas, acknowledges the need for a drainage maintenance policy; and,

**WHEREAS**, Staff has presented drafts of a policy and has modified it in accordance with City Council suggestions.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:**

Section 1. The City Council of the City of McKinney, Texas, hereby approves the Drainage Maintenance Policy (Exhibit A).

Section 2. This Resolution shall take effect immediately from and after the date of passage and is so resolved.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THE 1<sup>st</sup> DAY OF NOVEMBER, 2016.**

CITY OF MCKINNEY, TEXAS

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BRIAN LOUGHMILLER  
Mayor

ATTEST:

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SANDY HART, TRMC, MMC  
City Secretary  
DENISE VICE, TRMC  
Assistant City Secretary

APPROVED AS TO FORM:

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MARK S. HOUSER  
City Attorney

## EXHIBIT A

### Drainage Maintenance Policy

The purpose of this Drainage Maintenance Policy is to clarify how the City of McKinney may address various drainage and stormwater related concerns of residents.

#### BACKGROUND INFORMATION:

1. Per Texas state law, the City has no obligation to address flood or erosion hazards on private property.
2. The City does not by default have liability for damages on private property due to flooding or erosion.
3. The existence of an easement does not determine ownership and maintenance responsibility.
4. Drainage easements make no difference with respect to City obligations. The existence of a public easement only means the property may be used for a stated public purpose and the City does not need permission to enter. Easements do not create an obligation for the City to do anything.
5. Prescriptive drainage easements do not exist in Texas.
6. For work done by the City on private property outside a public easement, written permission is required from the property owner.
7. For work done by the City on private property within a public easement, permission is NOT required from the property owner, however, notification is strongly recommended. In the case of an emergency, there is not always sufficient time to provide notification.
8. All work done by the City must be done for a public benefit. Public money cannot be spent for a solely private benefit. Within reason, the City Council makes the determination as to what qualifies as a public benefit.
9. The City accepts ownership and maintenance responsibility of new infrastructure at the time of final acceptance of a project, not by the filing of a plat and/or the recording of an easement.
10. Natural creeks on private property are not owned by the City. The channel bottom, channel banks, and surrounding floodplain areas are owned by the property owner based on property boundary lines. Ownership and maintenance responsibility of natural creeks is not accepted by the City at the time of final acceptance of a development. In this sense, creeks are different than manmade drainage structures.
11. Manmade open channels are considered drainage structures. Natural creeks are not.
12. Standing water on private property is the responsibility of the property owner. The removal of standing water for aesthetic purposes or to eliminate the threat of mosquitoes is the responsibility of the property owner, not the City.

#### DEFINITIONS:

1. **Drainage easement** = the right to use another's real property for the purpose of conveying runoff either underground or on the ground surface.
2. **Erosion hazard** = a situation where **erosion protected structures** are at risk of damage by stormwater erosion. This includes a situation where stormwater erosion might cause a tree to fall on a residential dwelling or commercial building.
3. **Erosion protected structures** = all publicly owned structures (roads, bridges, hike and bike trails, headwalls, manholes, water lines, sewer lines, etc.) and some permitted, permanent, private structures allowed by current City code to be in their current location. This includes residential dwellings, commercial buildings, roads, parking lots, driveways, and pools. This does NOT include walls, fences, trees, shrubs, soil, turf, and lawns.
4. **Flood hazard** = a situation where floods up to and including the 100-yr fully developed flood would create a significant life safety threat and/or inundate

residential dwellings, commercial buildings, roads, parking lots (by at least 1'), and/or driveways (by at least 1'). This does NOT include pools, sheds, carports, patios, and lawn areas.

5. **Floodplain easement** = the right to use another's real property for the purpose of conveying floodwaters.
6. **Privately owned drainage structures** = inlets, pipes, headwalls, riprap, gabions, channels, etc., owned by private property owners. This typically includes:
  - a. detention ponds (both above and below ground),
  - b. driveway culverts, inlets, pipes, headwalls, ditches, and swales within a single lot, and
  - c. inlets and pipes running through residential backyards, typically maintained by an HOA.
7. **Publicly owned drainage structures** = inlets, pipes, headwalls, riprap, gabions, channels, etc., owned by the public. This typically includes:
  - a. all drainage structures located on public property and
  - b. drainage structures dedicated to and accepted by the City that convey runoff through multiple private properties.
8. **Routine landscape maintenance** = regular mowing, pruning, trimming, debris removal, tree removal, and rubbish removal.
9. **Structural maintenance** = repair/reconstruction of manmade structures (inlets, pipes, headwalls, culverts, bridges, riprap, gabions, channels, etc.).
10. **Surface drainage easement** = the right to use another's real property for the purpose of conveying runoff on the ground surface.

#### **POLICY:**

1. WHAT IS REQUIRED OF PRIVATE PROPERTY OWNERS?
  - a. Private property owners shall perform all **routine landscape maintenance** on private property per City Ordinance.
  - b. Private property owners shall perform all **structural maintenance** for **privately owned drainage structures** on private property. Some drainage structures are privately owned and maintained even when located within public drainage easements.
2. WHEN MAY THE CITY GET INVOLVED?
  - a. If vegetation/debris/sediment is deemed by the City to be a **flood hazard**, the City may, as resources allow, remove the vegetation/debris/sediment for the purpose of removing the **flood hazard**.
  - b. If stormwater erosion is deemed by the City to be an **erosion hazard**, the City may, as resources allow, address the **erosion hazard**.
  - c. Whether on public or private property, the City shall perform all **structural maintenance** for **publicly owned drainage structures**.
3. HOW MAY THE CITY ADDRESS DRAINAGE CONCERNS?
  - a. City staff will visit the site and thoroughly investigate the concern before making a determination. If City action is warranted, work will be prioritized using the Drainage Matrix.
  - b. If the City does any work, the City must make clear in writing that on-going **routine landscape maintenance** continues to be the responsibility of the property owner.
  - c. If **routine landscape maintenance** would have avoided the need for City action, the City may require reimbursement from the property owner for the expense of the work.
4. APPEAL PROCESS.

Residents may appeal the decision of City staff to the City Council. A processing fee of \$100 will be required for each appeal. At the earliest

opportunity, the appeal will be brought to the City Council for a decision.

**Relevant Excerpt from the Stormwater Ordinance:**

Section 130-265. – Responsibilities of owners.

- e) Floodplain and surface drainage easements shall be maintained by the property owner; save and except subsurface structure maintenance as provided by section 130-191; or where maintenance is otherwise expressly assumed by the city; or where the city maintains the floodplain or easement to preserve flood conveyance under NFIP regulations mandatory municipal maintenance. Regardless of maintenance responsibility, adequate maintenance easements and physical access alongside and to the conveyance shall be provided.

**SUMMARY:**

The City of McKinney is not by default liable for flooding or erosion concerns on private property. Easements do not change that. However, some drainage concerns on private property may be addressed based on the following:

The City will consider addressing drainage concerns on private property if the answer is yes to one of the following questions:

1. Does the issue pose a significant life safety threat?
2. Does the issue create a **flood hazard**?
3. Does the issue create an **erosion hazard**?

If the answer is yes to one of those questions, this does not guarantee that the City will address the issue. It only means that the City will investigate the issue and provide a Matrix score for it. Priority of work will then be determined based on the Matrix score in relation to other projects and on the cost of improvements and available funds. The City will seek out the most cost effective solution to address each problem.