

AN ORDINANCE

ESTABLISHING A STORMWATER MANAGEMENT UTILITY FOR THE PURPOSE OF PLANNING, DESIGNING, CONSTRUCTING, FUNDING AND MAINTAINING STORMWATER MANAGEMENT, SEDIMENT CONTROL, AND FLOOD CONTROL PROGRAMS, PROJECTS AND FACILITIES, AND REVIEWING AND APPROVING STORMWATER MANAGEMENT AND SEDIMENT CONTROL PLANS FOR LAND DISTURBING ACTIVITIES, AND PROVIDING FOR THE ADMINISTRATION AND ENFORCEMENT THEREOF.

BE IT ORDAINED, by the Mayor and Council of the City of North Charleston that Section ____ of the Code of Ordinances of the City of North Charleston be adopted which shall provide as follows:

WHEREAS, the South Carolina General Assembly adopted the Stormwater Management and Sediment Reduction Act (the Act), South Carolina Code Annotated, Section 48-14-10, which authorizes a local government to establish a Stormwater Management Utility, and the South Carolina Land Resources Commission has promulgated comprehensive regulations as required by said Act which regulate implementation of a Stormwater Management Utility; and

WHEREAS, pursuant to Section 5-7-30 and 5-31-10, et. seq. of the South Carolina Code Annotated, municipalities are authorized to enact regulations and ordinances for government services deemed necessary and proper; and

WHEREAS, North Charleston City Council, by agreement and in conjunction with the Department of Public Works of the City of North Charleston, has developed a comprehensive, innovative and expedited program for implementing the City's responsibilities under the referenced Act, and Council believes the implementation of that program, including the adoption of this Ordinance, is in the best interests of the citizens of North Charleston and the economy, environment and water quality of this City and area.

Section I
Findings of Fact

The Mayor and Council of the City of North Charleston find that;

- A. In the City of North Charleston the management of stormwater runoff and sediment is necessary to reduce pollution, siltation, sedimentation, local flooding, inflow and infiltration of stormwater into the public sewer collection system, and stream channel erosion, all of which impact adversely on land and water resources and the health, safety, property and welfare of the residents of the City.
- B. The City of North Charleston maintains a system of stormwater management facilities, including but not limited to, inlets, conduits, manholes, channels, ditches, drainage easements, retention and detention basins, infiltration facilities, and other components as well as natural waterways.

- C. The stormwater management facilities and components of the City need to be regularly maintained, rehabilitated, upgraded or expanded, and additional stormwater management facilities and measures need to be installed throughout the City.
- D. There is no comprehensive mapping system or base line data to assist in analysis, design and/or development of comprehensive maintenance and retrofit programs, and there is no long-term comprehensive drainage infrastructure maintenance program/plan in North Charleston.
- E. There is a lack of resources (equipment, manpower, funds) in North Charleston to address problems comprehensively and within a defined time frame.
- F. In North Charleston current and anticipated growth will contribute to the need for improvements in and maintenance of the stormwater management system.
- G. The City of North Charleston needs to upgrade its capability to maintain existing and future stormwater management facilities and measures.
- H. Every parcel of real property in the City of North Charleston either uses or benefits from the stormwater management system and the improvement of existing facilities and construction of additional facilities in the system will directly benefit the owners of all real property.
- I. In North Charleston the extent of use of the stormwater management system by each classification of real property is dependent on a variety of factors that influence runoff, such as land use, topography, intensity of development, amount of impervious surface, and location in a particular watershed or basin.
- J. In North Charleston property owners and users should finance the stormwater management system to the extent they contribute to the need for the system and benefit from the system, and charges therefor should bear a reasonable relationship to the cost of the service, and every effort should be made to fairly and reasonably spread the cost of the system to all property owners and users.
- K. Creating a permanent Stormwater Management Utility rate structure and schedule of fees is a difficult, time consuming and costly endeavor, and North Charleston is committed to such an undertaking but finds it is necessary to provide for **INTERIM** Stormwater Management Utility Fees and Classifications thereunder prior to the final completion of the referenced Stormwater Management Utility Study. Thus, Council finds that a Stormwater Management Utility with interim fees and classifications thereunder should be established with a view to establishing permanent Stormwater Management Utility Fees and Classifications based on the results of further study.
- L. It is in the best interests of the citizens of this City and, most specifically, the owners of real property, that a Stormwater Management Utility with interim fees and classifications thereunder be established by ordinance and implemented as part of the City's utility

enterprise system as authorized by South Carolina Code Annotated, Sections 48-14-10 to 48-14-150 (Supp. 1991); Section 5-7-30 (Supp. 1991); and other relevant laws and regulations of the State of South Carolina.

Section II
Article Designation and Authority

This article may be cited as the Stormwater Management Utility Ordinance and is adopted pursuant to South Carolina Code Annotated, Sections 48-14-10, et. seq.; Section 5-7-30 (Supp. 1991); and 26 South Carolina Code Annotated, Regulations 72-300, et. seq. and Section 5-31-10, et. seq.

Section III
Definitions

Unless the context specifically indicates otherwise, the meanings of words and terms used in this article shall be as set forth in South Carolina Code Annotated, Section 48-14-20 (Supp.1991) and 26 South Carolina Code Annotated, Regulation 72-301, (Supp. 1992).

Section IV
Establishment of a Stormwater Management Utility;
Administration; Duties and Powers

City Council hereby establishes a Stormwater Management Utility (Utility) to carry out the purposes, functions and responsibilities herein set forth. The governing body of the Utility shall be the Mayor and City Council. The Mayor shall administer the Utility under the Department of Public Works. The Utility shall have the powers and duties hereinafter set out, which powers are not necessarily exclusive to the Utility, to wit:

- A. Stormwater management planning and preparation of comprehensive watershed master plans for stormwater management.
- B. Regular inspections of public and private stormwater management facilities and measures and the construction thereof.
- C. Maintenance and improvement of stormwater management facilities that have been accepted by the City for that purpose.
- D. Plan review and inspection of sediment control and stormwater management plans, measures, and practices.
- E. Retrofitting designated watersheds to reduce existing flooding problems or to improve water quality.
- F. Acquisition of interests in land, including easements.

- G. Design and construction of stormwater management facilities and measures and acquisition of equipment.
- H. Water quantity and water quality management, including monitoring and surveillance.
- I. Billing and collecting a stormwater management utility fee shall be pursuant to the City Ordinance that sets forth the amount of the fees and interim fees.
- J. Any and all powers and duties delegated or granted to it as a local government implementing agency under the laws and regulations of the State of South Carolina, and the ordinances of this City.

**Section V
Boundaries and Jurisdiction**

The boundaries and jurisdiction of the Stormwater Management Utility shall extend to the corporate limits of the City, including all areas hereafter annexed thereto, and such additional areas lying outside the corporate limits of the City as shall be approved by City Council.

**Section VI
City Regulations of Land Disturbing Activity**

City Council shall establish by ordinance a system regulating land disturbing activities, including, but not limited to provisions for reviewing and approving stormwater management and sediment control plans; creating design requirements for such plans and land disturbing activities; and providing operational and maintenance requirements for stormwater management facilities and measures.

**Section VII
Stormwater Utility Fees**

City Council shall establish by ordinance the amounts and classifications of stormwater management utility fees to be implemented to help fund the Utility and its programs and projects. Because of the complexity and practical difficulty of setting utility fees and classifications, INTERIM fees and classifications may be adopted by ordinance to assist in funding the establishment of the Utility. Interim fees are temporary and shall apply only until such time as the final Study is completed and City Council adopts a permanent rate structure and schedule of fees for the Stormwater Utility. City Council shall consider, among other things, the following criteria in establishing fees:

- A. The fee system must be reasonable and equitable so that property owners and users pay to the extent they contribute to the needs for and benefit from the Utility. The fees shall be apportioned with approximate equality and upon a reasonable basis of equality with due regard for the benefits conferred. City Council recognizes that these benefits, while substantial, in many cases cannot be measured directly.

- B. Cost analysis, construction, maintenance, and the overall operation of the stormwater system should be borne equally by all classifications of property owners in the City in that all will enjoy the direct and indirect benefits of an improved and well-maintained system;
- C. Any fee established should be in an amount that is reasonable and equitable and not unduly burdensome on each property owner and user;
- D. The components of the calculations used to establish fees may include, but shall not be limited to, the following cost factors:
 - 1. Stormwater management planning and preparation of comprehensive watershed master plans for stormwater management;
 - 2. regular inspections of public and private stormwater management facilities and measures and the construction thereof;
 - 3. maintenance and improvement of stormwater management facilities that have been accepted by the city for that purpose;
 - 4. plan review and inspection of sediment control and stormwater management plans, measures, and practices;
 - 5. retrofitting designated watersheds to reduce existing flooding problems or to improve water quality;
 - 6. acquisition of interests in land, including easements;
 - 7. design and construction of stormwater management facilities and measures and acquisition of equipment;
 - 8. administration of enforcement;
 - 9. water quantity and water quality management, including monitoring and surveillance; and
 - 10. debt service and financing costs.
- E. The practical difficulties and limitations related to establishing, calculating, and administering such fees.
- F. The components of the calculations used to establish fees shall be based on whatever is determined to be reasonable and fair, to be approved by City Council

Section VIII
Investment and Reinvestment of Funds and Borrowing

Funds generated for the Stormwater Management Utility from fees, bond issues, other borrowing, and other sources shall be utilized only for those purposes for which the utility has been established, including but not limited to: planning; acquisition of interests in land including easements; design and construction of facilities; maintenance of the stormwater system, billing and administration; and water quality and water quantity management, including monitoring, surveillance, private maintenance inspection, construction inspection and other activities which are reasonably required. Such funds shall be invested and reinvested pursuant to the same procedures and practices established by the City for investment and reinvestment of funds. City Council may use any form of borrowing authorized by the laws of the State of South Carolina to fund capital acquisitions or expenditures for the Stormwater Management Utility.

Section IX
Enforcement and Penalties

- A. The Public Works Director, the Code Enforcement Director, or such other official(s) as the Mayor shall designate, shall be the enforcement officer(s) for the provisions of this Chapter.
- B. In addition to any other penalties provided in this article, the Public Works Director may assess a civil penalty not to exceed \$200 against any person violating any provision of this Chapter. In setting the amount of the civil penalty, the Public Works Director shall consider the type, duration, and severity of the violation and the responsiveness of the person against whom the penalty is assessed in remedying the violation. Each day a violation continues constitutes a separate violation that may be the subject of such a penalty. The Public Works Director, with the assistance of the City Attorney, shall make a written demand for payment of the civil penalty upon the person, including an explanation of the basis of the violation and penalty. If full payment of the penalty is not made within thirty (30) days after such demand is mailed or delivered to the person, the City Attorney may commence a civil action in the appropriate court to recover the penalty.
- C. In addition to any other penalties or remedies provided in this Chapter, the City, upon the recommendation of the City Attorney and approval of the Mayor, may institute a civil action in the appropriate court to obtain compliance with the provisions of this Chapter or remedy or prevent the violation or threatened violation of any provision of this Chapter.
- D. The billing and collections of the stormwater management utility fee shall be pursuant to the City Ordinance that sets forth the amount of the fees and interim fees and shall provide that the failure to pay the stormwater management utility fee can be enforced through the termination of water and/or sewer services.

Section X
Municipal Liability

Nothing in this article and no action or failure to act under this article shall or may be construed to:

- A. impose any liability on the City, or its departments, agencies, officers or employees for the recovery of damages; or
- B. relieve any person engaged in a land disturbing activity of duties, obligations, responsibilities, or liabilities arising from or incident to operations associated with such activity or imposed by the provisions of this article or the laws and regulations pursuant to which it was adopted.

Section XI
Requests for Reconsideration

- A. A Utility Customer may request a reconsideration of any determination or interpretation by the City Engineer in the operation of the Stormwater Management Utility. Such request must be in writing specifically explaining the grounds for the request and filed with the City Engineer.
- B. The City Engineer shall review the application and make a decision on the request within thirty (30) working days.
- C. The request shall be made upon such forms and be accompanied by such information as the City Engineer, by written policy, shall require.
- D. In cases where the applicant believes the fee to be inappropriate based on the actual impervious area of the property in which he has interest, the applicant shall submit a site survey of said property. The survey shall include, at a minimum:

- Property Boundaries
- Parking Areas
- Driveway(s)
- Building(s)
- Storm Drainage Facilities
- Any Other Surface Improvements
- Calculation of Total Impervious Area
- Calculation of Total Pervious Area

The survey shall be prepared by a licensed Land Surveyor and shall contain the name and license number of the Surveyor and date when the field survey was conducted.

Section XII
Appeals

Any person aggrieved by the stormwater management utility fee charged with respect to property in which he has an interest or against whom a civil penalty is imposed may appeal the fee or penalty by filing a written explanation of the grounds of the appeal with the Public Works Director within thirty (30) days of the mailing or delivery of the notification of the fee or penalty to the utility customer, real property owner, or person. The Public Works Director shall render

his decision on the appeal in writing within twenty (20) days after receipt of the written appeal. Any person aggrieved by the decision of the Public Works Director may appeal, pursuant to the foregoing procedures, to the Mayor/City Council, whose decision is final with respect to utility fees and civil penalties. At each level of appeal, the reviewing official or body shall conduct a de novo review of the fee or civil penalty, provide the appellant with notice of the review, and allow the appellant an opportunity to be heard orally or in writing upon request.

**Section XIII
Severability**

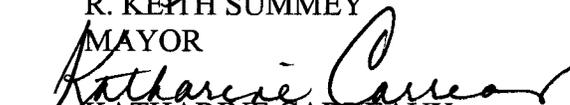
If any provision of this article or its application to any circumstance is held by a court of competent jurisdiction to be invalid for any reason, then this holding does not affect other provisions or applications of this article which can be given effect without the invalid provisions or application, and, to this end, the provisions of this article are severable.

THE WITHIN ORDINANCE SHALL BECOME EFFECTIVE IMMEDIATELY UPON ITS RATIFICATION BY CITY COUNCIL.

Ordained in City Council the 12th day of December, in the Year of Our Lord, 2002, and in the 226th year of the Independence of the United States of America.



R. KEITH SUMMEY
MAYOR



KATHARINE CARREAUX
MUNICIPAL CLERK

ATTEST:
APPROVED AS TO FORM:



LEGAL COUNSEL