

ORDINANCE ESTABLISHING A STORMWATER MANAGEMENT UTILITY FOR  
DURHAM COUNTY

BE IT ORDAINED by the Durham County Board Commissioners (the "Board") as follows:

**Section 1. Findings.**

The Board does hereby find that:

- (a) Water quality standards mandated by state and federal law are requiring that local governments develop more detailed, advanced, and costly stormwater programs.
- (b) Effective stormwater management should be provided to protect, to the extent practicable, the citizens of the County from the loss of life and property damage from flooding.
- (c) The construction, operation, and maintenance of stormwater conveyance systems requires long term planning and stable and adequate funding.
- (d) Chapter 153A, Article 15 of the North Carolina General Statutes, authorizes the County to acquire, construct, establish, enlarge, improve, extend, maintain, own, operate, and contract for the operation of Stormwater Management Programs designed to protect water quality by controlling the level of pollutants in, and the quantity and flow of, stormwater and structural and natural stormwater and Drainage Systems of all types.
- (e) The establishment of a Stormwater Management Utility that would be accounted for as a separate enterprise fund and would facilitate the provision of a Stormwater Management Program is reasonable and in the public interest.
- (f) North Carolina General Statute § 153A-277 authorizes Durham County to establish and revise, from time to time, a schedule of rates and charges to fund the Stormwater Management Program activities including both structural and natural stormwater conveyance and Drainage System services provided by the Stormwater Management Utility.

**Section 2. Purpose.**

A Stormwater Management Utility is hereby created as an identified fiscal and accounting fund for the purpose of comprehensively addressing the Stormwater management needs of the County. The County's Stormwater management needs are met herein (1) through programs designed to protect and manage water quality and quantity by controlling the level of pollutants in Stormwater runoff, and the quantity and rate of Stormwater received and conveyed by structural and natural Stormwater and Drainage Systems of all types, (2) by establishing a schedule of charges, (3) by defining the control, collection, and disbursement of funds, and (4) by setting forth penalties, methods of appeals and exemptions. Provided however, at the option of the board of county commissioners the cost of the required program may be provided for by appropriation from the general fund into the enterprise fund established by this ordinance. A system of fees may be imposed or re-imposed by the board at any time.

### Section 3. Definitions.

For the purpose of this Article, the following words, terms, and phrases shall have the meanings given to them in this section, except where the context clearly indicates a different meaning:

*Developed land* shall mean a land parcel altered from its Natural State

*Drainage System* shall mean natural and structural channels, swales, ditches, swamps, rivers, streams, creeks, wetlands, branches, reservoirs, ponds, drainage ways, inlets, catch basins, gutters, pipes, culverts, bridges, head walls, storm sewers, lakes, and other physical works, properties, and improvements that transfer, control, convey or otherwise influence the movement of storm water runoff. For purposes of this ordinance, Stormwater Conveyance Systems shall have the same meaning as Drainage System.

*Equivalent Residential Unit (ERU)* is a unit of measure of impervious surface (in square feet) that represents the impervious surface area on the average Single Family Residential Parcel in the underlying jurisdiction as a unit of comparison. ERU shall mean for the purposes of this Ordinance 4,300 square feet of impervious surface.

*Impervious Surface* shall mean developed areas of land that prevent or significantly impede the infiltration of Stormwater into the soil. Typical Impervious Surfaces include, but are not limited to: roofs, sidewalks, walkways, patios, swimming pools, private driveways, parking lots, access extensions, alleys and other paved, engineered, compacted or gravel surfaces containing materials that prevent or significantly impede the natural infiltration of Stormwater into the soil.

*Natural State* shall describe existing Undeveloped Land where the soil and vegetation characteristics have not been substantially modified or disturbed by human activities and the hydrologic function is in an unaltered or natural condition.

*Service Area* shall mean all land within Durham County excluding all land within the corporate limits of any municipalities located within the County.

*Service Charge* shall mean a Stormwater management service charge, applicable to a land parcel, which generally reflects the impact on or demand for Stormwater management services provided by the County to properly control and manage Stormwater runoff quantity and/or quality associated with the land parcel. The Service Charge will vary from one land parcel to another based on the Impervious Surface. The Service Charge may vary for the same class of service in different areas of the Service Area and may vary according to classes of service.

*Single Family Residential Parcel* means a parcel with a single family residential structure used as a single family dwelling and whose primary use is as a single family residence

*Stormwater* shall mean the runoff from precipitation that travels over Natural State or Developed Land surfaces and enters a Drainage System.

*Stormwater Services Utility Manager.* A person working for or on behalf of the County to administer the Stormwater Management Program, such as the Stormwater and Erosion Control Division Manager, Stormwater Manager, or designee.

*Stormwater Management Program* shall mean an identified set of measures and activities designed to protect, restore and/or manage stormwater quality by controlling and/or reducing pollutants and to reduce and/or manage stormwater quantity by controlling velocity, volume, and rate.

*Stormwater Management Utility* shall mean an organizational structure that is responsible for funding, administering, and operating the County's Stormwater Management Program, and that is supported through a rate structure based on the Impervious Surface Area found on land parcels located within the Service Area.

*Undeveloped Land* shall mean all land that is not altered from its Natural State.

#### **Section 4. Establishment of a Stormwater Management Utility and Stormwater Management Enterprise Fund.**

- (a) There is hereby established a Durham County Stormwater Management Utility that shall be responsible for implementing, operating, and administering the County's Stormwater Management Program as defined herein.
- (b) There is hereby established a Durham County Stormwater Management Enterprise Fund for the purpose of dedicating and protecting funding applicable to the responsibilities of the Stormwater Management Utility including, but not limited to, rents, rates, fees, charges, and penalties as may be established after due notice having been given and a public hearing held by the Board as required by G.S. §153A-277(al)(1). The hearing may be held concurrently with the public hearing on the proposed budget ordinance, Funding may also include other funds transferred or allocated to the Stormwater Management Utility by the Board. All revenues and receipts of the Stormwater Management Utility shall be placed in the Stormwater Management Enterprise Fund and all expenses of the Stormwater Management Utility shall be paid from the Stormwater Management Enterprise Fund, except that other revenues, receipts, and resources not accounted for in the Stormwater Management Enterprise Fund may be applied to Stormwater management activities as deemed appropriate by the Board. Provided however, if the board of county commissioners elects to fund the required storm water program from the general fund, an amount estimated to have been generated by stormwater fees provided for hereunder shall be determined and be deposited in the Stormwater management Enterprise fund.

#### **Section 5. Jurisdiction.**

The jurisdiction of the Stormwater Management Utility shall extend throughout the Service Area.

#### **Section 6. Rate Structure.**

- (a) Every parcel within the Service Area shall be subject to a Stormwater Management Utility Service Charge as defined by the rate structure described below. The rate structure to distribute the cost of services associated with the operation, repair, improvement and maintenance of public

Drainage Systems and facilities through a schedule of rates, fees, charges, and penalties related to the operation of a Stormwater Management Utility and Stormwater Management Enterprise Fund as established in Section 4 shall be based on the following parameter:

1. *Impervious Surface Area* on a given land parcel, which directly relates to the volume, rate and pollutant loading of Stormwater runoff discharged from that land parcel to the County's structural and natural Drainage Systems and facilities. Based on an analysis by the County upon the enactment of this Ordinance of Impervious Surface Area on properties throughout the County, an Impervious Surface Area of 4,300 square feet is hereby designated as one (1) ERU.

(b) Each Single Family Residential Parcel shall be charged based on the tier structure below.

- i. A parcel with less than or equal to 2,700 square feet of impervious surface area will be charged 0.5 ERUs
- ii. A parcel with greater than 2,700 square feet and less than or equal to 6,000 square feet of impervious surface area will be charged 1 ERU
- iii. A parcel with greater than 6,000 square feet will be charged 2 ERUs

(c) Each Non-Single Family Residential Parcel shall be charged based on the number of impervious area units (ERUs). *Impervious Surface Area rates will apply to each unit or part thereof of impervious area.*

(d) There will be no charge for parcels with fewer than 400 square feet of Impervious Surface Area.

## **Section 7. Schedule of Fees and Charges.**

The schedule of rates, fees, charges, and penalties, if any. related to this Ordinance shall be as prescribed by the Board of County Commissioners.

## **Section 8. Billing and Collection**

(a) *Method of billing.* Billing and collection of the Stormwater Management Utility Service Charges for Stormwater management services and facilities shall be billed with property taxes under the general administration of the County Manager and shall be payable in the same manner as property taxes.

(b) *Delinquencies.* Stormwater Management Utility Service Charge billings that are not paid within the time allowed for the payment of property taxes shall be collected by any remedy provided by law for collecting and enforcing private debts or in any other manner authorized by law.

(c) *Application of payment.* Any and all remitted funds shall be applied to a customer's bill in the following order:

1. Interest, to the extent allowed by law.
2. Civil penalties assessed pursuant to this Ordinance.
3. Stormwater Management Utility Service Charge.

(d) *Appeal of disputed bills and adjustments.* If any citizen wishes to dispute a Stormwater Utility Service Charge: billing or any other rents, rates, fees, charges, or penalties adopted pursuant to this Article, that citizen must submit a written appeal within forty-five (45) calendar days from the date of billing, stating the reasons for the appeal, and providing information pertinent to the calculation of the billed charge. A timely appeal shall stay the penalty deadlines. An appeal of a disputed bill shall be filed with the Stormwater Utility Manager for review and disposition. If the citizen is not satisfied with the disposition of the appeal, the citizen may further appeal the disputed charge to the County Manager or his/her designee who shall make the final ruling on the validity of the appeal. A written appeal to the County Manager must be submitted within fourteen (14) calendar days after receiving a decision from the Stormwater Utility Manager. If a written appeal to the County Manager is not received within fourteen (14) calendar days, the decision of the Stormwater Utility Manager becomes final.

### **Section 9. Disposition of Service Charges and Fees and/or Appropriations.**

Stormwater Management Utility Service Charge and fee revenues and/or Appropriations shall be assigned and dedicated solely to the Stormwater Management Enterprise Fund in the County budget and accounting system, which shall be and remain separate from other funds, and shall be used only to fund identified Stormwater Management Program activities. The services charges and fees paid to and collected by virtue of the provision of this Article shall not be used for general or other governmental or proprietary purposes of the County, except to pay for costs incurred by the County in rendering services associated with the Stormwater Management Utility.

### **Section 10. Exemptions and Credits Applicable to Stormwater Management Service Charges.**

(a) *Statement of Policy.* Except as provided in this section, no public or private property shall be exempt from Stormwater Management Service Charges or receive a credit or offset against such Stormwater Management Service Charges. No exemption or reduction in Stormwater Management Service Charges shall be granted based on the age, economic status, race, or religion of the customer, or other condition unrelated to the cost of providing stormwater services and facilities.

(b) *Exemptions.* No public or private property shall be exempt from Stormwater Management Utility Service Charges, with the following exceptions:

1. Impervious area features used for vehicular or pedestrian traffic that are available for use by the general public for transportation purposes and located on publicly dedicated rights of way or easements such as, but not limited to, publicly dedicated roads, streets, greenways, and sidewalks, shall be exempt from County Stormwater Management Utility Service Charges. This exemption shall not apply to internal site roadways within public facilities.
2. Railroad rights-of-way used or formerly used for trackage shall be exempt from County Stormwater Management Utility Service Charges. This exemption shall not be construed to apply to railroad stations, maintenance buildings, or other developed land used for railroad purposes.

(c) *Credits [Reserved for future use]*

**Section 11. Miscellaneous.**

- (a) This Ordinance supersedes all other County ordinances, or parts of ordinances in conflict herewith.
- (b) Any part or provision of this Ordinance found by a court of competent jurisdiction to be in violation of the Constitution or laws of the United States or of the State of North Carolina is hereby deemed severable and shall not affect the validity of the remaining provisions of the Ordinance.
- (c) This Ordinance shall become effective upon adoption.

This the 13th day of July, 2020.