

ORDINANCE 07-O-25 to create a utility for stormwater management and establish its functions and method of funding by amending Murfreesboro City Code, Chapter 27½—Stormwater Management, adding Article III—Stormwater Utility and User Fees.

WHEREAS, the Federal Clean Water Act, 33 U.S.C. 1251 et seq., requires entities such as the City to implement stormwater management programs within prescribed time frames, and the Environmental Protection Agency, pursuant to the Federal Clean Water Act, 33 U.S.C. 1251 et seq., has published rules for stormwater outfall permits; and,

WHEREAS, T.C.A. §68-221-1101, provides that the purpose of the stormwater management statute is to facilitate municipal compliance with the Water Quality Act of 1977, and applicable EPA regulations, particularly those arising from § 405 of the Water Quality Act of 1987, and § 402(p) of the Clean Water Act of 1977, and to enable municipalities to regulate stormwater discharges, establish a system of drainage facilities, construct and operate a system of stormwater management and flood control facilities, and to "fix and require payment of fees for the privilege of discharging stormwater"; and

WHEREAS, T.C.A. §68-221-1105 provides that among the powers municipalities have with respect to stormwater facilities, is the power by ordinance or resolution to:

- (A) Exercise general regulation over the planning, location, construction, and operation and maintenance of stormwater facilities in the municipality, whether or not owned and operated by the municipality;
- (B) Adopt any rules and regulations deemed necessary to accomplish the purposes of T.C.A. §68-221-1105, including the adoption of a system of fees for services and permits;
- (C) Establish standards to regulate the quantity of stormwater discharged and to regulate stormwater contaminants as may be necessary to protect water quality;
- (D) Review and approve plans and plats for stormwater management in proposed subdivisions or commercial developments;
- (E) Issue permits for stormwater discharges, and for the construction, alteration, extension, or repair of stormwater facilities;
- (F) Suspend or revoke permits when it is determined that the permittee has violated any applicable ordinance, resolution, or condition of the permit;
- (G) Regulate and prohibit discharges into stormwater facilities of sanitary, industrial, or commercial sewage or waters that have otherwise been contaminated;
- (H) Expend funds to remediate or mitigate the detrimental effects of contaminated land or other sources of stormwater contamination, whether public or private; and,

WHEREAS, T.C.A. §68-221-1107 provides that all municipalities constructing, operating or maintaining stormwater or flood control facilities are authorized to establish a graduated stormwater users fee which may be collected from each user of the stormwater facilities provided by the municipality provided such fees are reasonable in amount and used exclusively for the purposes set forth in T.C.A. §68-221-1101, et. seq.

WHEREAS, City is a Phase II National Pollutant Discharge Elimination System ("NPDES") permit holder and has engaged in a variety of activities to fulfill its six permit responsibilities; and,

WHEREAS, City has engaged consultants to inventory its stormwater system and advise it on stormwater matters at considerable expense; and,

WHEREAS, City has hired employees with expertise in stormwater and adopted ordinances to protect its waters and lands during construction (land disturbance permit) and once developed (water quality protection area); and,

WHEREAS, these efforts, and future efforts in stormwater management, can best be organized, structured and funded as a stormwater utility with a separate revenue stream dedicated to that purpose; and,

WHEREAS, Neel-Schaffer, Inc. was retained by the City to provide a recommendation for the appropriate funding mechanism, to review the City's determination of a single family residential unit ("SFU"), and to develop a credit policy that encourages the use of best management practices ("BMPs"); and,

WHEREAS, Neel-Schaffer, Inc. in its Stormwater Funding Report of December 22, 2006, has: recommended that the City establish a stormwater utility as an equitable means of establishing financial charges for services provided and benefits, including environmental impacts, received; approved the use of a single family unit as the basis for the stormwater utility fee; and, approved the methodology used to calculate the single family unit's amount of impervious surface area; and,

WHEREAS, the SFU, the median impervious surface area for single family residences, was calculated based on over 20,000 lots within the City using the City's 2004 GIS aerial mapping; and,

WHEREAS, the methodology used to establish the proposed stormwater user's fee is designed to call for each user to pay a proportionate share of the construction, administration, operation and maintenance cost of stormwater facilities based on their proportionate share of stormwater runoff in compliance with T.C.A. §68-221-1107; and,

WHEREAS, the Stormwater Advisory Council and the Water and Sewer Board have studied and approved the stormwater utility concept and the proposed stormwater user fee.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MURFREESBORO, TENNESSEE, AS FOLLOWS:

SECTION 1. Chapter 27½--Stormwater Management, of the Murfreesboro City Code is hereby amended by adding Article III as follows:

"ARTICLE III. STORMWATER UTILITY AND USER FEES

SECTION 27½-34 LEGISLATIVE FINDINGS AND POLICY.

The City Council finds, determines and declares that the stormwater system which provides for the collection, treatment, storage and disposal of stormwater provides benefits and services to all property within the incorporated City limits. Such benefits include, but are not limited to: the provision of adequate systems of collection, conveyance, detention, treatment and release of stormwater; the reduction of hazards to property and life resulting from stormwater runoff; improvements in general health and welfare through reduction of undesirable stormwater conditions; and, improvements to the water quality in the stormwater and surface water system and its receiving waters.

SECTION 27½-35 CREATION OF STORMWATER UTILITY.

To achieve the purposes of the Federal Clean Water Act and T.C.A. §68-221-1101 et seq., there is created a stormwater utility in and for the City within the Water and Sewer Department. The stormwater utility, under the supervision and control of the City Manager, through the Department, with the participation and assistance of other City departments, may:

- (A) Administer the acquisition, design, construction, maintenance and operation of the stormwater utility system, including capital improvements designated in the capital improvement program;
- (B) Administer and enforce this ordinance and all regulations and procedures adopted relating to the design, construction, maintenance, operation and alteration of the utility stormwater system, including, but not limited to, the quantity, quality and/or velocity of the stormwater conveyed thereby;
- (C) Advise on matters relating to the utility;
- (D) Prepare and revise a comprehensive drainage plan;
- (E) Review plans and approve or deny, inspect and accept extensions and connections to the system;
- (F) Enforce regulations to protect and maintain water quality and quantity within the system in compliance with water quality standards established by state, regional and/or federal agencies as now adopted or hereafter amended;
- (G) Annually analyze the cost of services and benefits provided, and the system and structure of fees, charges, civil penalties and other revenues of the utility.

SECTION 27½-36 Definitions.

For the purpose of this ordinance, the following definitions shall apply:

Base rate. The stormwater user fee for single family residential property.

Construction. The erection, building, acquisition, alteration, reconstruction, improvement or extension of stormwater facilities; preliminary planning to determine the economic and engineering feasibility of stormwater facilities; the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary in the construction of stormwater facilities; and, the inspection and supervision of the construction of stormwater facilities.

Developed property. Real property which has been altered from its natural state by the creation or addition of impervious areas by the addition of any buildings, structures, pavement or other improvements.

Exempt property. Federal, state, county and City road right-of-way; property from which stormwater runoff does not flow into or through City-owned or operated stormwater facilities, including drainage structures, conduits, combined sewers, sewers, bridges, channels, culverts, pipes, and drainage easements; and, property from which all stormwater runoff for normal rain events, up to and including the 100-year frequency storm, is drained by sinkhole(s) downstream of which there are no City-owned or operated stormwater facilities.

Fee or stormwater user fee. The charge established under this ordinance and levied on owners or users of parcels or pieces of real property to fund the costs of stormwater management and of operating, maintaining, and improving the stormwater system in the City. The stormwater user fee is in addition to any other fee that the City has the right to charge under any other ordinance, rule or regulation of the City.

Fiscal year. July 1 of a calendar year to June 30 of the next calendar year, both inclusive.

Impervious surface. A term applied to any ground or structural surface that water cannot penetrate or through which water penetrates with great difficulty, including, but not limited to, most conventionally surfaced streets, roofs, sidewalks, patios, driveways, parking lots, and any other oiled, graveled, graded, compacted or other surface which impedes the natural infiltration of surface water.

Impervious surface area. The number of square feet of horizontal surface covered by buildings and other impervious surfaces. All building measurements shall be made between exterior faces of walls, foundations, columns or other means of support or enclosure.

Non-single family property. Developed property other than single-family residential property. Such property shall include, but not be limited to, commercial properties, industrial properties, parking lots, hospitals, schools, recreational and cultural facilities, hotels, offices, and churches.

Person. Any and all persons, natural or artificial, including any individual, firm or association, government and any governmental or private corporation organized or existing under the laws of this or any other state or country.

Property owner. The property owner of record as listed in the Rutherford County tax assessment roll. A property owner includes any individual, corporation, firm, partnership, or group of individuals acting as a unit, and any trustee, receiver, or personal representative or government.

Single family residential property. A developed property which serves the primary purpose of providing a permanent dwelling unit to a single family. A single family detached dwelling containing an accessory apartment or a second dwelling unit ("duplex") is included in this definition.

Single family residential unit or SFU. The median of the total square footage of the impervious surface areas (e.g. building footprints, paved driveways, parking lots, patios, non-public sidewalks) of developed single family residential lots within the City.

Stormwater. Stormwater runoff, snow melt runoff, surface runoff, street

wash waters related to street cleaning or maintenance, infiltration, and drainage.

Stormwater facilities. The drainage structures, conduits, combined sewers, sewers, bridges, channels, culverts, pipes, drainage easements and all devices or appurtenances by means of which stormwater is collected, transported, pumped, treated or disposed of.

Stormwater management. The planning, design, construction, regulation, improvement, repair, maintenance, and operation of facilities and programs relating to water, floodplains, flood control, grading, erosion, tree conservation, and sediment control.

Stormwater management fund or fund. The fund created by this ordinance to operate, maintain, and improve the City's stormwater system.

Surface water. Includes waters upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other water courses, lakes and reservoirs.

User. The owner of record of property subject to the stormwater user fee imposed by this ordinance.

SECTION 27½-37 FUNDING OF STORMWATER.

Revenue sources for the stormwater utility's activities may include, but not be limited to, the following:

- (A) Stormwater user fees.
- (B) Civil penalties and damage assessments imposed for or arising from the violation of the City's stormwater management ordinances.
- (C) Stormwater permit and inspection fees.
- (D) Other funds or income obtained from federal, state, local, and private grants, or revolving funds, and from the Local Government Public Obligations Act of 1986 (Tennessee Code Annotated, title 9, chapter 21).

To the extent that the stormwater user fees collected are insufficient to construct needed stormwater drainage facilities, the cost of the same may be advanced from such City funds as may be determined by the City Council.

SECTION 27½-38 STORMWATER UTILITY MANAGEMENT FUND.

All revenues generated by the stormwater user fees shall be deposited in a stormwater utility management fund and used exclusively for stormwater management.

SECTION 27½-39 OPERATING BUDGET.

The City Council shall adopt, based on a recommendation from the Water and Sewer Board, an operating budget for the stormwater utility management fund each fiscal year. The operating budget shall set forth for such fiscal year the estimated revenues and the estimated costs for operations and maintenance, extension and replacement and debt service.

SECTION 27½-40 STORMWATER USER FEES ESTABLISHED.

There shall be imposed on each and every property in the City, except exempt property, a stormwater user fee. Prior to establishing or amending the stormwater user fees, the City shall advertise its intent to do so by publishing notice in a newspaper of general circulation in the City at least thirty days in advance of the meeting of the City Council which shall consider the adoption of the fee or its amendment.

SECTION 27½-41 SINGLE FAMILY RESIDENTIAL UNIT (SFU).

- (A) *Establishment.* There is established for purposes of calculating the stormwater user fees the single family residential unit (SFU) as a method of measurement.
- (B) *Definition.* The SFU is the median of the total square footage of the impervious surface areas of developed single family residential lots within the City as set by the City Council.
- (C) *Setting the SFU.* The SFU shall be set by Council from time to time by resolution.
- (D) *Source of SFU.* Council shall have the discretion to determine the source of the data from which the SFU is established, taking into consideration the general acceptance and use of such source on the part of other stormwater systems, and the reliability and general accuracy of the source including but not limited to property tax assessor's rolls, site examination, mapping information, aerial photographs, and other reliable information.

SECTION 27½-42 PROPERTY CLASSIFICATION FOR STORMWATER USER FEE.

- (A) *Property classifications.* For purposes of determining the stormwater user fee, all properties in the City are classified into one of the following classes:
 - (1) Single family residential property;
 - (2) Non-single family property;
 - (3) Exempt property.
- (B) *Single family residential fee.* The City Council finds that the intensity of development of most parcels of real property in the City classified as single family residential is similar and that it would be excessively and unnecessarily expensive to determine precisely the square footage of the impervious surface on each such parcel. Therefore, all single family residential properties in the City shall be charged a uniform stormwater management fee, equal to the base rate, regardless of the size of the parcel or the impervious surface area of the improvements.
- (C) *Non-single family property fee.* The fee for non-single family property shall be the base rate multiplied by the numerical factor obtained by dividing the total impervious area (square feet) of the property by one SFU. The impervious surface area for non-single family property is the square footage for the impervious surface area on the property. The minimum stormwater user fee for non-single family property shall be one SFU.
- (D) *Exempt property.* There shall be no stormwater user fee for exempt property.

SECTION 27½-43 BASE RATE.

The City Council shall, by resolution, establish the base rate for the SFU. The base rate shall be calculated to insure adequate revenues to fund the costs of stormwater management and to provide for the operation, maintenance, and capital improvements of the stormwater utility system in the City.

SECTION 27½-44 ADJUSTMENTS TO STORMWATER USER FEES.

The stormwater utility shall adjust the stormwater user fee for non-single family property based on its Credit and Appeals Policy. This policy shall provide credits to stormwater user fees charged owners of non-single family property who implement onsite stormwater management controls that provide peak runoff and/or volume control, stormwater quality best management practices and proper operation and maintenance of the onsite stormwater facilities. This policy, to be approved by resolution of the City Council, shall provide for: flood control volume credits; stormwater quality volume credits; streambank protection volume credits; education credits; and NPDES stormwater permitted facilities credits. This policy shall also provide for adjustments to the stormwater user fee if it can be proven that the City has incorrectly calculated the total impervious area of the non-single family property. This policy shall specify how owners are to apply for credits and adjustments.

SECTION 27½-45 PROPERTY OWNERS TO PAY CHARGES.

The owner of each non-exempt property shall be obligated to pay the stormwater user fees as provided in this ordinance, provided however, that if no water or sewer service is being provided at the property to the owner as a customer of record and such service is being provided to a customer of record other than the owner, it shall be presumed that the owner and such customer of record have agreed that the customer of record shall be obligated to pay such stormwater user fee. If the customer of record rebuts this presumption as provided for in the Credit and Appeals Policy, the owner shall pay such charges.

SECTION 27½-46 BILLING PROCEDURES AND PENALTIES FOR LATE PAYMENT.

- (A) *Rate and collection schedule.* The stormwater user fee shall be set at a rate, collected at a location, on a schedule, established by resolution, which resolution shall also specify when the fee shall become delinquent and the late fee which shall become due on delinquent payments.
- (B) *Penalties for late payment.* Stormwater user fees shall be subject to a late fee established by resolution. The City shall be entitled to recover attorney's fees incurred in collecting delinquent stormwater user fees.
- (C) *Mandatory statement.* To the extent that state law, T.C.A. §68-221-1112, requires it, each bill that shall contain stormwater user fees shall also contain the following statement in bold: **"THIS TAX HAS BEEN MANDATED BY CONGRESS"**. It is the position of City that the stormwater user fee is not a tax but a utility service charge.

SECTION 27½-47 APPEALS OF FEES.

Any person who disagrees with the calculation of the stormwater user fee, as provided in this ordinance, or who seeks a stormwater user fee

adjustment based upon stormwater management practices, may appeal such fee determination to the stormwater utility within thirty days from the date of the last bill containing stormwater user fees charges. Any appeal must be filed, and will be decided, in accordance with the Credit and Appeal Policy."

SECTION 2. That this Ordinance shall take effect fifteen (15) days after its passage upon third and final reading, the public welfare and the welfare of the City requiring it.

Passed:

Tommy Bragg, Mayor
Tommy Bragg, Mayor

1st reading June 7, 2007

2nd reading June 28, 2007

3rd reading July 19, 2007

ATTEST:

James B. Penner
James B. Penner
City Recorder

APPROVED AS TO FORM:

Susan Emery McGannon
Susan Emery McGannon
City Attorney

SEAL