

ORDINANCE TO ESTABLISH UTILITY FOR STORMWATER MANAGEMENT; TO ESTABLISH THE FUNCTION OF THE UTILITY; TO CREATE A SPECIAL REVENUE FUND AND METHOD OF FUNDING FOR THE UTILITY; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

WHEREAS, The Federal Clean Water Act, 33 U.S.C. 1251 et seq., requires certain political

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;

WHEREAS, Tennessee Code Annotated, § 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,”

WHEREAS, Tennessee Code Annotated, § 68-221-1105 provides that among other powers

municipalities have with respect to stormwater facilities, is the power by ordinance or resolution to:

- (1) 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;**
- (2) Adopt any rules and regulations deemed necessary to accomplish the purposes of this statute, including the adoption of a system of fees for services and permits;**
- (3) Establish standards to regulate the quantity of stormwater discharged and to regulate stormwater contaminants as may be necessary to protect water quality;**
- (4) Review and approve plans and plats for stormwater management in proposed subdivisions or commercial developments;**
- (5) Issue permits for stormwater discharges, and for the construction,**

alteration, extension, or repair of stormwater facilities;

- (6) Suspend or revoke permits when it is determined that the permittee has violated any applicable ordinance, resolution, or condition of the permit;**
- (7) Regulate and prohibit discharges into stormwater facilities of sanitary, industrial, or commercial sewage or waters that have otherwise been contaminated;**
- (8) Expend funds to remediate or mitigate the detrimental effects of contaminated land or other sources of stormwater contamination, whether public or private; and**

WHEREAS, the city desires to develop a stormwater utility to be responsible for the operation, construction and maintenance of stormwater facilities; for stormwater system planning, and for review of stormwater development plans for compliance with stormwater management codes.

NOW THEREFORE, BE IT ENACTED BY THE MAYOR AND BOARD OF THE CITY OF MCMINNVILLE, TENNESSEE:

Stormwater Utility

1) Legislative findings and policy

- a) The City of McMinnville 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 City of McMinnville limits. Such benefits include, but are not limited to: the provision of adequate systems of collection, conveyance, detention, retention, treatment and release of stormwater, the reductions 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 water quality in the stormwater and surface water system and its receiving waters of the state all of which are managed by the Stormwater Manager as part of the Municipal Separate Storm Sewer System (MS4) Program

The objective of this ordinance is to promote the public health, safety and general welfare of the City of McMinnville, Tennessee (“City”) and its citizens in compliance with the Federal Clean Water Act, 33 U.S.C. 1251 et seq., and Tennessee Code Annotated, § 68-221-1101 et seq. which require municipalities to implement stormwater management programs, within prescribed time frames, to regulate stormwater discharges to protect water quality; establish adequate systems of collection, conveyance, detention, treatment and release of stormwater; reduce hazards of property and life resulting from stormwater runoff; and enable municipalities to fix and require payment of fees for the privilege of discharging stormwater. The City finds that a stormwater management system which provides for the treatment of stormwater is of benefit and provides services to all property within the City.

2) Creation of stormwater utility.

- a) For those purposes of the Federal Clean Water Act and of Tennessee Code Annotated, § 68-221-1101 et seq., there is created a stormwater utility which shall consist of a manager or director and such staff as the municipality’s governing body shall authorize. The stormwater utility, under the legislative policy, supervision and control of the governing body of the city, shall:
- (i) Administer the acquisition, design, construction, maintenance and operation of the stormwater utility system, including capital improvements designated in the capital improvement program;
 - (ii) 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;
 - (iii) Advise the municipality’s governing body and other city departments on matters relating to the utility;
 - (iv) Prepare and revise a comprehensive drainage plan for adoption by the municipality’s governing body;
 - (v) Review plans and approve or deny, inspect and accept extensions and connections to the system;
 - (vi) 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;
- (vii) 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.

3) **Administering Entity.**

- a) The Stormwater Utility shall be part of McMinnville's Public Works Department. The Stormwater Utility, under the direction and supervision of the Public Works Director or designee, shall administer the provisions of this Stormwater Utility Ordinance

4) **Funding of Stormwater Utility**

- a) Funding for the Stormwater Utility's activities may include, but not be limited to, the following:
- i) Stormwater User Fees;
 - ii) Civil penalties and damage assessments imposed for or arising from the violation of the City of McMinnville's Stormwater Ordinance;
 - iii) Land Disturbance Permit, stormwater review, and inspection fees; and
- 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 made from such City of McMinnville funds as may be determined by the Board of Mayor and Alderman.

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- (iii) Advise the municipality's governing body and other city departments on matters relating to the utility;
- (iv) Prepare and revise a comprehensive drainage plan for adoption by the municipality's governing body;
- (v) Review plans and approve or deny, inspect and accept extensions and connections to the system;
- (vi) 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;
- (vii) 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.

5) Stormwater Management Fund

- a) All revenues generated by or on behalf of the Stormwater Utility shall be deposited in a Stormwater Management Fund and used to fulfill the purposes of the Stormwater Utility.

6) Operating Budget

- a) The Board of Mayor and Alderman shall adopt, based on a recommendation from the Director of Public Works or designee, an operating budget for the Stormwater Management Fund each fiscal year. The operating budget shall set forth for such fiscal year the estimated revenues and estimated costs for operations and maintenance, extension and replacement and debt service.

7) Stormwater User's Fees Established

- a) There shall be imposed on each and every property in the City of McMinnville, except exempt property, a stormwater user fee, which shall be set from time to time by ordinance or resolution in the fee schedule as adopted by the City of McMinnville. Prior to establishing or amending the stormwater user fee, the City of McMinnville shall advertise its intent to do so by publishing notice in the newspaper of general circulation in the city at least thirty (30) days in advance of the meeting of the Board of Mayor and Alderman at which the fees are considered for adoption or amendment.

8) Equivalent Residential Unit (ERU)

- a) Establishment.
 - i) There is established for purposes of calculating the stormwater user's fee the equivalent residential unit (ERU).
 - (1) Definition. The ERU is the average square footage of a detached single family residential property.
 - ii) Setting the ERU.
 - (1) The ERU shall be set by the municipality's governing body from time to time by ordinance or resolution.
 - iii) Source of ERU. The municipality's governing body shall have the discretion to determine the source of the data from which the ERU 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. The municipality's governing body shall have the discretion to determine the impervious surface area of other developed property through property tax assessor's rolls or site examination, mapping information, aerial photographs, and other reliable information.

9) Property classification for stormwater user's fee.

For purposes of determining the stormwater user's fee, all properties in the City of McMinnville are classified into one of the following categories:

- a) Single Family Residential Property Fee.
 - i) The Board of Mayor and Alderman finds that the monthly stormwater management fees for single-family residential properties will be based on the median amount of

impervious surface one a single-family residential lot in the city which will be known as an ERU. There will be a tier system for single-family residential properties based on the impervious surface of the single-family residential property. The stormwater user's fee rate for non-exempt single-family residential property will be placed in one of the following tiers and charged according to the values in the table below:

Description	Monthly Fee
Rate – Single-Family Residential Property Tier (square feet of impervious surface)	Charge per Dwelling Unit
0 to 2,000	50% of base rate
2,001 to 3,500	100% of base rate
3,501 to 5,000	150% of base rate
5,001 to 6,500	200% of base rate
6,501 to 8,000	250% of base rate
Every 1,500 square feet over 8,000	+50% of base rate

- b) Non-single-family residential property fee. For non-single-family residential property, the monthly stormwater management fees are defined in the table below:

Description	Monthly Fee
Rate- Non-Single-Family Residential Property	Charge per Dwelling Unit
<u>Subcategory</u>	
Multi-Family (duplex, triplex, quadplex, apartments, etc.)	33% of base rate
Mobile Homes	50% of base rate
Townhomes & Condos	75% of base rate

Other developed property fee. The fee for developed property that is not single-family residential or non-single-family residential property in the city will be the base rate multiplied by a numerical factor obtained by dividing the total impervious area (square feet) of the property by one (1) ERU, rounded to the nearest tenth. The minimum value shall not be less than one (1) single-family unit.

Classification	Number of ERUs	Stormwater User's Fee Monthly Rate
Other Developed Property- Commercial, industrial, institutional, recreational, cultural, churches, parking lots, etc.	Variable depending on amount of impervious surface area	Base rate ERU per month with a minimum fee of no less than the base rate.

c) Exempt property.

i) The following property is exempt from the stormwater user's fee:

- (1) Property which stormwater runoff is not discharged into or through the stormwater flood controls facilities, or both, of the city
- (2) Owners and/or operators of agricultural property, in the city, upon which the owner and/or operator conducts activities that enable the owner and/or operator to satisfy the requirements of a qualified farmer or nurseryman, as define in Tennessee Code Annotated, Section 67-6-207
- (3) Undeveloped property that is not altered from its natural state
- (4) Improved public transportation ways, including public streets, roads, sidewalks, mobility paths, greenways and trails, airport runways, and internal roads within public facilities which have been conveyed to the city and are used by the general public for motor vehicle transportation
- (5) Railroad tracks, provided, however, railroad stations, maintenance buildings or other developed land will not be exempt from stormwater user fees.

10) Base Rate.

- a) The Board of Mayor and Alderman shall establish the base rate for the stormwater user's fees. The base rate will be calculated to provide adequate revenues to fund the costs of stormwater management and to provide for the acquisition, operation, maintenance, rehabilitation and capital improvements of the stormwater utility in the city. The base rate is set forth by ordinance or resolution and will be charged to customers monthly.

11) Payment of Stormwater User's Fees.

Except as otherwise provided in this section, stormwater user's fees for a non-exempt property that received utility service will be sent to the person named on the account, who shall be responsible for the payment of such fees. For developed property having no utility service, the stormwater user's fees will be sent to the property owner, who shall be responsible for the payment of such fees. Where multiple utility service accounts exist on a single property, the stormwater user's fees may, for good cause shown at the discretion of the city, be sent to the property owner, who shall be responsible for the payment of such fees.

12) Billing Procedures, Delinquent Bills and Penalties for Late Payment

- a) The stormwater user's fee must be set at a rate, and collected on a schedule, established by ordinance or resolution
- b) Stormwater user's fees will be paid to McMinnville Water Department (acting as the collection agency for the City) by any method allowed by McMinnville Water Department and shall become delinquent after the due date shown on the bill. If a customer does not have utility service with McMinnville Water Department, the City may bill the owner of such property directly through a separate billing process. Such bills are subject to the same delinquency policy established herein.
- c) Stormwater users' fee shall be subject to a late payment penalty. The late payment penalty shall be applied in the same manner as McMinnville Water Department rules

and regulations as it related to utility bills. The City shall be entitled to recover attorney's fees incurred in collecting delinquent stormwater user's fee. Any charge due under this ordinance which shall not be paid may be recovered by law by the City.

- d) Pursuant to Tennessee Code Annotated, Section 68-221-1107(b), the city through its agent McMinnville Water Department, may provide for the discontinuance of water utility service to stormwater users who fail or refuse to pay stormwater user fees, including the right not to accept payment of the water utility bill from any user without receiving at the same time payment of any stormwater fees owed by such user and not to re-establish utility services until such time as all part due stormwater fees owed by such user have been paid and/or the user has performed all acts and discharged all obligations required by this ordinance.
- e) The stormwater user's fee shall be paid electronically or by mail/in person at 101 E. Main St. and shall become delinquent as of twenty (20) days following the billing.
- f) Pursuant to Tennessee Code Annotated, Section 68-221-1112, each bill for stormwater user's fee will contain the following statement in bold:

THIS FEE HAS BEEN MANDATED BY CONGRESS.

13) Stormwater User Fee Credit, Adjustment and Appeals Policy

- a) Adjustments may be requested for errors or omissions on the customer's stormwater user fee. Request for adjustment due to error or oversight of the stormwater user's fee must be submitted to the city within thirty (30) days from the date of the last bill containing the customer's stormwater user fee. Any appeal for adjustment shall be filed in writing and shall state the grounds for appeal. The Stormwater Manager may request additional information from the appealing party. Adjustments will be determined based on the number of dwelling units or amount of impervious surface area on the property. The Stormwater Manager shall notify the appealing party in writing of the decision. Adjustments can also be made by the city should the city identify an error or oversight, provided the city notifies the customer in advance of the adjustment.
- b) The City of McMinnville will provide a system of credits to reduce stormwater user fees for properties on which stormwater control measures substantially mitigate the peak discharge, runoff volume and/or runoff pollution flowing from such properties or substantially decreases the city's cost of maintaining the stormwater management system.
- c) The Public Works Department will develop written procedures to implement the credit system. No credit will be authorized until the Board of Mayor and Alderman approves such written policies to implement the system of credits; a copy of the approved procedures will be on file with the Public Works Department. The procedures may allow credits retroactively for no more than one (1) past year. Any reimbursement granted due to a credit will be reimbursed through the utility billing system. Credits cannot exceed the stormwater utility charge for the customer. Nothing herein will prevent the Board of Mayor and Alderman from modifying the adopted system of credits, and such modifications may apply to holders of existing credits.