

**MEMORANDUM**

TO: Mayor and Town Council

FROM: W. Calvin Horton, Town Manager

SUBJECT: An Ordinance Establishing a Stormwater Management Utility and a Stormwater Management Utility Advisory Board

DATE: June 14, 2004

The attached ordinance would establish a Stormwater Management Utility, set an equivalent rate unit fee of \$39 per 2,000 square feet of impervious surface area, and provide for appointment of a Stormwater Management Utility Advisory Board for the Town of Chapel Hill.

The Manager recommends enactment of the Ordinance.

**BACKGROUND AND DISCUSSION**

As part of its budget deliberations in past months, the Council has discussed and received public comment on the proposed establishment of a Stormwater Management Utility intended to provide the Town with a mechanism to fund and support the management of stormwater within the Town's corporate limits.

Key elements of the proposed stormwater management program are:

- Implement stormwater management activities necessary for compliance with existing and new State and federal regulations
- Develop a master plan in year one intended to identify and schedule program activities in future years
- Continue and enhance stormwater management services currently being provided by the Town
- Provide stable and sufficient funding for capital improvements and drainage assistance projects
- Provide an emergency reserve fund
- Reimburse the Town's General Fund for Utility development costs
- Identify existing General Fund costs that should be billed to the Utility
- Establish broad-based public education and information activities to maximize community involvement in managing stormwater
- Authorize minimal increases in Town staff to support the Utility program, with emphasis on using contract services
- Establish an Equivalent Rate Unit (ERU) of 2000 square feet of impervious surface area and an annual Utility fee of \$39.00 per ERU
- Authorize an annual program budget of \$1,760,000 in the first year.

The first year of the proposed program would focus on the following key elements:

- A stormwater management program master plan would be developed to identify program activities in future years, and to establish an implementation schedule including associated resource needs and costs.
- A comprehensive public education and participation plan would be developed to provide outreach services.
- Existing stormwater management services would be continued and required new services would be provided.
- A portion of the utility revenue would be reserved to establish a capital improvements project fund account (approximately \$50,000 in the first year).
- A portion of the utility revenue would be used to reimburse the General Fund for all costs associated with the development and establishment of the Utility (\$402,000 one time charge).
- The utility would be charged for costs incurred by the Town for providing stormwater management services (approximately \$576,000 in the first year).
- A fee rate of \$39.00 per Equivalent Rate Unit (ERU) per year would be implemented, based on an ERU area of 2000 square feet. The first ERU would include 200-2000 square feet of impervious surface area, and there would be no cap on the number of ERUs per property.
- The Utility rate base would not include assessment of fees for public streets and/or other public access ways owned and maintained by the Town or by the North Carolina Department of Transportation.
- Property owned by the University would not be included in making the initial estimate of total Equivalent Rate Units. It is our understanding of the law that the University would be subject to the Town's utility ordinance, including payment of applicable fees. However, the University has a different understanding of the relevant law. Therefore, the Manager recommends that the Utility proceed without including any revenue from the University in the first-year revenue estimate and that negotiations to resolve this issue be initiated.
- A stormwater management credit system would be explored during the first year of the program, and the Manager would provide recommendations for the Council's consideration regarding the issue of allowing credits.

To accomplish the above objectives, the first year of the proposed stormwater management program would involve primarily organizational, planning, and public information/participation

activities. New services would be limited to those mandated by State and federal regulations involving, for the most part, implementation of the Town's National Pollutant Discharge Elimination System, Phase Two (NPDES-II) permit requirements.

### ORDINANCE CONSIDERATIONS

Under North Carolina General Statute 160A-314(a1)(1), before the Council establishes a schedule of rates, fees, charges or penalties for a stormwater management program it is required to hold an advertised Public Hearing on the matter. The Council held a Public Hearing on the proposed Stormwater Management Utility ordinance on May 12, 2004.

The proposed ordinance would establish a Town Stormwater Management Utility and a Stormwater Management Utility Advisory Board. The proposed ordinance calls for an annual stormwater management fee of \$39.00 per equivalent rate unit (ERU), which is set at two thousand square feet of impervious surface area or fraction thereof. This fee would apply to all zoning lots and tracts within the corporate limits of the Town except lots and tracts with fewer than 200 square feet of impervious surface area.

The proposed ordinance also includes a penalty schedule consistent with the schedule for interest charged by Orange County and Durham County for delinquent taxes, 2% for the month of January and  $\frac{3}{4}\%$  for each month thereafter.

### **MANAGER'S RECOMMENDATION**

The Manager recommends enactment of the attached ordinance that would establish a Stormwater Management Utility, set an equivalent rate unit fee of \$39 per 2,000 square feet of impervious surface area, and provide for appointment of a Stormwater Management Utility Advisory Board for the Town of Chapel Hill.

If the Council enacts this ordinance, the Manager would proceed with the normal process for soliciting citizens interested in serving on Town advisory boards and would present the names and qualifications of applicants to the Council for its consideration in nominating and appointing members of the Stormwater Management Utility Advisory Board described in the ordinance.

**AN ORDINANCE ESTABLISHING A STORMWATER MANAGEMENT UTILITY AND A STORMWATER MANAGEMENT UTILITY ADVISORY BOARD FOR THE TOWN OF CHAPEL HILL (2004-06-14/O-9)**

BE IT ORDAINED by the Council of the Town of Chapel Hill as follows:

Section 1. Chapter 23, Article I of the Town Code is hereby revised to read as follows:

“ARTICLE I. STORMWATER MANAGEMENT UTILITY

**Sec. 23-1. Findings.**

The Council does hereby find that:

(a) North Carolina General Statute Chapter 160A, Article 16 authorizes the Town to acquire, construct, establish, enlarge, improve, 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.

(b) The establishment, by Town ordinance, of a Stormwater Management Utility that shall be accounted for as a separate enterprise fund and will facilitate the provision of a stormwater management program.

(c) North Carolina General Statute Sec. 160A-314 authorizes the Town of Chapel Hill 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.

**Sec. 23-2. Purpose.**

This ordinance establishes a Stormwater Management Utility as an identified fiscal and accounting fund for the purpose of comprehensively addressing the stormwater management needs of the Town 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. It sets forth a schedule of charges and defines the control, collection, and disbursement of funds including penalties, appeals, exemptions and credits.

**Sec. 23-3. 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:

*Credits* shall mean ongoing reductions in the stormwater management service charge applicable to a given zoning lot or tract in recognition of on-site or off-site systems, facilities, measures, and/or actions undertaken to reduce or mitigate the stormwater quantity and/or quality impact(s) of the zoning lot or tract that would otherwise impact the public stormwater management system. Credits shall be conditioned on the continuing performance of the mitigation systems, facilities, measures, or actions in reference to standards adopted by the Stormwater Management Utility, and may be revised or rescinded for cause. In no case shall credits exceed the amount of the stormwater management service charge. The means and measures for identifying, issuing and obtaining credits will be provided in a Credit Manual approved by the Town Council.

*Developed land* shall mean a zoning lot or tract altered from its natural state to include impervious surface area equal to or greater than 200 square feet.

*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 stormwater runoff.

*Equivalent Rate Unit (ERU)* shall mean two thousand (2,000) square feet of impervious surface or fraction thereof.

*Impervious surface area* shall mean developed areas of land that prevent or significantly impede the infiltration of stormwater into the soil. Typical impervious surface areas 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 that 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 the corporate limits of the Town, including all land areas legally annexed thereto.

*Service charge* shall mean a stormwater management service charge, applicable to a zoning lot or tract, that generally reflects the impact on or demand for stormwater management services provided by the Town to properly control and manage stormwater runoff quantity and/or quality associated with the zoning lot or tract. The service charge will vary from one zoning lot or tract to another, based on the impervious surface area.

*Stormwater* shall mean the runoff from precipitation that travels over natural state or developed land surfaces and enters a drainage system.

*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 Town's stormwater management program, and that is supported through a rate structure based on the impervious surface area found on zoning lots or tracts located within the service area.

*Tract* shall mean a parcel of land not previously recorded as a zoning lot.

*Undeveloped land* shall mean all land that is not altered from its natural state to an extent that results in 200 or more square feet of impervious surface area.

*Zoning lot* shall mean a legally subdivided lot (not a tract) shown on a legally recorded plat or deed, or a combination of such legally subdivided and recorded adjacent lots.

**Sec. 23-4. Establishment of a Stormwater Management Utility and Stormwater Management Enterprise Fund.**

(a) There is hereby established a Town Stormwater Management Utility that shall be responsible for implementing, operating, and administering the Town's stormwater management program as defined herein.

(b) There is hereby established a Town 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 and a public hearing by the Town Council. Funding may also include other funds transferred or allocated to the Stormwater Management Utility by the Town Council. All revenues and receipts of the Stormwater Management Utility shall be placed in the Stormwater Management Enterprise Fund and all expenses of the 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 Town Council.

**Sec. 23-5. Jurisdiction.**

The jurisdiction (service area) of the Stormwater Management Utility shall extend to the corporate limits of the Town, including all areas legally annexed thereto.

**Sec. 23-6. Impervious Service Area and Equivalent Rate Unit.**

(a) *Impervious surface area* on a given zoning lot or tract directly relates to the volume, rate and pollutant loading of stormwater runoff discharged from that zoning lot or tract to the Town's structural and natural drainage systems and facilities. Therefore, impervious surface area shall be the primary parameter for establishing a 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 23.4.

(b) Based on an analysis by the Town of impervious surface area on properties throughout the Town, an impervious surface area of 2,000 square feet shall be designated as one (1) *Equivalent Rate Unit (ERU)*

**Sec. 23-7. Schedule of Fees and Charges.**

(a) The schedule of fees and charges set out in this section is hereby adopted and shall apply to all zoning lots and tracts within the corporate limits of the Town, except as may be altered by credits or exemptions provided in this Article.

(1) All zoning lots and tracts of land within the corporate limits of the Town, shall be billed for one (1) Equivalent Rate Unit for each 2,000 square feet or fraction thereof of impervious surface area on the subject zoning lot or tract.

(2) The annual service charge per Equivalent Rate Unit shall be \$39.00 per year.

(b) There will be no service charge for zoning lots or tracts with fewer than 200 square feet of impervious surface area.

**Sec. 23-8 Billing and Collection**

(a) *Method of billing.* Billing and collection of the Stormwater Management Utility service charges and any other rents, rates, fees, charges, and penalties for stormwater management services and facilities shall be administered by the Town Manager.

(b) *Delinquencies.* Stormwater Management Utility service charge billings or other billings for rents, rates, fees, charges, and penalties associated with the Stormwater Management Utility shall be declared delinquent if not paid on or before January 5 of the following year that billings are issued. Delinquent billings shall accumulate additional penalties at the rate of 2% for the month of January, and  $\frac{3}{4}$  if 1% for each month thereafter. This penalty shall be termed a delinquent payment penalty charge.

(c) *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 60 days of receipt of the 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 Town's stormwater 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 Town Manager or his designee who shall make the final ruling on the validity of the appeal.

(d) *Collection of delinquencies*: The administrative remedies provided in this chapter shall be exhausted before recourse to a court of competent jurisdiction.

**Sec. 23-9. Disposition of Service Charges and Fees.**

Stormwater Management Utility service charge and fee revenues shall be assigned and dedicated solely to the Stormwater Management Enterprise Fund in the Town 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 Town, except to pay for costs incurred by the Town in rendering services associated with the Stormwater Management Utility.

**Sec. 23-10. Credits and Exemptions.**

(a) *Credits*. Credits against stormwater management utility service charges are an appropriate means of adjusting fees, rates, rentals, charges, fines, and penalties, under some circumstances, to account for applicable mitigation measures. Credit mechanisms may be established by the Town Council and, if established, the means and measures for identifying, issuing and obtaining credits will be provided in a Credit Manual approved by the Town Council. No exception, credit, offset, or other reduction in stormwater management service charges shall be granted based on age, race, tax status, economic status, or religion of the customer, or other condition unrelated to the demand for and cost of services provided by the Stormwater Management Utility.

(b) *Exemptions*. Except as provided in this Article, no public or private property shall be exempt from Stormwater Management Utility service charges, with the following exceptions:

- (1) Public road rights-of-way that have been conveyed to and accepted for maintenance by the North Carolina Department of Transportation, and that are available for use by the general public for transportation purposes, shall be exempt from Town Stormwater Management Utility service charges.
- (2) Public road rights-of-way that have been conveyed to and accepted for maintenance by the Town of Chapel Hill, and that are available for use by the general public for transportation purposes, shall be exempt from Town Stormwater Management Utility service charges.
- (3) Railroad rights-of-way used for trackage and related appurtenances shall be exempt from Town Stormwater Management Utility service charges.

**Sec. 23-11. Establishment of a Stormwater Management Utility Advisory Board.**

A Town of Chapel Hill Stormwater Management Utility Advisory Board is hereby established.



**Sec. 23-12. Membership Qualifications and Terms.**

The Stormwater Management Utility Advisory Board shall consist of nine (9) members appointed by the Town Council. All appointees shall reside within the corporate limits of the Town of Chapel Hill during their terms of service. Board representation shall include three members who are single-family residential property owners, five members who are owners or employees of companies owning property used for multi-family, business, commercial, or non-profit purposes, and one member employed by the University of North Carolina at Chapel Hill.

The terms of board members shall be a maximum of three (3) years. The terms of the original members may be staggered so that all terms do not expire simultaneously. Vacancies shall be filled only for the remainder of the unexpired term of the vacant position. Members of the Board shall demonstrate interest in support for the efficiency, effectiveness, goals and mission of the Town's Stormwater Management Program. Board members shall serve without compensation, but may be reimbursed for actual expenses incidental to the performance of their duties within the limit of funds available to the Board and identified by the Town Council for such purposes.

**Sec. 23-13. Officers.**

The Board shall elect one member to serve as Chair and to preside over its meetings, and shall create and fill such offices and committees as it may deem necessary. The term of the Chair and other officers shall be one (1) year, with eligibility for re-election to a second term. The Chair or any member acting as Chair is authorized to administer oaths to witnesses coming before the Board.

**Sec. 23-14. Charge and Responsibilities of the Board.**

The Stormwater Management Utility Advisory Board is herewith charged with the following responsibilities:

- (a) Provide recommendations regarding the identification and implementation of new stormwater management program activities.
- (b) Review and provide recommendations on the Stormwater Management Program Master Plan.
- (c) Provide recommendations concerning gaps or inconsistencies in Town stormwater management services, facilities, programs, policies, and regulations and recommend improvement alternatives.
- (d) Provide recommendations for priorities and scheduling of watershed master planning and development of drainage basin plans.
- (e) Assist Town staff in working with stakeholder groups to implement program objectives and activities.

(f) Assist Town staff with public education and outreach activities that promote the Town's Stormwater Management Program.

(g) Assist Town staff in meeting the mission and achieving the identified goals and objectives of the Town's Stormwater Management Program.

(h) Provide recommendations for internal program evaluation and reporting mechanisms, and assist Town staff in periodically reporting to the Town Council on program effectiveness.

**Sec. 23-15. Meetings.**

The Board shall establish a regular meeting schedule and shall meet at least quarterly.

All Board meetings shall be open to the public, and reasonable notice of the time and place thereof shall be given in accordance with Chapter 143, Article 33C of the North Carolina General Statutes.

The Board shall keep a record of its meetings, including attendance of its members, and its resolutions, findings, recommendations, and actions.

**Sec. 23-16. Meeting Attendance.**

Any member of the Board who misses more than three (3) consecutive meetings shall lose his or her status as a member of the Board, and shall be replaced or reappointed by the Council. Absence due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and shall not affect the member's status on the Board, except that in the event of a long illness or other such cause for prolonged absence, the member shall be replaced.

**Sec. 23-17. Quorum and Voting.**

A quorum and simple majority of the Board shall consist of five (5) members. The vote of a simple majority shall be necessary to take any official Board action.

Section 2. This ordinance supersedes all Town ordinances or parts of ordinances in conflict herewith.

Section 3. 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.

Section 4. This ordinance shall become effective upon its enactment.

This the 14<sup>th</sup> day of June, 2004.