

THE CITY OF FREDERICK
MAYOR AND BOARD OF ALDERMEN

ORDINANCE NO: G-13-21

AN ORDINANCE concerning

Stormwater management utility fees

FOR the purpose of establishing a new chapter of the City Code and transferring into that chapter the existing article relating to stormwater management; establishing a stormwater management fund; adopting a stormwater management utility fee; providing for certain exemptions and credits; and generally pertaining to stormwater management utility fees.

BY adding

Chapter 28, "Stormwater Management"
The Code of the City of Frederick, 1966 (as amended)

BY transferring

Chapter 25
Article VIII, "Stormwater Management", §§ 25-56 through 25-75.2, respectively
The Code of the City of Frederick, 1966 (as amended)

to be

Chapter 28
Article I, "Stormwater Management", §§ 28-1 through 28-22, respectively
The Code of the City of Frederick, 1966 (as amended)

BY adding

Chapter 28
Article II, "Stormwater Management Utility Fees"
The Code of the City of Frederick, 1966 (as amended)

WHEREAS, The City of Frederick ("City") has certain responsibilities with regard to the management of stormwater within its boundaries; and

WHEREAS, the City is authorized by State law to adopt a system of charges to fund the implementation of stormwater management programs; and

WHEREAS, the Board of Aldermen wishes to enact a stormwater management fee system based on factors that influence runoff, including land use and the amount of impervious surface on the property, as an alternative to an *ad valorem* tax; and

WHEREAS, all real property in the City, including property owned by the public and tax-exempt entities, contributes to runoff and either uses or benefits from the stormwater system; and

WHEREAS, a stormwater management program will reduce the amount of runoff, which contributes to nonpoint source pollution of waterways within the City; and

WHEREAS, the imposition of a stormwater management utility fee offers additional financial

management options that could assist the City in improving stormwater and drainage services; and

WHEREAS, it is in the best interests of the residents of the City that stormwater management be funded by the imposition of a stormwater management utility fee that equitably allocates the costs of stormwater management to all property owners, based on the extent to which a parcel of land contributes to the need for stormwater management.

SECTION I. NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK that Chapter 25, Article VIII, "Stormwater Management", §§ 25-56 through 25-75.2, respectively, is hereby transferred to be Chapter 28, Article I, "Stormwater Management", §§ 25-1 through 25-22, respectively, of The Code of the City of Frederick, 1966 (as amended).

SECTION II. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK that Chapter 28, Article II of The Code of The City of Frederick, 1966 (as amended), is hereby enacted to read as follows:

ARTICLE II. STORMWATER MANAGEMENT UTILITY FEES

§ 28-23. Authority.

This article is enacted pursuant to the Annotated Code of Maryland, Environment Article, § 4-204(d), which authorizes municipalities to adopt a system of charges to fund the implementation of stormwater management programs.

§ 28-24. Purpose.

To protect the public health, safety, and welfare, the City's stormwater management, storm drainage, and water quality programs must be supported by an adequate, sustainable source of revenue. All real property in the City, including property owned by public and tax-exempt entities, benefits from these City programs and services. Those with higher amounts of impervious surface area contribute greater amounts of stormwater or pollutants to the City's stormwater management facilities, storm drains, and streams, and therefore should carry a proportionate burden of the cost. The City has determined that it is in the interest of the public to enact a stormwater management utility fee that allocates program costs to all property owners based on impervious surface area measurement.

§ 28-25. Definitions.

For the purposes of this article, the following terms have the meanings given:

"**2000 Design Standards**" means the standards established in the 2000 Maryland Stormwater Design Manual.

"**Community association**" means a mandatory membership organization created for the maintenance of commonly owned real estate and improvements where the members are required to adhere to a set of rules and to pay certain assessments. "Community association" includes homeowners' associations and commercial property owners' associations.

"Commercial lot" means any lot that is used for a non-residential purpose and that is located in an NC, GC, PB, MO, M1, M2, or MXE zoning district, or within the commercial component of a PND or mixed use development.

"Condominium" means a residential property that is subject to a condominium regime established under the Maryland Condominium Act.

"ESD to the MEP" means environmental site design implemented to the maximum extent practicable, as defined in the Stormwater Management Ordinance (Article I of this Chapter).

"Downtown District" means the area of the City bounded on the north by 7th Street, on the south by South Street, on the west by Bentz Street, and on the east by East Street.

"Impervious surface" means a surface that is compacted or covered with material that is resistant to infiltration by water, including but not limited to, most conventionally surfaced streets, roofs, sidewalks, patios, driveways, parking lots, and other oiled, graveled, graded, compacted or similar surface that impedes the natural infiltration of surface water and from which stormwater runoff will be produced.

"Impervious surface area" means the number of square feet of horizontal surface covered by buildings and other impervious surfaces.

"Multifamily dwelling" means a building containing three or more dwelling units.

"Percent impervious factor" or "PIF" means average percent impervious surface area as defined in this article.

"Single family dwelling" means a dwelling unit designed and used exclusively by one family and surrounded on all sides by yards or other open space.

"Structural management facilities" include facilities that include recharge storage as a portion of the full water quality treatment volume if they are subject to routine structural maintenance.

"Townhouse dwelling" means one of a series of two or more attached dwelling units separated from one another by continuous party walls, which are without openings from lowest floor level to the highest point of the roof.

"Unit rate" means the stormwater management utility fee for 1,000 square feet of impervious surface area, as established by the fee schedule ordinance in effect at the time the fee is calculated.

§ 28-26. Stormwater Management Fund.

- (a) **Establishment.** The City's Stormwater Management Fund is a dedicated enterprise fund. It will be used only to fund stormwater management, storm drainage, and water resources programs and services.
- (b) **Revenues.** The following revenue will be deposited into the Stormwater Management Fund:

- (1) all fees established by the Board of Aldermen to cover the cost of administering the provisions of the City's Stormwater Management Ordinance (Article I of this Chapter), including but not limited to application and permit fees and fines and waiver fees;
 - (2) all revenue collected from the imposition of the utility fee pursuant to this article;
 - (3) all interest from deposits in the Stormwater Management Fund; and,
 - (4) any other revenue as may be determined by the Board of Aldermen, including but not limited to grants and special appropriations.
- (c) **Expenses.** The City may use the Stormwater Management Fund only for the following expenses:
- (1) regulatory review and inspection of stormwater management, sediment control, and storm drainage for development permits;
 - (2) watershed, stormwater management, floodplain, and storm drainage conveyance studies and planning;
 - (3) the study, design, purchase, construction, expansion, retrofit, repair, maintenance, landscaping, operation or inspection of stormwater management facilities, storm drainage, and other watershed improvements;
 - (4) land acquisition (including easements and rights-of-way) for stormwater management facilities or storm drainage;
 - (5) water quality programs related to State or Federal laws, including requirements for the City's National Pollution Discharge Elimination System permits;
 - (6) water quality monitoring, inspection, and enforcement activities, including illicit discharge and illicit connection investigations;
 - (7) water quality and pollution prevention education and outreach activities;
 - (8) program administration and implementation, including reasonable operating and capital reserves to meet unanticipated or emergency requirements for stormwater management, storm drainage and water quality; and,
 - (9) other stormwater management, storm drainage, and water quality programs that are reasonably required to protect public safety or meet applicable regulatory requirements.

§ 28-27. Applicability.

Except as otherwise provided in this article, this article applies to all improved real property in the City, including but not limited to government-owned real property and real property that is tax exempt from property tax by Title 7 of the Tax Property Article of the Annotated Code of Maryland.

§ 28-28. Administrative regulations.

The City Engineer may develop and implement administrative regulations as needed to implement the provisions of this article, including but not limited to procedures for the application for and granting of credits.

§ 28-29. Utility fees.

- (a) **Establishment.** The City shall charge an annual stormwater management utility fee on all improved real property in the City based on the amount of impervious surface area on each property and the cost of implementing the City's stormwater management, storm drainage, and water quality programs. Except as otherwise provided in this article, the owner of each lot is responsible for paying the stormwater management utility fee imposed for that lot. Any real property added to the State assessment role after July 1 or annexed into the City after July 1 may be subject to a partial year charge.
- (b) **Single family dwellings.** The City Engineer will calculate the utility fee for single family dwellings, except for those located within the Downtown District, in accordance with this subsection.
- (1) The PIF for a lot on which a single family dwelling is located (PIFSF) is defined as 30%.
- (2) The utility fee for each lot on which a single family dwelling is located is calculated as follows: $\text{PIFSF} \times \text{Lot Area in sf} \times \text{Unit Rate}/1000 \text{ sf}$.
- (c) **Townhouse dwellings, condominiums and multifamily dwellings.** The City Engineer will calculate the utility fee for townhouse dwellings, condominiums, and multifamily dwellings, except for those located within the Downtown District, in accordance with this subsection.
- (1) The PIF for a lot on which a townhouse, condominium or multifamily dwelling (PIFM) is located is defined as 55%.
- (2) The utility fee for each lot on which a townhouse, condominium or multifamily home is located is calculated as follows:
 $\text{PIFM} \times \text{Lot Area in sf} \times \text{Unit Rate}/1000 \text{ sf}$.
- (d) **Downtown District lots.** The City Engineer will calculate the utility fee for properties located within the Downtown District in accordance with this subsection.
- (1) The PIF for a lot located within the Downtown District (PIFD) is defined as 55%.
- (2) The utility fee for each Downtown District lot is calculated as follows:
 $\text{PIFDD} \times \text{Lot Area in sf} \times \text{Unit Rate}/1000 \text{ sf}$.
- (e) **Commercial lots.** The City Engineer will calculate the utility fee for commercial lots, except for those located within the Downtown District, by:
- (1) Determining the impervious surface area measurement in square feet for the lot; and

- (2) Multiplying the impervious surface area in square feet by the unit rate divided by 1,000 sf.
- (f) **Other improved lot fee.** The City Engineer will calculate the utility fee for any improved lot for which a calculation is not provided in subsections (b) through (e) of this section by:
 - (1) Determining the impervious surface area measurement in square feet for the lot; and
 - (2) Multiplying the impervious surface area in square feet by the unit rate divided by 1,000 sf.
- (g) **Common areas.** Common areas owned by a community association will be charged based on the total impervious surface area of the common area.
- (h) **Roads and other rights of way.** The City will not charge a stormwater utility fee for public roads or other property within a public right of way. The City will charge a stormwater utility fee to owners of private rights of way, meaning those rights of way that have not been dedicated to public use and are not maintained by the City or other governmental agency.

§ 28-30. Impervious surface area measurements.

- (a) **Methods.** The City Engineer shall calculate impervious surface area measurements using one of the following methods:
 - (1) geographic information systems analysis of aerial photography;
 - (2) measurement from approved as-built engineering drawings; or
 - (3) at the option of a property owner and at the property owner's sole expense, a field survey signed and sealed by a Maryland professional land surveyor.
- (b) **Exemptions.** An impervious surface area is exempt from measurement for purposes of this article if the area is:
 - (1) less than 100 square feet and located within an unimproved lot; or
 - (2) located within a public right-of-way.

§ 28-31. Credits.

- (a) **Generally.** The stormwater management utility fee for commercial lots may be reduced through the use of credits when an investment in on-site stormwater management system results in a reduced impact on the public stormwater management system. Residential lots (single family dwellings, townhouse dwellings, multifamily dwellings, and condominiums) are not eligible for credits, except for those properties where stormwater management has been provided through ESD to the MEP.

- (b) **Amount of credit.** The City Engineer shall determine the amount of the credit based on the extent of runoff control provided by the on-site stormwater management system, as further described in this section and the administrative regulations.
- (c) **Application.** A property owner seeking credits against the stormwater management utility fee shall submit an application, including an administrative fee as established by the Board of Aldermen, in accordance with the requirements set forth in the administrative regulations.
- (d) **Basis.** The amount of a credit is a percentage of the amount of impervious surface area draining to the private stormwater management facility, as specified in subsections (e) through (g) of this section.
- (e) **Previous standards credit.** An eligible structural management facility that does not meet the 2000 Design Standards may receive a maximum cumulative credit of 20% against the utility fee.
 - (1) A 10% credit will be applied against the utility fee if the stormwater management facility provides stormwater quality control; and
 - (2) A 10% credit will be applied against the utility fee if the stormwater management facility provides stormwater quantity control.
- (f) **2000 design standards credit.** An eligible structural management facility that meets the 2000 Design Standards may receive a maximum cumulative credit of 50% against the utility fee.
 - (1) A 25% credit will be applied if the facility provides stormwater quality control for water quality volume (WQv); and
 - (2) A 25% credit will be applied if the facility provides stormwater quantity control for channel protection storage volume (CPv).
- (g) **ESD to the MEP credit.** Any property for which stormwater management has been provided through ESD to the MEP may receive a maximum cumulative credit of 60% against the utility fee.
 - (1) A 50% credit will be applied if the full ESD volume is treated through a combination of ESD and structural management practices.
 - (2) An additional 10% credit will be applied if the full ESD volume is treated solely through ESD practices.

§ 28-32. Collection.

- (a) **Means of collection.** The stormwater management fee for an owner of property who is using the City's water or sewer service will be billed and collected as part of the water and sewer bill for that property. The fee will be included as a separate line item on the water and sewer bill for each property subject to the fee. The stormwater management fee for an owner of property who is not using the City's water or sewer service will be billed and collected on a quarterly basis.

- (b) **Common areas.** Except as otherwise provided in this subsection, the utility fee for common areas owned by community associations will be billed directly to the community association.
- (c) **Delinquency.** Unpaid stormwater management utility fees may be collected in any manner permissible under Maryland law, including but not limited to the methods specified in this section.
 - (1) Upon the failure of a property owner who is using the City's water service to pay the stormwater management utility fee within 30 days after it is due, the Director of Finance will issue a written notice to the property owner, stating that if the fee is not paid within 10 days, water service to the property will be discontinued and suit may be instituted to recover the amount of the fee. In addition, a charge of one percent per month will be added to any stormwater management utility fee not paid thirty days after it is due as established by this article.
 - (2) The Department of Public Works shall discontinue water service to the property until the owner pays the amount due, plus a reconnection charge as established by the Board of Aldermen. Once discontinued, water service will be restored only after payment in full of the stormwater management utility fee and any other outstanding water charges.
 - (3) Any unpaid stormwater management utility fee will be a lien against the property to be collected in the same manner as municipal taxes are collected.

§ 28-33. Adjustments.

- (a) **Submission of request.** Within 30 days after a bill is mailed or issued to a property owner, the property owner may request an adjustment of the utility fee. A request for an adjustment must be submitted to the Director of Finance in writing, stating the grounds for the request. Additional submittal requirements may be set forth in the administrative regulations.
- (b) **Criteria.** The Director of Finance may adjust the utility fee if:
 - (1) the property was incorrectly classified under § 28-29;
 - (2) the impervious surface area was measured incorrectly;
 - (3) there is a mathematical error in calculating the utility fee; or
 - (4) the property owner invoiced for the fee was identified in error.
- (c) **Appeals.** The decision of the Director of Finance on a utility fee adjustment is a final decision from which an aggrieved party may appeal, within 30 days after the decision, to the Circuit Court for Frederick County in accordance with Title 7, Chapter 200 of the Maryland Rules.

SECTION III. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK that in the event any provision, section, sentence, clause, or part of this ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause, or part of this ordinance, it being the intent of the City that such remainder shall be and shall remain in full force and effect.

SECTION IV. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK that this ordinance shall take effect on January 1, 2014, and all other ordinances or parts of ordinances inconsistent with the provisions of this ordinance will as of that date be repealed to the extent of such inconsistency.

PASSED: September 5, 2013

DATE: September 5, 2013



Randy McClement, President,
Board of Aldermen

APPROVED:

DATE:



Randy McClement, Mayor

September 5, 2013

Approved for Legal Sufficiency:



Candice A. Nickols
City Attorney