

ORDINANCE NO. (2003) - 537

AN ORDINANCE TO CREATE A STORMWATER SERVICES ADVISORY COMMISSION AND TO ESTABLISH A STORMWATER MANAGEMENT UTILITY.

Whereas, Chapter 160A, Article 16 of the General Statutes authorizes the City of Raleigh to establish a stormwater management enterprise program, and

Whereas, State and Federal laws, regulations, and rules require the City of Raleigh to limit pollutants in stormwater discharged into receiving waterways through various controls and management practices of stormwater quality, flow, and quantity, and

Whereas, The North Carolina Department of Environment and Natural Resources has adopted, in NCAC title 15A Subchapter 2B, surface water and wetland standards for the Neuse River which requires the City of Raleigh to regulate stormwater runoff and reduce nitrogen loads from stormwater runoff, and

Whereas, The City of Raleigh has certain obligations and responsibilities for the planning, designing, construction, operation and maintenance of the stormwater management system within its municipal borders, and

Whereas, The Stormwater Utility Stakeholders Group established by the City Council recommended to the Council that annual funding for stormwater management programs be increased from 6 million dollars to 11.8 million dollars per year, and

Whereas, Based on various completed drainage basin studies conducted on behalf of the City of Raleigh, it is estimated that the City of Raleigh has a backlog of approximately 100 million dollars of stormwater capital improvements required to meet basic flood control, stream stabilization and water quality objectives.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RALEIGH, NORTH CAROLINA that:

Section 1. Section 6-1002(b) of the Raleigh City Code is amended to replace the words “storm drainage system and structures” in subsection (5) with the words “stormwater management system” and to delete subsection (6) in its entirety, and in lieu thereof insert the following:

“(6) Manage the stormwater services of the City.”

Said section is further amended to insert at the end of subsection (8) the following language: “, and the construction, reconstruction, extending and otherwise building or improving storm sewer and drainage systems.” Section 6-1002(b) is amended yet further to delete subsection (11) in its entirety and in lieu thereof insert the following:

“(11) Enforce the following: soil erosion and sedimentation control (Part 10 Chapter 5), floodprone area regulations (Part 10 Chapter 4), sidewalks, and driveways (Part 10 Chapter 7) and stormwater control and watercourse buffer regulations (Part 10 Chapter 9). “.

Section 2. Chapter one of Part 6 of the Raleigh City Code is to create two articles. Article A shall appear before section 6-1001 and it shall read”

**“ARTICLE A.
DEPARTMENT OF CENTRAL ENGINEERING”**

Article B shall follow section 6-1002 and it shall read:

“

**Secs. 6-1003 – 6010.
RESERVED.**

**ARTICLE B.
STORMWATER MANAGEMENT ADVISORY COMMISSION**

**Sec. 6011.
ESTABLISHMENT, COMPOSITON, DUTIES AND PROCEDURES.**

(a) Establishment and Composition:

The Raleigh Stormwater Management Advisory Commission *shall* be composed of ten (10) members who *shall* reside within the *City* limits. The membership of the Commission *shall* be appointed by the *Council*. Each member *shall* be appointed for a period of two years except that the *Council* in appointing the original membership of the Commission *may* prescribe terms of fewer years to the end that the terms of the various

members of Stormwater Management Advisory Commission *shall* be staggered.

(b) Duties:

The Stormwater Management Advisory Commission *shall* have the following charge and duties:

- (1) The Commission *shall* review and recommend to the *Council* stormwater management policies, policy changes, long range plans and their budgetary and rate impacts.
- (2) The Commission *shall* review and comment to the *Council* on the annual stormwater management capital improvements program.
- (3) The Commission *shall* respond to the City Council and city staff requests for advice on matters related to stormwater services and the stormwater management utility.
- (4) The Commission *shall* present the *Council* with an annual report of key actions and issues and its annual work program.

(c) Procedure:

The Stormwater Management Advisory Commission is directed to adopt rules of procedure necessary to the conduct of its affairs and in keeping with the provision of this *Code*, all policies of the *City Council*, and applicable State laws. Such rules of procedure, and any modifications to same, *shall* be submitted to the *City Council* for review and approval. Except as provided in this *Code*, the rules of procedure adopted by the Commission *shall* at least provide for: selection of the *officers* of the Commission; the time and place of its regular meetings, which *shall* at least be held bi-annually, and the calling of special meetings; the procedures of the conduct of public hearings and voting. The Commission *shall* elect from its membership at least a *chairperson* and vice *chairperson*, who *shall* serve for terms of one (1) *year*, who *shall* be eligible for reelection, and who *shall* have the right to vote. The *chairperson shall* preside over the Stormwater Management Advisory Commission. In the absence or disability of the *chairperson*, the *vice-chairperson shall* perform the duties of the *chairperson*. All meetings of the Stormwater Management Advisory Commission *shall* be open to the public, in accordance with the North Carolina Open Meetings Law, G.S. 143-318.10 et seq., and a public record *shall* be kept of the Commission's resolutions, proceedings, and actions. The rules of procedure and minutes of the Commission are maintained as separate documents in the nature of a public record at the *City Clerk's Office*. The

Central Engineering Department *shall* provide such technical, administrative, and clerical assistance as required by the Commission.

Section 3. Part 6 of the Raleigh City Code is amended to add a new chapter related to stormwater water services, including provisions for a stormwater management utility, and the new chapter shall read as follows:

**“ CHAPTER 4.
STORMWATER SERVICES**

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| Sec. 6-4001 | Findings. |
| Sec. 6-4002 | Definitions. |
| Sec. 6-4003 | Creation of stormwater management account. |
| Sec. 6-4004 | Stormwater management service charges. |
| Sec. 6-4005 | credits applicable to stormwater management service charges. |
| Sec. 6-4006 | Billing method, responsible parties. |
| Sec. 6-4007 | Payment provisions; utility termination. |
| Sec. 6-4008 | Appeal. |
| Sec. 6-4009 | Limitation of responsibility. |

**Sec. 6- 4001.
Findings.**

- (a) Stormwater poses a threat to the public health, safety, and welfare because if unmanaged it floods properties, erodes watercourses and channels, and pollutes streams and rivers.
- (b) By mapping, planning, constructing, operating, cleaning, regulating and maintaining the natural and constructed stormwater management system, the *City* reduces the adverse effects of stormwater and improves the quality of groundwater, streams, rivers, and lakes in and around the *City*.
- (c) Providing a stable source of funding for stormwater services, as hereafter defined, can best be accomplished through stormwater management utility funds. Such a utility will benefit owners and occupants of developed land in the *City* and other *Raleigh* citizens.
- (d) The amount of impervious surface on a property is the single most important factor affecting the peak rate of runoff, the total volume

discharged, and pollutant loadings of stormwater that flows from property.

State law reference: Authority to adopt a stormwater management utility, Chapter 160A, Article 16

Sec. 6- 4002.

Definitions.

All definitions as used in this Chapter, unless the context clearly indicates otherwise, shall have the meaning given herein:

Customer or consumer means the *person* or entity to which a bill for stormwater service charges is sent. This *may* include the owner, occupant, or tenant of property, a homeowner's association with responsibility for property or for common areas associated with property, or a person or entity who has requested in writing to be billed for stormwater management service charges for a property.

Developed land means real property that contains *impervious surfaces*, and includes improved land without structures and land on which improvements are under construction.

Dwelling unit means one or more rooms physically arranged to create an housekeeping establishment with separate facilities for cooking, sleeping and toilet for occupancy by one or more *persons*.

Impervious surface means any surface which because of its material composition or compacted nature impedes or prevents natural infiltration of stormwater into the soil. Impervious surfaces include, but are not limited to, roofs, roof extensions, patios, balconies, decks, including wooden slatted decks, athletic courts, swimming pools, excluding the water area of swimming pools, streets, parking areas, driveways, sidewalks, and any concrete, stone, brick, asphalt, or compacted gravel surfaces. Ungraveled natural footpaths, water surfaces of lakes streams and swimming pools and drain fields are not *impervious surfaces*.

Other residential and nonresidential developed land means any individual lot or parcel of *developed land* that is not *single-family developed land*. It includes, but is not limited to, land upon which there are residential structures

that contain more than one dwelling unit, such as multi-family dwellings (duplexes and greater), manufactured home park, as defined in Part 10, §10-2002, condominiums, apartments, boarding houses, rooming houses, fraternity houses, sorority houses, dormitories, churches; institutional buildings, whether public or private; hospitals, rest homes, public and private schools, colleges, and universities, commercial, office, hotels and motels, industrial buildings, storage areas, parking lots and land containing improvements under construction or *impervious surfaces*.

Property owner or owner means the owner of a real property as shown on the tax records of Wake or Durham County.

Single-family Equivalent Unit (SFEU) is the median amount of impervious surface on a *single-family* (detached home) *developed land* in the *City* as established by City Council resolution.

Single-family developed land means an individual lot or parcel of *developed land* with only one single-family (attached [townhome] or detached) *dwelling unit*, one manufactured home, or one mobile home, and the ownership interest of the land and of the *dwelling unit* are united and identical. *Single-family developed land shall* not include structures used primarily for nonresidential purposes or *other residential and nonresidential developed property*.

Stormwater management service charge is the charge to provide *stormwater services* to *developed land*. The charge is based upon the *Single-family Equivalent Unit (SFEU)* as calculated for that property.

Stormwater management system or system means the system of natural and constructed devices for collecting and transporting or treating stormwater. It includes, but is not limited to, structural drainage systems such as open swales and ditches, catch basins, pipes, inlets, storm sewers, drains, culverts, junction boxes, and other stormwater management facilities that affect the quality and quantity of stormwater located within dedicated open public street rights-of-way and City of Raleigh permanent drainage easements accepted by the *City* and all natural stormwater drainage systems.

Stormwater management utility funds mean the stormwater management service charges and the interest generated by those charges.

Stormwater services means *City* stormwater management programs designed to protect water quality by controlling the level of pollutants in, and

the quantity and flow of, stormwater and *City* service of structural and natural stormwater and drainage systems of all types. Stormwater services include any cost necessary to assure that all aspects of stormwater quality and quantity are managed in accordance with federal and State laws, regulations and rules, and costs related to the construction, operation, maintenance, inspection, management and regulation of the *stormwater management system*.

Sec. 6- 4003.

Creation of stormwater management account.

All *stormwater management service charges* and interest generated by such charges, the *stormwater management utility funds*, shall be placed in a separate *City* account and shall be used by the City of Raleigh solely for the operational costs, maintenance costs, and management costs, indirect costs, capital improvements, debt principal and debt service, and establishment of a reserve fund for *stormwater services*. The City may use funds that are not *stormwater management utility funds* to provide *stormwater services*.

Sec. 6- 4004.

Stormwater management service charges.

(a) All *developed land* in the *City*, whether public or private, shall be subject to a *stormwater management service charge*. Exemptions shall not be allowed based on age, tax exemption, or other status of an individual or organization. *Stormwater management service charges* may be subject to a credit system as further provided herein.

(b) *Stormwater management service charges* on *developed land* shall be based on a schedule of rates, charges, tiers, and late fees fixed and established from time to time by the City Council and maintained on file in the offices of the Finance Director and Chief Engineer. *Stormwater management service charges* will be determined and modified from time to time by the City Council, so that the total revenues generated by said charges will be used to pay the principal and the interest on the debt incurred for stormwater purposes, and such expenses as are reasonably necessary for providing *stormwater services* within the City of Raleigh.

Cross reference: Cross reference: The amount of *impervious surface* area for *single-family equivalent units*, the base rate, the tier structure for *single-family developed land* and late charges are set forth in Resolution No. (2003) -888

_____.

(c) Computation of *stormwater management service charges*.

For *Other residential and nonresidential land*, the monthly *stormwater management service charges* on *developed land* is calculated by dividing the total *impervious surface* area of the property divided by one *single-family equivalent unit*, rounded to the nearest tenth, multiplied by the established monthly single-family equivalent unit rate as fixed by City Council Resolution.

For developments with common property containing *impervious surfaces*, such as townhouse developments, cluster unit developments, or condominiums, each *dwelling unit shall* be responsible for its equal pro rata share of the total *impervious surfaces* area of the common areas of the development unless other arrangements are made pursuant to section 6-4006(e).

(d) The following exemptions from *stormwater management service charges* are allowed:

(1) Undeveloped land.

(2) Improved public streets, not including internal roads within public facilities which have been conveyed to the North Carolina Department of Transportation or City of Raleigh and which are used by the general public for motor vehicle transportation, and private streets constructed in accordance with the Raleigh City Code and City of Raleigh Streets Sidewalks and Driveway Access Handbook.

(3) *Developed land* with less than four-hundred (400) square feet of *impervious surface* area.

(4) Railroad tracks. However, railroad stations, maintenance buildings or other *developed land shall* not be exempted from *stormwater management service charges*.

(5) Portions of *developed land* that directly drain outside the city limits

No exemption authorized under subsections (3) through (5) *shall* be made until a written request to the Chief Engineer of the *City* documenting the application of the exemption is approved. The Chief Engineer *may* approve or reject the request in whole or in part.

Sec. 6- 4005.

Credits applicable to stormwater management service charges.

(a) The *City* may provide a system of credits to reduce *stormwater management service charges* for properties on which stormwater control measures substantially mitigates the peak discharge or runoff pollution flowing from such properties or substantially decreases the *City's* cost of maintaining the *stormwater management system*. The Central Engineering Department will develop written policies to implement the credit system. No credit will be authorized until the City Council approves written policies to implement the system of credits; a copy of the approved policies *shall* be on file with the City Clerk. The *City's* policies *may* make credits retroactive to the date *stormwater management service charges* were initiated. Any bill charges requiring adjustments must be applied through the utility billing system. But no credit will be granted for more than three past years. Nothing *shall* prevent the City Council from modifying the adopted system of credits, and such modifications *may* apply to holders of existing credits.

(b) Each credit allowed against the *stormwater management service charge* is conditioned on the continuing operation and functioning of the stormwater control measure as designed; credited stormwater control measures must comply with all applicable laws, ordinances and regulations, and credits *may* be rescinded for noncompliance with these standards.

(c) Each credit for which a *customer* applies *shall* be subject to review and approval by the Chief Engineer or his designee. The Chief Engineer *may* approve or reject any application for a credit in whole or in part.

(d) Credits *shall* only be applied to *developed lands* containing the credited stormwater control measure. For developments with common property containing credited stormwater control measures such as townhouse developments, cluster unit developments, or condominiums, each *dwelling unit shall* be eligible for its equal pro rata share of the credit unless other arrangements for billing the *stormwater management service charge* are made pursuant to section 6-4006(e).

Sec. 6- 4006.

Billing method, responsible parties.

(a) Bills for *stormwater service shall* be sent at regular periodic intervals. *Stormwater*

management service charges may be billed on a combined utility bill that also contains charges for sewer service or combined sewer and water service and/or solid/waste management service. Stormwater management service charges that are shown on a combined utility bill may be for a different service period than that used for sewer service or combined sewer and water service.

(b) *Stormwater management service charges for a property that receives sewer service or combined sewer and water service will be sent to the customer receiving such service. However, where multiple water and sewer accounts exist for a single parcel, the bill for stormwater management service charges may for good cause shown at the discretion of the City be sent to the property owner. Additional policies concerning billing will be developed by the City.*

(c) *The property owner is ultimately responsible for payment of the stormwater management service charge for property for which the party billed has not paid the stormwater management service charge.*

(d) *Owners of property may, with the consent of the City, designate each occupant of the property as the party to receive the bill for stormwater management service charge by completing and properly executing a form provided by the City. Such designation shall fairly allocate the impervious surfaces actually used by the billed party, and it shall be binding for the period of time specified by the City. No occupant may be designated as the party to receive the bill for stormwater management service charge unless the occupant is also receiving a City sewer service or combined sewer and water service bill. Such transfer does not relieve either the owner or occupant from liability for stormwater management service charges if they are not paid by the party billed.*

(e) *The residents of townhouse, cluster unit, and condominium developments and other similar properties containing impervious surface in common areas may in accordance with this subsection charge the total impervious surface of all commonly-owned or common areas to the homeowners association. The bill for stormwater management service charge will be sent to the homeowners' association upon official request of a majority of all lot or unit owners of the association; provided that (1) the current adopted budget of the association includes this additional charge to the homeowners association, (2) the association is receiving a City sewer service bill or combined sewer and water service bill and (3) a payment bond in the amount of six months estimated bill in favor of the City. Stormwater management service charges applied to all individually-owned property within the development may likewise be billed to the homeowners association. Any request for homeowner association billing must contain all information required by the City and shall be binding for the period of time specified by the City.*

Sec. 6- 4007.**Payment provisions; utility termination.**

(a) Where *stormwater management service charges* appear on a combined utility bill or a master summary bill, and a *customer* does not pay the service charges for all the utilities on the bill, the partial payment will be applied to the respective service charges in the following order: delinquent *stormwater management service charges*, delinquent recycling and/or solid waste management service charges, delinquent sewer service or combined sewer and water charges, current stormwater charges, current recycling and/or solid waste management service charges and current sewer service or combined sewer and water charges.

(b) *Stormwater management service charges* are due at the collection office in *City* hall within the time period stated on the bill. Bills not paid within this time *shall* be charged a late fee as set forth in the City Council adopted schedule of charges.

(c) Where a property receives sewer service or combined sewer and water service, if stormwater management service charges for that property are not paid, sewer service or combined sewer and water service to that property *may* be terminated, whether or not the *stormwater management service charges* were included on a combined utility bill. Termination will be handled in accordance with standard operation provisions of the *City*. At least twenty-one days prior to termination of service, the *City* will post a sign or signs either upon the subject property or at convenient locations as it deems appropriate. Such posting *shall* advise that *City* sewer service or combined sewer and water service *may* be terminated and direct further inquiry to a listed telephone number. All postings are for the convenience of the public and any defective posting *shall* not invalidate the termination of *City* utility services.

(d) No property for which *stormwater management service charges* are outstanding is entitled to receive sewer service or combined sewer and water service until the outstanding *stormwater management service charge* on that property is paid. No *customer* with a delinquent stormwater management service account is entitled to open a sewer service or a combined sewer and water account at the same or different location until the delinquency has been satisfied.

(e) If property is underbilled, or not billed, or a bill is sent to the wrong party, the *City* may backbill up to a three-year period.

(f) *Customers* with complaints about the accuracy of *stormwater management service charges* are entitled to a review as provided in section 6-4008. No charge will be retroactively adjusted to resolve *customer* complaints for a period of

more than three-year prior to the date the *City* received the complaint. Any bill charges requiring adjustment must be applied through the utility billing system.

Sec. 6- 4008.
Appeal.

Any *customer* who believes the provisions of this chapter have been applied in error *may* appeal in the following manner:

- (1) An appeal must be filed in writing with the Chief Engineer. At the discretion of the Chief Engineer, the appeal *may* be required to include a survey prepared by a registered land surveyor and such other information that show the total property area, the *impervious surface* area, and any other features or conditions which influence the hydrologic response of the property to the stormwater events.
- (2) Using the information provided, the Chief Engineer *shall* conduct a technical review pursuant to good engineering practices. The Chief Engineer *may* adjust the *stormwater service management charge* so long as the adjustment is in conformance with the general purpose and intent of this chapter. At the conclusion of the review, the Chief Engineer *shall* issue a written determination stating whether an adjustment to the *stormwater service management charge* is appropriate, and if so, the percentage of such adjustment. Any approved adjustments must be communicated in writing to the appropriate utility billing staff.
- (3) An appeal *may* be taken from any decision of the Chief Engineer which is adverse to the *customer* by giving notice of appeal to the City Manager within thirty (30) days after service of the Chief Engineer's written decision on the *customer*. Notice of appeal *shall* be given by the *customer* by delivery of a written statement to the City Manager stating the grounds for the appeal and providing the City Manager with a copy of the written decision of the Chief Engineer. The Chief Engineer *shall* transmit to the City Manager and the *customer* all documents constituting the record upon which the Chief Engineer's decision was made.
- (4) All decisions of the Chief Engineer and City Manager *shall* be served on the *customer* personally or by registered or certified mail. Mailing *shall* be based upon the billing address of the *customer*.

- (5) Following the decision of the City Manager, the *customer may* make an appeal to the City Council. The City Council *shall* fix a reasonable time for the hearing of an appeal, *shall* give due notice of such hearing to the *customer* and the manager, and *shall* render its decision within a reasonable time.
- (6) When an appeal is from a decision authorizing an adjustment to the *customer's* bill, the Chief Engineer's decision *shall* remain in effect until and unless reversed or otherwise modified.

No adjustment to a *customer's* bill *shall* be made which is for more than the three-year period immediately preceding the date that the *customer's* request is first received by the *City*.

Sec. 6-4009.
Limitations of responsibility.

(a) The *City shall* be responsible only for the portions of the drainage system which are in City maintained street rights-of-way and permanent storm drainage easements conveyed to and accepted by the City. Repairs and improvements to the drainage system *shall* be in accordance with established standards, policies, and schedules.

(b) The *City's* acquisition of permanent storm drainage easements and/or the construction or repair by the *City* of stormwater control measures and drainage facilities does not constitute a warranty against stormwater hazards, including, but not limited to, flooding, erosion, or standing water.”.

Section 4. All laws and clauses of laws in conflict herewith are hereby repealed to the extent of said conflict.

Section 5. If this ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given separate effect and to this end the provisions of this ordinance are declared to be severable.

Section 6. This ordinance shall become effective five days following its adoption.

ADOPTED: 11/5/03
EFFECTIVE: See section 6

This ordinance prepared by the Raleigh City Attorney's Office

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