

AN ORDINANCE ADDING CHAPTER 19 – STORMWATER MANAGEMENT UTILITY-
TO THE TOWN CODE
OF THE TOWN OF HILLSBOROUGH

THE BOARD OF COMMISSIONERS OF THE TOWN OF HILLSBOROUGH ORDAINS:

Section 1. Add Chapter 19 to the Town Code to create a stormwater management utility as follows:

CHAPTER 19 - STORMWATER MANAGEMENT UTILITY

ARTICLE I. - GENERAL PROVISIONS

Section 19-1. Findings.

- a) Water quality standards mandated by state and federal law are requiring that local governments develop more detailed, advanced, and costly stormwater programs.
- b) Effective stormwater management should be provided to protect, to the extent practicable, the citizens of the Town from the loss of life and property damage from flooding.
- c) The construction, operation, and maintenance of stormwater conveyance systems requires long term planning and stable and adequate funding.
- d) Chapter 160A, Article 16 of the North Carolina General Statutes, authorizes the Town to acquire, construct, establish, enlarge, improve, extend, 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.
- e) The establishment of a Stormwater Management Utility that would be accounted for as a separate enterprise fund and would facilitate the provision of a Stormwater Management Program is reasonable and in the public interest.
- f) North Carolina General Statute §160A-314 authorizes the Town of Hillsborough 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.

Section 19-2. Purpose.

A Stormwater Management Utility is hereby created as an identified fiscal and accounting fund for the purpose of comprehensively addressing the Stormwater management needs of the Town. The Town's stormwater management needs are met herein (1) 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, (2) by establishing a schedule of charges, (3) by defining the control, collection, and disbursement of funds, and (4) by setting forth penalties, methods of appeals and exemptions.

Section 19-3. Definitions Applicable to Article.

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:

- (1) *Developed Land* shall mean a land parcel altered from its Natural State.
- (2) *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 storm water runoff.
- (3) *Equivalent Residential Unit* (ERU) is a unit of measure of impervious surface (in square feet) that represents the impervious surface area on the average Single Family Residential Parcel in the Town as a unit of comparison. ERU shall mean, for the purposes of this Ordinance, 2,800 square feet of impervious surface.
- (4) *Impervious Surface* shall mean developed areas of land that prevent or significantly impede the infiltration of stormwater into the soil. Typical Impervious Surfaces 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. Impervious Surface Area is synonymous with Built Upon Area (“BUA”) as defined in the Falls Model Stormwater Ordinance for New Development as approved by the North Carolina Environmental Management Commission on March 10, 2011.
- (5) *Natural State* shall describe existing undeveloped land where the soil and vegetation characteristics have not been substantially modified or disturbed by human activities and the hydrologic function is in an unaltered or natural condition.
- (6) *Non-residential Parcel* shall mean a parcel that is Developed Land not used as a single family residence; this includes but is not limited to commercial, industrial, institutional properties, and apartment complexes.
- (7) *Residential Parcel* shall mean a parcel with a single family residential structure used as a single family dwelling and whose primary uses is as a single family residence; residential condominiums/townhomes subdivided as individual parcels are considered residential parcels.
- (8) *Service Charge* shall mean a stormwater management service charge, applicable to a land parcel, which 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 land parcel. The Service Charge may vary from one land parcel to another based on the Impervious Surface and pollution load. The Service Charge may vary for the same class of service in different areas of the Town Limits and may vary according to classes of service.
- (9) *Stormwater* shall mean the runoff from precipitation that travels over Natural State or Developed Land surfaces and enters a Drainage System.

- (10) *Stormwater Utility Manager* is a person working for or on behalf of the Town to administer the Stormwater Management Program.
- (11) *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.
- (12) *Stormwater Management Utility* shall mean an organizational structure established by the Town, 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 and found on land parcels located within the Town Limits.
- (13) *Town Limits* shall mean all land within the corporate limits of the Town of Hillsborough.
- (14) *Undeveloped Land* shall mean all land that is not altered from its Natural State.

Section 19-4 Establishment of a Stormwater Management Utility and Enterprise Fund.

- a) There is hereby established a Town of Hillsborough 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 of Hillsborough 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 having been given and a public hearing held by the Town Board as required by N.C. Gen. Stat. §160A-314(a1)(1). The hearing may be held concurrently with the public hearing on the proposed budget ordinance. Funding may also include other funds transferred or allocated to the Stormwater Management Utility by the Town Board. All revenues and receipts of the Stormwater Management Utility shall be placed in the Stormwater Management Enterprise Fund and all expenses of the Stormwater Management 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 Board.

Section 19-5. Jurisdiction.

The jurisdiction of the Stormwater Management Utility shall extend throughout the Town Limits.

ARTICLE II. – ESTABLISHMENT OF STORMWATER SERVICE CHARGE AND CREDITS

Section 19-6. Rate Structure.

- a) Every parcel within the Town Limits shall be subject to a Stormwater Management Utility Service Charge derived from the rate structure described below. The 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 4 shall be based on the following parameters:

1. Residential Parcels shall be assessed an annual, flat Service Charge based upon the schedule of rates approved by the Town Board as described in Section 7 of this ordinance.
 - i. Each Residential Parcel shall be charged for one (1) ERU of impervious area.
 - ii. Each residential unit in a townhome, condominium, or other multifamily structure with individual unit ownership and duplexes shall be billed for one (1) ERU of impervious area.
2. Non-residential Parcels shall be assessed an annual Service Charge based on the tier of the property. The schedule of rates for each tier is based on the number of ERUs in for the midpoint of the tier. Tiers are determined by the amount of Impervious Surface Area on the parcel as follows:
 - i. Tier 1 - 0 to 10,000 square feet of Impervious Surface Area;
 - ii. Tier 2 - 10,001 to 30,000 square feet of Impervious Surface Area;
 - iii. Tier 3 - 30,000 to 100,000 square feet of Impervious Surface Area;
 - iv. Tier 4 - 100,001 to 200,000 square feet of Impervious Surface Area;
 - v. Tier 5 - 200,001 square feet of Impervious Surface Area and above.
- c) Based on an analysis of Impervious Surface Area on properties throughout the Town, an Impervious Surface Area of 2,800 square feet is hereby designated as one ERU.
- d) Parcels maintained by residential homeowner associations that contain a common use building (i.e. “club house, pool house, etc.”), parking and/or a swimming pool shall be charged one (1) ERU of impervious area.

Section 19-7. Schedule of Fees and Charges.

The schedule of rates, fees, charges, and penalties related to this Ordinance shall be adopted after notice and a public hearing as required by N.C. Gen. Stat. §160A-314. As set out in N.C. Gen. Stat. §160A-314, the hearing may be held concurrently with the public hearing on the Town’s proposed budget. The schedule of rates, fees, charges, and penalties shall apply to all land parcels within the Town Limits, except as may be altered by credits or exemptions provided in this Article.

Section 19-8. Billing and Collection

- a) Method of billing. Billing and collection of the Stormwater Management Utility Service Charges for Stormwater management services and facilities shall be billed with property taxes under the general administration of the Town Manager. Stormwater Management Utility Service Charges may be made payable in the same manner as property taxes, or in such other manner as may be determined by the Town Manager.
- b) Delinquencies. Stormwater Management Utility Service Charge billings that are not paid within the time allowed for the payment of property taxes shall be collected by any remedy provided by law for collecting and enforcing private debts or in any other manner authorized by law.
- c) Application of payment. Payment will be applied to a customer’s bill in the following order:
 1. Interest, to the extent allowed by law.
 2. Civil penalties assessed pursuant to this Ordinance.
 3. Stormwater Management Utility Service Charge.

- d) Appeal of disputed bills and adjustments. If any citizen wishes to dispute a Stormwater Management 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 from the date of 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 Stormwater Utility 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.

Section 19-9. Exemptions and Credits Applicable to Stormwater Management Service Charges.

- a) *Statement of Policy.* Except as provided in this section, no public or private property shall be exempt from Stormwater Management Utility Service Charges or receive a credit or offset against such Stormwater Management Utility Service Charges. No exemption or reduction in Stormwater Management Utility Service Charges shall be granted based on the age, tax or economic status, race, or religion of the customer, or other condition unrelated to the cost of providing stormwater services and facilities.
- b) *Exemptions.* No public or private property shall be exempt from Stormwater Management Utility Service Charges, with the following exceptions:
1. Publically dedicated roads, streets, greenways, sidewalks and other publically dedicated rights of way and easements for vehicular or pedestrian traffic that are available for use by the general public for transportation purposes, shall be exempt from Town Stormwater Management Utility Service Charges. This exemption shall not apply to internal site roadways within public or private facilities.
 2. Railroad rights-of-way used or formerly used for trackage shall be exempt from Town Stormwater Management Utility Service Charges. This exemption shall not be construed to apply to railroad stations, maintenance buildings, or other developed land used for railroad purposes.
 3. Undeveloped Land, open space or land parcels with fewer than 500 square feet of Impervious Surface Area.
 4. Parcels maintained by homeowner associations as open space or with engineered stormwater control measures.
 5. Town-owned property.
- c) *Credits.* The following credits may be allowed upon adoption of a Credit Application Instruction Manual by the Town Board:
1. Non-residential parcels that provide measures to mitigate the impacts of runoff on the stormwater system beyond what was required at the time the project was approved by the Town may be eligible for one or more credits to the Stormwater Management Utility Service Charge.
 2. The Credit Application Instruction Manual may be approved by the Town Board and placed on file with the Town Clerk at which time it shall be followed in establishing applicable credits to a customer's Stormwater Management Utility Service Charge.

3. Each credit allowed against a customer's Stormwater Management Utility Service Charge shall be conditioned on continuing compliance with the performance standards set forth in the Credit Application Instruction Manual and may be rescinded for noncompliance with those standards.
4. Each credit for which a customer applies shall be subject to review and approval by the Stormwater Utility Manager. The Stormwater Utility Manager may approve or reject any application for a credit in whole or in part.

ARTICLE III. – USE OF STORMWATER UTILITY ENTERPRISE FUNDS

Section 19-10. 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.

Section 19-11. Miscellaneous.

- a) This Ordinance supersedes all other Town ordinances, or parts of ordinances in conflict herewith.
- b) 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 2. All provisions of any town ordinance in conflict with this ordinance are repealed.

Section 3. This ordinance shall become effective upon adoption.

The foregoing ordinance having been submitted to a vote, received the following vote and was duly adopted this 13th day of June, 2016.

Ayes: 5

Noes: 0

Absent or Excused: 0


Katherine M. Cathey, Town Clerk