

ORDINANCE NO. 6146

AN ORDINANCE TO AMEND THE KINGSPORT CODE OF ORDINANCES CHAPTER 106, UTILITIES TO ESTABLISH A UTILITY FOR STORMWATER MANAGEMENT; TO ESTABLISH THE FUNCTION OF THE UTILITY; TO CREATE AN ENTERPRISE 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 the entities such as the city to implement a stormwater management program 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; and

WHEREAS, Tennessee Code Annotated, Section 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," and

WHEREAS, Tennessee Code Annotated, Section 68-221-1105 provides that among 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 owned and operated by the municipality or not;
- (2) Adopt any rules and regulations deemed necessary to accomplish the purposes of Tennessee Code Annotated, Section 68-221-1101 et seq., 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 developed property;
- (5) Issue permits for stormwater discharges, or 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; and
- (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, it is advisable to create a stormwater utility to be responsible for the operation, construction, maintenance and rehabilitation of stormwater facilities; for stormwater system planning, property acquisition related to stormwater management and for review of stormwater development plans for compliance with stormwater management ordinances, policies, procedures and manuals.

Now therefore,

BE IT ORDAINED BY THE CITY OF KINGSPORT, AS FOLLOWS:

SECTION I. That the Code of Ordinances, City of Kingsport, Tennessee, is hereby amended by adding the following appropriately numbered sections to conform with the numbering system of the Code:

Section ____. **Legislative findings and policy.** The board of mayor and aldermen 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 incorporated city limits. Such benefits include, but are not limited to: the provision of adequate systems of collection, conveyance, detention, treatment and release of stormwater; the reduction 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 the water quality in the stormwater and surface water system and its receiving waters.

Section ____. **Creation of stormwater utility and stormwater management fund.** To achieve the purposes of the Federal Clean Water Act and T.C.A. § 68-221-1101 et seq., there is created a stormwater utility and a stormwater enterprise fund known as the Kingsport Stormwater Management Fund to fund the stormwater utility in and for the city within the department of public works. The stormwater utility, pursuant to the policy that may be established by the board and mayor and aldermen and under the general supervision and control of the city manager, through the department of public works, with the participation and assistance of other city departments, may:

- (1) Administer the acquisition of property for and the design, construction, maintenance and operation of the stormwater utility system, including capital improvements designated in the capital improvement program;
- (2) Administer and enforce this ordinance and all regulations and procedures adopted relating to the design, construction, maintenance, rehabilitation, operation and alteration of the utility stormwater system, including, but not limited to, the quantity, quality and/or velocity of the stormwater conveyed thereby;
- (3) Advise the board of mayor and aldermen and other city departments on matters relating to the utility;
- (4) Prepare and revise a comprehensive drainage plan for adoption by the board of mayor and aldermen;
- (5) Review plans and approve or deny, inspect and accept extensions and connections to the system;
- (6) 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; or
- (7) 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.

Section ____. **Definitions.** For the purpose of this ordinance, the following definitions will apply: Words used in the singular will include the plural, and the plural will include the singular; words used in the present tense will include the future tense. Words not defined in this section will be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary.

"Base rate" means the stormwater user's fee for a single-family unit in the city.

"Construction" means the erection, building, acquisition, alteration, reconstruction, improvement or extension of stormwater facilities; preliminary planning to determine the economic and engineering feasibility of stormwater facilities; the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary in the construction of stormwater facilities; and the inspection and supervision of the construction of stormwater facilities;

"Developed property" means real property which has been altered from its natural state by the creation or addition of an impervious surface area, by the addition of any buildings, structures, pavement or other improvements.

"Dwelling" or "dwelling unit" means a building or a portion thereof occupied for residential purposes.

"Fee(s)" or "Stormwater user's fee(s)" means the charge established by resolution, and levied on owners or users of parcels or pieces of real property to fund the costs of stormwater management and of operating, maintaining, and improving the stormwater system in the city. The stormwater user's fees are in addition to any other fee that the city has the right to charge under any other rule or regulation of the city.

"Fiscal year" means July 1 of a calendar year to June 30 of the next calendar year, both inclusive.

"Impervious surface" means an impermeable surface which prevents the percolation of water into the soil including, but not limited to, pavement, parking areas and driveways, packed gravel or soil, or rooftops.

"Impervious surface area" means the number of square feet of horizontal surface covered by buildings, and other impervious surfaces. All building measurements will be made between exterior faces of walls, foundations, columns or other means of support or enclosure.

"Non-single-family residential property" means land that is zoned, developed or used solely as residential land, including, but not limited to, duplexes, townhouses, apartments, condominiums, mobile homes, mobile home parks, mixed use buildings and other multi-unit residential developments, or any other lands upon which there are residential structures that contain more than one (1) dwelling unit.

"Other developed property" means developed property other than single-family or non-single-family residential property. Such property includes, but not be limited to, commercial properties, industrial properties, parking lots, hospitals, schools, recreational and cultural facilities, hotels, offices, churches, and mixed-use property.

"Property" means real property.

"Property owner" means the property owner of record as listed in the county's assessment roll. A property owner includes any individual, corporation, firm, partnership, or group of individuals acting as a unit, and any trustee, receiver, or

personal representative.

"Single-family residential property" means a developed property which serves the primary purpose of providing one detached dwelling unit for one family or housekeeping unit, but this does not include single wide mobile homes, even if attached to the land or there is only one unit on the property.

"Single-family Unit" or "SFU" means the average square footage of the impervious surface area for a single-family residential property determined pursuant to this ordinance.

"Stormwater" means stormwater runoff, snow melt runoff, surface runoff, street wash waters related to street cleaning or maintenance, infiltration, and drainage.

"Stormwater facilities" or "Stormwater flood control facilities" means all natural and manmade conveyances and structures for which the partial or full purpose or use is to convey surface water within the jurisdictional boundaries of the city. This includes all natural conveyances for which the city has assumed a level of maintenance responsibility, to which the city has made improvements, against the flooding of which the city must make provision to protect public and private property, or for which the city is accountable under federal or state regulations for protecting the water quality within its jurisdictional boundaries.

"Stormwater management" means the planning, acquisition, design, construction, regulation, improvement, repair, rehabilitation, maintenance, and operation of property, facilities and programs relating to water, flood plains, flood control, grading, erosion, conservation, riparian buffers and sediment control.

"Stormwater management fund" or "fund" means the fund created by this ordinance to operate, maintain, and improve the city's stormwater system.

"Surface water" includes waters upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other water courses, lakes and reservoirs.

"User(s)" means for developed non-exempt property the person listed as receiving water service, sewer service or combined sewer and water service or, if there is no such service or person listed, the property owner. It may also mean the property owner of property with multiple water service, sewer service or combined sewer and water service accounts on such property.

Section ____. **Funding of stormwater utility.** Revenue sources for the stormwater utility's activities may include, but are not limited to, the following:

- (1) Stormwater user's fees.
- (2) Civil penalties and damage assessments imposed for or arising from the violation of the city's stormwater management ordinance.
- (3) Stormwater permit and inspection fees.
- (4) 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's fees collected are insufficient to fund the stormwater management program and its components, the cost of the same may be paid from such city funds as may be determined by the board of mayor and aldermen.

Section ____. **Stormwater management fund.** All revenues generated by or on behalf of the stormwater utility will be deposited in the stormwater management

fund and used exclusively for the stormwater utility.

Section ____. **Operating budget.** The board of mayor and aldermen will adopt an operating budget for the stormwater utility each fiscal year. The operating budget will set forth for such fiscal year the estimated revenues and the estimated costs for the management, acquisition, operations and maintenance, extension and replacement and debt service of the stormwater utility.

Section ____. **Stormwater user's fees established.** There will be imposed on each and every developed property in the city, except exempt property, stormwater user's fees, which will be set from time to time by resolution. Prior to establishing or amending the fees, the city will advertise its intent to do so by publishing notice in a newspaper of general circulation in the city at least thirty (30) days in advance of the meeting of the board of mayor and aldermen at which the fees are considered for adoption or amendment.

Section ____. **Single-family Unit (SFU).**

(a) There is established, for purposes of calculating the stormwater user's fees, the single-family unit (SFU).

(b) The SFU is the average square footage of the impervious surface area of a single-family residential property.

(c) The SFU will be set by the board of mayor and aldermen from time to time by resolution.

(d) The board of mayor and aldermen will have the discretion to determine the source of the data from which the SFU 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 board of mayor and aldermen will 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.

Section ____. **Property classification for stormwater user's fee.**

(a) For purposes of determining the stormwater user's fee, all property in the city is classified into one of the following classes:

(1) **Single-family residential property fee.** The board of mayor and aldermen finds that the monthly stormwater management fees for single-family residential property will be based on the average amount of impervious surface area on a single-family residential lot in the city, which is known as an SFU. There will be a tier system for single-family residential properties, based on the amount of impervious surface of single-family residential property, as set forth in the in the resolution establishing or adjusting the rates for this classification of property for the utility.

(2) **Non-single-family residential property fee.** For non-single-family residential property the monthly stormwater management fees will be as set forth in the resolution establishing or adjusting the rates for this classification of property for the utility.

(3) **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 the numerical factor obtained by dividing the total impervious area (square feet) of the property by one SFU.

(4) Exempt property. The following property is exempt from the stormwater user's fee:

- a. Property which stormwater runoff is not discharged into or through the stormwater flood control facilities, or both, of the city;
- b. 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 defined in Tennessee Code Annotated, Section 67-6-207.
- c. Undeveloped property that is not altered from its natural state.
- d. Developed property with less than five hundred (500) total square feet of impervious surface area per individual lot.
- e. 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.
- f. Railroad tracks, provided, however, railroad stations, maintenance buildings or other developed land will not be exempt from stormwater user's fees.

Section ____. **Base rate.** The board of mayor and aldermen will, by resolution, establish the base rate for stormwater user's fees. The base rate will be calculated to insure 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.

Section ____. **Payment of stormwater user's fees.** Except as otherwise provided in this section, stormwater user's fees for non-exempt property that receives water service, sewer service or combined water service and sewer 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 water service, sewer service, or combined water and sewer service the stormwater user's fee will be sent to the property owner, who shall be responsible for the payment of such fees. Where multiple water service and sewer service or combined water and sewer 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.

Section ____. **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 resolution, which resolution will also specify when the fee will become delinquent and the late fees and other penalties and interest that will be due on delinquent payments.

(b) Stormwater user's fees will be paid to the city as directed and will become delinquent as of 20 days following the billing. If such charges are not paid within

20 days from the date of the bill or the delinquent date stamped thereon, an additional charge of ten percent of the bill will become due and payable and will become a part of the bill.

(c) Stormwater user's fees will be subject to a late fee established by resolution. Any charge due under this ordinance or resolution setting such charge or fee, which will not be paid may be recovered at law by the city. The city will be entitled to recover attorney's fees incurred in collecting delinquent stormwater user's fees or charges.

(d) Pursuant to Tennessee Code Annotated, Section 68-221-1112, each bill for stormwater user's fees will contain the following statement in bold:

THIS FEE HAS BEEN MANDATED BY CONGRESS.

Section ____. Stormwater fee adjustments and credits.

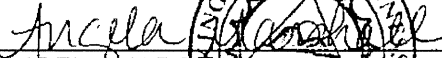
(a) Adjustments may be requested for errors or omissions on the customer's stormwater user's fee. Request for adjustment due to error or oversight of the stormwater user's fee must be submitted to the city in accordance with the policy adopted by the board of mayor and aldermen. Adjustments can also be made by the city recorder should the city identify an error or oversight, provided the city notifies the customer in advance of the adjustment. Adjustments will be determined on the basis of the number of dwelling units or amount of impervious surface area on the property.

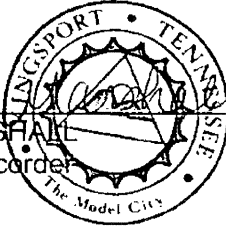
(b) The city will provide a system of credits to reduce stormwater user's fees for properties on which stormwater control measures substantially mitigates the peak discharge or runoff pollution flowing from such properties or substantially decreases the city's cost of maintaining the stormwater management system. The department of public works will develop written policies to implement the credit system. No credit will be authorized until the board of mayor and aldermen approves such written policies to implement the system of credits; a copy of the approved policies will be on file with the city recorder's office and the department of public works. The policy 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 aldermen from modifying the adopted system of credits, and such modifications may apply to holders of existing credits.

SECTION II. That this ordinance shall take effect as the law directs, the public welfare of the City of Kingsport, Tennessee requiring it.



DENNIS R. PHILLIPS, Mayor

ATTEST:


ANGELA MARSHALL
Deputy City Recorder



APPROVED AS TO FORM:


J. MICHAEL BILLINGSLEY, City Attorney

PASSED ON 1ST READING: October 18, 2011

PASSED ON 2ND READING: November 1, 2011