

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KINSTON TO  
ESTABLISH A STORMWATER MANAGEMENT UTILITY**

**WHEREAS**, the City Council makes the following findings:

- (1) The management and regulation of stormwater runoff and sediment is necessary to reduce pollution, siltation, sedimentation, local flooding and stream channel erosion, all of which impact adversely on land and water resources and the health, safety, property and welfare of the residents of the City; and
- (2) Although the City has no control over the amount and timing of precipitation which falls on the City, development of real property alters the quality and quantity of stormwater runoff from real property such that runoff volumes are generally increased, runoff rates are accelerated and runoff quality is degraded; and
- (3) The City maintains a system of stormwater management facilities, including but not limited to inlets, conduits, manholes and certain drainage features and easements, that drain city-maintained streets and property; and
- (4) The stormwater management facilities and components of the City system need to be regularly rehabilitated, upgraded or expanded, and additional stormwater management facilities and measures need to be installed throughout the City; and
- (5) The City needs to upgrade its capability to maintain existing and future city stormwater management facilities, measures and programs; and
- (6) All parcels of real property in the City, particularly those with improvements, both use and benefit from the stormwater management system and program; and the improvement of existing facilities and construction of additional facilities in the city system will directly or indirectly benefit the owners of all real estate; and
- (7) Future growth in the City will contribute to the need for improvements in and maintenance and regulation of the stormwater management system; and
- (8) The extent of use of the stormwater management system by all parcels of real property depends on factors that influence runoff, such as land use, intensity of development, amount of impervious surface, and location in a particular watershed or basin; and
- (9) The State and Federal governments have imposed regulations on the City of Kinston to manage various aspects of stormwater runoff quantity and quality throughout the entire jurisdiction of the city and further regulation of stormwater is anticipated; and
- (10) The City can best manage and regulate the control of stormwater by a policy which regulates the use of real property, both private and public, and which takes reasoned, measured steps to involve the City in additional methods of participation and regulation;

and

- (11) It is in the best interests of the citizens of the City that a stormwater management utility and stormwater management utility fee system be established by ordinance and implemented as part of the City's utility special revenue fund, by whatever name designated.

THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KINSTON:

**SECTION 1.** That a new Article VI be added to "Chapter 19, Public Utilities" entitled Article VI. STORMWATER MANAGEMENT UTILITY to read as follows:

#### ARTICLE VI. STORMWATER MANAGEMENT UTILITY

- Sec. 19-181. Authority
- Sec. 19-182. Definitions
- Sec. 19-183. Stormwater management utility established, administration, powers and duties
- Sec. 19-184. Boundaries and jurisdiction
- Sec. 19-185. Stormwater utility service fees, rates and fee schedule
- Sec. 19-186. Exemption and credits
- Sec. 19-187. Billing methods, responsible parties
- Sec. 19-188. Backbilling
- Sec. 19-189. Complaints regarding a bill
- Sec. 19-190. Appeal
- Sec. 19-191. Use of revenue, investment of funds, and borrowing

#### ARTICLE VI. STORMWATER MANAGEMENT UTILITY

##### **Sec. 19-181. Authority.**

Pursuant to Article 16 of Chapter 160A of the North Carolina General Statutes, the City of Kinston hereby creates a stormwater utility and authorizes establishment of a schedule of stormwater utility service fees to fund a stormwater management program and construct and maintain a structural and natural stormwater drainage system for stormwater runoff from city-maintained streets.

##### **Sec. 19-182. Definitions.**

The following words, terms, and phrases, when used in this Article VI, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

***Developed property*** means real property which has been altered from its natural state by the addition and attachment of any improvements such as building, structures or other impervious area. For new construction, property shall be considered developed property upon final approval

of site improvements by the City.

***Single family residential property*** means developed property which serves the primary purpose of providing a permanent dwelling unit, regardless of the zoning district in which such property is located, for single-family detached units, duplexes, or other housing intended to have one dwelling unit per parcel, and which may or may not have accessory uses related to the purpose of providing permanent dwelling facilities.

***Equivalent residential unit (ERU)*** means the total impervious area of a typical single-family residential property, and is determined as the median impervious area of a representative sample, as determined by the City, of all developed residential properties in the single-family residential category.

***Stormwater utility service fee*** (stormwater fee) means the monthly monetary amount charged each parcel of developed property for the services provided by the stormwater utility system and program as set forth in the City of Kinston Manual of Fees and Charges, a copy of which is located in the office of the City Clerk and is incorporated by reference herein.

***Impervious surface area*** means a surface which, because of its composition or compacted nature, impedes or prevents natural infiltration of water into the soil, including but not limited to roofs, decks, driveways, patios, sidewalks, parking areas, tennis courts, streets, or compacted gravel surfaces.

***Property owner of record*** means the person identified as owner by county tax records.

***Revenues*** means all fees, assessments or other income received by the stormwater utility, including but not limited to amounts received from the investment or deposit of monies in any fund or account, and all amounts received as gifts or donations, and the proceeds from the sale of bonds to finance the stormwater management program, or any other type of funds derived from grants, fees or loans which by purpose or effect relate to stormwater management activities.

#### **Sec. 19-183. Stormwater management utility established; administration; powers and duties.**

The City Council hereby establishes a stormwater management utility to carry out the purposes, functions and responsibilities set forth in this division. The governing body of the stormwater management utility shall be the City Council. The City Manager shall administer the stormwater management utility through the Public Services Department or such other departments and divisions as the City Manager shall designate. The stormwater management utility shall have the ability to conduct any of the following activities as needed, subject to available funds, to provide an effective stormwater management system, such activities not necessarily being exclusive to the stormwater management utility:

- (1) Stormwater management planning and preparation of comprehensive watershed master plans for stormwater management.

- (2) Regular inspections and maintenance of public stormwater management facilities and measures for the construction thereof.
- (3) Regular inspections of private stormwater management facilities installed to meet local and state regulations or which qualify for credits under this ordinance.
- (4) Maintenance and improvements of city-maintained stormwater management facilities. These facilities include all drainage structures in and downstream of city-maintained streets and city-owned property within the city limits.
- (5) Plan review and inspection of sediment control and stormwater management plans, measures, and practices.
- (6) Retrofitting designated watersheds to reduce existing flooding problems or to improve water quality.
- (7) Acquisitions of interests in land, including easements, upon prior approval by City Council.
- (8) Design and construction of stormwater management facilities and measures and acquisition of equipment.
- (9) Water quantity and water quality management, including monitoring activities.
- (10) Compliance with state and federal regulations for stormwater management and submission of mandatory and non-mandatory reports related thereto, except those regulations which require approval by City Council.
- (11) Any and all powers and duties delegated or granted to it as a local government implementing agency under the laws and regulations of the state and ordinances of the City.

**Sec. 19-184. Boundaries and jurisdiction.**

The boundaries and jurisdiction of the stormwater management utility shall extend to the corporate limits of the City, as they may exist from time to time, and such areas lying outside the corporate limits of the City as shall be approved by the City Council.

**Sec. 19-185. Stormwater utility service fees, rates and fee schedule.**

Stormwater utility service fees will be determined and modified from time to time by the City Council so that the total revenues generated by said fees will be used to pay such expenses as are reasonably necessary or convenient in the management, administration, planning, regulatory compliance, public education, construction, operation, and maintenance of the stormwater system and to pay principal of and interest on the debt incurred for stormwater purposes. The fee system shall require that substantially all owners of real property contribute to funding the stormwater

management utility, and that fees bear a substantial relationship to the cost of service. The City Council recognizes that the benefits of the stormwater management utility, while substantial, in many cases cannot be measured directly.

- (a) Stormwater utility service fees shall accrue on the date determined by City Council and set forth in the city schedule of rates and fees. Stormwater utility service fees shall apply to all land as presented in Section 19-184, whether public or private, but subject to such reasonable classifications as may be determined by the City Council. Exemptions shall not be allowed based on age, tax exemption, or other status of an individual or organization, except as set forth in Section 19-186.
- (b) The city may initially impose a flat base rate fee for each parcel of developed property. In subsequent years, stormwater utility service fees shall be based on a commonly accepted rate unit for stormwater utilities, the equivalent residential unit (ERU). The ERU will be used to relate a base rate fee charged to a single-family residential property to that which is charged to a non-single family residential property. The ERU may be determined by analyzing digital photographs and performing field checks for verification purposes of a representative sample of single-family residences within the city limits. The Public Services Director (or his designee) shall determine the amount of impervious area on each non-single family residential property using aerial photographs, building plans, and/or field checks when necessary. Upon application, a stormwater utility customer shall be provided a written determination of the amount of impervious area for which a fee has been established and charged to that customer.
- (c) Effective January 1, 2009, each non-single family residential property stormwater utility service fee shall be calculated utilizing the equivalent residential unit. Non-single family residential properties shall be charged the base rate fee for each ERU contained on the property. The number of ERUs shall be rounded up to the nearest whole number. The minimum stormwater utility service fee for non-single family residential properties shall not be less than the base rate fee. Each single family residential property shall pay the base rate fee. The maximum stormwater utility service fee for any property shall not exceed the fee charged for a total of 250 ERUs.
- (d) The base rate fee shall be contained in the City of Kinston Manual of Fees and Charges, a copy of which is located in the City Clerk's office and is incorporated by reference herein.

#### **Sec. 19-186. Exemptions and credits.**

Except as provided in this section, no developed property shall be exempt from stormwater utility service fees or receive credit against such fees. Only non-single family residential use properties subject to stormwater utility service fees may be granted credits against the fees in accordance with the City of Kinston Stormwater Utility Credit Manual. Any credit allowance shall be conditional on continuing compliance with applicable standards, including requirements for operation and maintenance. Subject to approval in accordance with the credit manual, any credits shall be effective in the first full billing period after the credit is approved by the Public Services Director or his designee.

**Sec. 19-187. Billing method, responsible parties.**

- (a) Bills for stormwater utility service fees shall be sent at regular, periodic intervals. Stormwater utility service fees may be billed on a combined utility bill that also contains fees for other utilities. Stormwater utility service fees that are shown on a combined utility bill may be for a different service period than that used for other utilities. For properties not having otherwise active utility accounts, the stormwater utility service fee shall be billed to the owners or other persons listed on the real property tax records. These accounts may be billed at different intervals than the accounts receiving combined utility billings.
- (b) Stormwater utility bills for a property that receives other city-provided utilities shall be sent to the customer receiving such service. However, where multiple utility accounts exist for a single parcel, the stormwater utility bill will be sent to the property owner, unless the property qualifies for per account billing as set forth in subsection (c).
- (c) Where multiple utility accounts exist for a single parcel, the property owner may apply for per account stormwater fee billing by completing a form provided by the Public Services Director or his designee. The application shall include the proposed division of the stormwater fee between the utility accounts for the property. The applicant shall provide notice of the application to each affected utility customer prior to the division of the fee. The Public Services Director or his designee shall approve the per account billing for the parcel unless the billing plan (1) will result in a fee for less than one ERU for one or more accounts, and/or (2) does not equitably allocate the fee between accounts. The approval of per account billing pursuant to this subsection does not relieve the owner from liability for stormwater utility service fees if they are not paid by the party billed.
- (d) In townhouse and condominium developments, individual tax parcels will be charged the stormwater utility service fee at the flat residential rate. Impervious surface in common ownership, such as parking areas, sidewalks and recreation areas, shall be charged to the homeowners' association.
- (e) Stormwater utility service fees shall be due and payable as set forth in the city schedule of rates and fees, a copy of which is located in the public services office and is incorporated by reference herein. The property owner is ultimately responsible for payment of the stormwater utility service fee for property for which the party billed has not paid the stormwater fee.

**Sec. 19-188. Backbilling.**

Failure to receive a stormwater utility service fee bill is not justification for nonpayment. The owner of each parcel of land shall ultimately be obligated to pay such fee. Collection of unpaid stormwater fees shall be done in conformance with the City of Kinston Customer Service Policy.

**Sec. 19-189. Complaints regarding a bill.**

Grievances or complaints about a bill shall be addressed in conformance with the City of Kinston Customer Service Policy. If it is determined that the bill is in error, an adjustment will be made according to the City of Kinston Customer Service Policy and the City of Kinston Manual of Fees and Charges.

#### **Sec. 19-190. Appeal.**

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

- (1) An appeal of a stormwater utility service fee related to the amount of impervious surface on a parcel, shall be made in writing and include a surveyed map of the parcel prepared by a registered land surveyor or professional engineer and showing all impervious areas as defined in Section 19-182 of this Code. The map shall be submitted in digital and hard copy form and shall contain a table summarizing total parcel area, impervious surface area, and any other features or conditions related to impervious area.
- (2) Using information provided by the appellant, the Public Services Director or his designee shall conduct a technical review of the conditions on the property and respond to the appeal in writing within 30 days. The Public Services Director may adjust the fee as long as the adjustment is in conformance with the intent of this Article. At the conclusion of the review, the Public Services Director shall issue a written determination stating whether an adjustment to the stormwater utility service fee is appropriate, and if so the amount of such adjustment.
- (3) Appeals of the stormwater utility service fee for reasons other than the amount of impervious area shall be made in conformance with the City of Kinston Customer Service Policy.
- (4) No provision of this Article allowing for administrative appeal shall be deemed to suspend the due date for payment in full of the stormwater utility service fee.

#### **Sec. 19-191. Use of revenue; investment of funds; borrowing.**

Funds generated for the stormwater management utility from fees, bonds issued, other borrowing and other sources shall be utilized only for those purposes for which the stormwater management utility has been established. Such funds shall be invested and reinvested pursuant to the same procedures and practices established by the City for investment and reinvestment of funds. The City Council may use any form of borrowing authorized by law to fund capital acquisitions or expenditures for the stormwater management utility.

**SECTION 2.** That any person violating the provisions of this ordinance shall be subject to the penalties set forth in this chapter. If the violation is continued, each day's violation shall be a separate offense.

**SECTION 3.** That any violation of this ordinance shall subject the offender to a civil penalty to be recovered by the City in a civil action in the nature of a debt if the offender does not pay any penalty called for hereunder within the prescribed period of time after being cited for violation of the ordinance.

**SECTION 4.** That this ordinance may be enforced by an appropriate, equitable remedy such as injunction or order of abatement issued from any court of competent jurisdiction.

**SECTION 5.** That this ordinance may be enforced by any one, all, or a combination of the remedies authorized and prescribed above.

**SECTION 6.** That all the ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

**SECTION 7.** That if any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

**SECTION 8.** That this ordinance shall become effective on July 1, 2008.

DULY ADOPTED this 16<sup>th</sup> day of June, 2008.

**CITY OF KINSTON**

By: \_\_\_\_\_  
O. A. Ritch, Jr., Mayor

Attest:

\_\_\_\_\_  
Carol Barwick, City Clerk  
(SEAL)