

AN ORDINANCE

*TO AMEND THE CODE OF THE COUNTY OF YORK, SOUTH CAROLINA, TO ADD CHAPTER 157 – STORMWATER MANAGEMENT UTILITY DISTRICT IN ORDER TO ESTABLISH A FUNDING SOURCE FOR MAINTAINING, REPAIRING, AND REPLACING THE PUBLIC INFRASTRUCTURE ASSOCIATED WITH STORMWATER AND FLOODPLAIN MANAGEMENT; TO MANAGE GROWTH IMPACTS TO THE COUNTY'S STORMWATER AND FLOODPLAIN MANAGEMENT SYSTEMS; TO PROTECT AND MONITOR THE COUNTY'S NATURAL RESOURCES; TO COLLECT A FEE; TO ESTABLISH AN APPEALS PROCESS AND PENALTIES FOR NONPAYMENT OF THE FEE; TO PROVIDE FOR A PUBLIC HEARING; AND TO PROVIDE FOR OTHER MATTERS RELATING THERETO.*

BE IT ORDAINED AND ENACTED BY THE COUNTY COUNCIL OF YORK COUNTY, SOUTH CAROLINA:

**SECTION 1. Legislative findings.**

As an incident to the adoption of this ordinance, the York County Council, as the governing body of York County, South Carolina, has made the following legislative findings:

- 1.1 Council is empowered to enact ordinances for the implementation and enforcement of powers granted to Council pursuant to S.C. Code Ann. §§ 4-9-30 (6), (14), and (17), , as amended and to exercise such other powers as may be authorized for counties under S.C. Code Ann.§ 48-14-120(C), , as amended.
- 1.2 Council has received a Stormwater Utility District Feasibility Study (“Study”), dated February 28, 2018, and approved, at a duly called and noticed County Council meeting on March 3, 2018, the Study and directed staff to create a Stormwater Utility District (“SWUD”) pursuant to S.C. Code Ann. Title 48, Chapter 14 and S.C. Code Ann. Regs. 72-310.
- 1.3 Council finds that this ordinance will:
  - (A) Create a SWUD pursuant to South Carolina state laws and regulations;
  - (B) Assist the County in maintaining compliance with the County’s National Pollutant Discharge Elimination System (NPDES) MS4 permit;
  - (C) Further Council’s stated goal of Growth Management by:
    - i. Establishing a stable funding source for operating the County’s Environmental Compliance and Floodplain Management Programs;
    - ii. Establishing a stable funding source for maintaining, repairing, and replacing the public infrastructure associated with stormwater and floodplain management; and
    - iii. Ensuring impacts to the County’s stormwater and floodplain management systems by residential and commercial/industrial growth is paid for on an ongoing and long-term basis;
  - (D) Further County’s stated goal, as identified in the York Forward Comprehensive Plan 2035, of protecting natural resources by:

- i. Establishing a stable funding source and program to monitor imperiled rivers and streams through implementation of Total Maximum Daily Loads (TMDL);
  - ii. Ensuring the County has the necessary staff and resources to monitor and inspect stormwater infrastructure, enforce rules and regulations related to stormwater, including by not limited to: a) controlling sediment runoff from construction sites, b) illicit discharges, c) proper maintenance of BMPs, and d) perform routine inspections of public infrastructure ; and
  - iii. Continue to provide public outreach and information to educate property owners on the benefits of protecting rivers and streams and floodplain management.
- (E) Enable the County to limit damage to public and private property from flooding by assessing, maintaining, repairing, and replacing public stormwater infrastructure;
- (F) Promote the public health, safety, order, and general welfare.

## **SECTION 2. Code of York County Amended.**

**The following Chapter is being added to the York County Code of Ordinances**

### **Chapter 157 STORMWATER MANAGEMENT UTILITY DISTRICT**

#### **§157.001 Title**

This chapter shall be known as the “York County Stormwater Management Utility District.”

#### **§157.002 AUTHORITY**

This article is adopted pursuant to the authority conferred upon York County by applicable federal and state laws and regulations.

#### **§157.003 PURPOSE**

The purpose of this chapter is to establish a Stormwater Management Utility District (District) in order to collect fees for properties located in unincorporated York County in order to provide a secure and stable funding source for the County’s Environmental Compliance and Floodplain Management Programs. Such funds shall be used to fund the day-to-day operations of the Environmental Compliance and Floodplain Management Programs, including but limited to inspections of sites pre, during, and post construction; implementing the requirements of the County’s MS4/NPDES permit; reviewing erosion and sediment control plans; investigating illicit discharges; complying with the National Flood Insurance Program; assisting property owners in protecting property from flooding; and other duties assigned by the County to the Environmental Compliance and Floodplain Management Programs. The fees collected shall also be used for the assessment, maintenance, repair, and replacement of County owned and maintained stormwater infrastructure and to ensure privately maintained stormwater infrastructure is not adversely impacting the public stormwater and floodplain management systems.

#### **§157.004 DEFINITIONS**

**AGRICULTURAL/FORESTLANDS** – Real property classified by the York County Tax Assessor as agricultural real property pursuant to S.C. Code Ann. § 12-43-220(d).

**BMPs** – Best Management Practices is any device, practice, or procedure that has demonstrated to effectively control either the quality and/or quantity of stormwater runoff while maintaining compatibility with the planned land use.

**BOARD** – Stormwater Management Board

**CIP** – Capital Improvement Program

**CONDOMINIUMS** – As defined in Chapter 155 – Zoning Code.

**CREDITS** - A conditional reduction in the amount of a stormwater service charge or other fees, rates, rentals, charges, fines, and penalties to an individual property based on the provision and continuing presence of an effectively maintained and operational on-site stormwater system or facility, or a continuing service or activity that reduces the stormwater management utility's cost of providing stormwater management services and stormwater management systems and facilities.

**DAYS** –Calendar days

**DEPARTMENT** – Planning and Development Services Department

**DISTRICT** – Stormwater Management Utility District

**DISTRICT MANAGER** – Stormwater Management Utility District Manager

**ERU** – Equivalent Residential Unit

**HOMEOWNERS ASSOCIATION** – An organization of homeowners of a particular subdivision, condominium or planned unit development, in which the Association owns and maintains common areas (amenities, open space, infrastructure) for the benefit of the homeowners.

**IMPERVIOUS SURFACE AREA** - Impervious surface areas are those areas which prevent or impede the infiltration of stormwater into the soil as it entered in natural conditions prior to development. Common impervious areas include, but are not limited to, rooftops, sidewalks, walkways, patio areas, driveways, parking lots, storage areas, compacted gravel and soil surfaces, awnings and other fabric or plastic coverings, and other surfaces which prevent or impede the natural infiltration of stormwater runoff which existed prior to development.

**MANUAL** - York County Stormwater Water Utility District Credit Manual prepared by the Stormwater Utility District Manager and updated from time to time.

**MANUFACTURED HOME (MOBILE HOME)** – As defined in Chapter 155 – Zoning Code

**MANUFACTURED HOME PARK** – As defined in Chapter 155 – Zoning Code.

**MCM** – Minimum Control Measures, as required by EPA and SCDHEC under the MS4 General Permit, that include (1) public education and outreach, (2) public involvement and participation, (3) detection and elimination of illicit discharges to the stormwater system, (4) construction site stormwater runoff control, (5) post-construction stormwater control and management, and (6) pollution prevention and municipal good housekeeping measures.

**MS4** – Municipal Separate Storm Sewer System and includes all conveyances or system of conveyances (including roads with drainage systems, highways, rights-of-way, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, storm drains, detention ponds, and other stormwater facilities) that inlets, transports, stores, or treats stormwater runoff and is (a) owned or operated by York County, (b) designed or used for collecting or conveying stormwater, (c) not a combined sewer system, and (d) not part of a publicly owned treatment works.

**NPDES** – National Pollutant Discharge Elimination System

**TMDL** – Total Maximum Daily Load

**TOWNHOMES** – A residential building with attached units (three or more) where each unit located on an individually platted lot.

**UNDEVELOPED LAND** – Undeveloped land is land in its unaltered natural state or land which has been modified to such minimal degree that its hydrologic response is comparable to land in an unaltered natural state. Undeveloped land shall have no impervious surface area that would prevent or impede infiltration of stormwater or cause stormwater to collect, concentrate, or flow

in a manner materially different than that which would occur if the land was in an unaltered natural state.

### **§157.005 ESTABLISHMENT OF A STORMWATER MANAGEMENT UTILITY DISTRICT, ADMINISTRATION, DUTIES AND POWERS**

County Council hereby establishes a Stormwater Management Utility District (District) to carry out the purposes, functions, and responsibilities herein set forth. The governing body of the District shall be the County Council. The Stormwater Utility District Manager shall administer the District under the Planning and Development Services Department (Department). The District, in conjunction with other Divisions and Departments of the County, shall have the duties and powers set forth below:

- A. Implementation and enforcement of the County's Stormwater and Floodplain Management Programs.
- B. Development and implementation of the MCMs, BMPs and other regulatory requirements as contained in the NPDES MS4 permit.
- C. Stormwater management planning and preparation of comprehensive watershed master plans for stormwater management.
- D. Regular inspections of public and private stormwater management facilities and measures and the construction thereof.
- E. Maintenance and improvement of stormwater management facilities that have been accepted by the County for that purpose.
- F. Repairs to drainage infrastructure performed in conjunction with road repair work pursuant to the County's Agreement for Road Work;
- G. Plan review and inspection of sediment control and stormwater management measures, and practices.
- H. Retrofitting existing stormwater management facilities to reduce existing flooding problems or to improve water quality.
- I. Acquisition of interests in land, including easements.
- J. Design and construction of stormwater management facilities and measures and acquisition of equipment.
- K. Water quantity and water quality management, including monitoring and surveillance.
- L. Establish TMDL standards in compliance with state and federal law.
- M. Billing and collecting stormwater management utility fees pursuant to this Ordinance.
- N. Any and all duties and powers delegated or granted to it as a local government implementing agency under the laws and regulations of the State of South Carolina, and the ordinances of this County.

### **§157.006 JURISDICTION**

The boundaries and jurisdiction of this article shall encompass those portions of the unincorporated area of York County as they may exist from time to time.

### **§157.007 FUNDING**

- A. In addition to all other charges, fees, and penalties, the County shall have the right to develop and impose a Stormwater Service Fee to fund the following:

- i. Implementation and enforcement of the County's Stormwater Management and Erosion Control and Floodplain Management ordinances;
- ii. Implementation and enforcement of the County's MS4 permit;
- iii. Implementation and enforcement of the NPDES program;
- iv. Establishment of a Capital Improvements Program;
- v. Maintenance, repair, and/or replacement of publicly owned or maintained stormwater infrastructure;
- vi. Assess and address areas of chronic flooding resulting in impacts to County owned and/or maintained rights-of-way or property;
- vii. Administrative functions associated with implementation and enforcement of the stormwater and floodplain management programs;
- viii. Water quality including monitoring and reporting;
- ix. Purchase the necessary equipment, tools, and materials for maintenance, repair, and replacement of stormwater infrastructure
- x. Retain consultants to prepare studies, evaluations, and perform other services related to stormwater and floodplain management; and
- xi. Any other expenses, e.g. mosquito control, aerial imagery updates, acquisition of easements, etc., associated with implementation and enforcement of the stormwater and floodplain management programs and maintenance, repair, and replacement of publicly owned or maintained stormwater infrastructure.

B. Such funds shall be invested and reinvested pursuant to the same procedures and practices established by the County for investment and reinvestment of funds. County Council may use any form of borrowing authorized by the laws of the State of South Carolina to fund capital acquisitions or expenditures for the District. County Council, in its discretion and pursuant to standard budgetary procedures, may supplement such funds with amounts from the general fund.

#### **§157.008 CLASSIFICATION OF PROPERTY**

For purposes of determining the Stormwater Service Fee, all property in unincorporated York County, not identified as exempt under §157.012, shall be classified as:

- A. Tier 1 – single family, duplex, townhomes, condominiums
- B. Tier 2 – commercial, publicly owned (federal, state, and local), industrial, multi-family, Manufactured Home Park, Homeowners Association, institutional uses, schools, religious, and non-profit
- C. Tier 3 - Manufactured Homes (not part of a Manufactured Home Park)

#### **§157.009 DETERMINATION OF STORMWATER SERVICE FEE**

A. The Stormwater Service Fee must be reasonable and equitable in order to ensure property owners and users pay in proportion to the impact they create to the County's stormwater and floodplain programs and infrastructure and the benefit that they receive from the District.

B. The County shall determine the Stormwater Service Fee based on the Equivalent Residential Unit (ERU) method. One ERU shall be the equivalent to the average impervious surface area of a single-family residential developed property. One ERU shall equal 3,200 square feet of impervious coverage. The County shall annually charge \$60 per ERU. The following Stormwater Service Fees shall apply:

- 1) Tier 1 – One (1) ERU
- 2) Tier 2 – Total impervious surface area (sq. ft.) divided by 3,200 sq. ft. = Total ERUs
- 3) Tier 3 – ½ ERU

Except for owners of Tier 3 properties, all property owners, not otherwise exempt, shall pay a minimum of one (1) ERU.

C. The District Manager shall be responsible for determining the total impervious surface area for all Tier 2 properties in the unincorporated areas of the County. In determining total impervious surface area, the District Manager may use aerial imagery, as-built drawings, and/or field verification. The records shall be updated on a routine basis.

### **§157.010 AS-BUILT DRAWINGS**

In order to maintain the most accurate and current records of impervious surface area for Tier 2 properties, all property owners, who obtain a building permit or land disturbance permit, for Tier 2 developments must submit an as-built or record drawing of all site improvements, including but not limited to parking lots, driveways, private roads/aisles, building footprints, and sidewalks. As-built drawings shall also identify all stormwater infrastructure (ponds, pipes, culverts, bridges, drainage swales, etc.) and easements. The easements and infrastructure shall be clearly labeled as private or public. As-built drawings shall be submitted in digital format and be prepared by a licensed surveyor, engineer, or landscape architect. The District Manager or designee shall approve all as-built drawings.

### **§157.011 IMPLEMENTATION OF STORMWATER SERVICE FEE**

A. *Fee.* All properties, except for Tier 2 properties, shall pay the Stormwater Service Fee as identified in this Chapter at adoption of this ordinance. For Tier 2 properties, the Stormwater Service Fee shall be implemented as follows:

- i. First year – One ERU
- ii. Second year – Twenty-Five (25) percent of the Stormwater Service Fee calculated per §157.009
- iii. Third year – Fifty (50) percent of the Stormwater Service Fee calculated per §157.009
- iv. Fourth year and all subsequent years - total fee calculated based on the ERUs identified in §157.009.

B. *Billing.* The Stormwater Service Fee shall be billed on a property owner's annual tax bill.

### **§157.012 EXEMPTIONS AND CREDITS**

A. *Fee.* Except as provided in this section, no public or private property shall be exempt from a Stormwater Service Fee or receive a credit or offset against such service charge. No exemption, credit, offset, or other reduction in Stormwater Service Fees shall be granted based on the age, tax, economic status, race, or religion of the customer or other condition unrelated to the District's cost of providing stormwater management services and stormwater management systems and facilities.

B. *Credits.* A property owner may apply for a Credit, as provided for in the York County Stormwater Water Utility District Credit Manual (Manual). Property owners shall submit an application, on a form provided by the Department, on or before April 1 of each year. The maximum credit shall be fifty (50) percent of the total Stormwater Service Fee owned by a property owner.

C. *Exemptions.* The following exemption shall be allowed:

- i. Improved public road rights-of-way which have been conveyed to and accepted for maintenance by the State of South Carolina and are available for use in common for vehicular transportation by the general public;
- ii. Improved public road rights-of-way which have been conveyed to and accepted for maintenance by York County and are available for use in common for vehicular transportation by the general public;
- iii. Railroad tracks, except for railroad station, yard, maintenance buildings, or other developed land used for railroad purposes, shall be exempt from stormwater service charges;
- iv. Undeveloped land; and
- v. Agricultural/Forestlands.

#### **§157.013 ADMINISTRATION**

A. The District Manager shall be responsible for administering and enforcing all provisions of this chapter.

B. In administering and enforcing all provisions of this chapter, the District Manager shall have the following authority and responsibilities, including but not limited to:

- i. Prepare the Manual, Policy Handbook, and all other applicable policy documents;
- ii. Calculate the Stormwater Water Service Fee annually for each property located within unincorporated York County;
- iii. Update impervious surface area layers;
- iv. Receive, review, and determine applications for credits;
- v. Prepare and update, in conjunction with Public Works, annually the CIP;
- vi. Coordinate and oversee maintenance, repair, and replacement projects
- vii. Serve as staff liaison to the Board;
- viii. Prepare written administrative decisions;
- ix. Review appeals of Stormwater Service Fee calculations; and
- x. Prepare an annual budget.

#### **§157.014 STORMWATER MANAGEMENT BOARD**

A. *Creation.* The Stormwater Management Board (Board) is hereby created. The Board shall consist of five members appointed by the County Council. Members shall have professional or educational experience in civil or environmental engineering, land surveying, hydrology, geology, landscape architecture, ecology, environmental sciences, earth science, soil science, natural resources, chemistry, or other commensurate professional or educational background. Of the members first appointed, three members shall serve for three years and two members shall serve for two years. Subsequent terms for all members shall be for three years. Members shall serve a

maximum of two terms. The District Manager shall serve as staff liaison to the Board. Annually, the members shall select a Chairman and Vice-Chairman. The Planning and Development Services Director shall appoint a staff member to serve as a secretary for the Board.

B. *Duties.* The Board shall have the following duties and responsibilities:

- i. Hear appeals from the District Manager's administrative decisions regarding interpretation and implementation of this Chapter;
- ii. Hear appeals from property owners regarding District fees. The Board, however, shall have no authority to waive a fee;
- iii. Review and provide recommendations on proposed revisions to this Chapter;
- iv. Review and provide recommendations on proposed revisions to the Manual; and
- v. Review and provide recommendations on the CIP annually. The District Manager, however, will have final authority on updates and revisions to the CIP.

C. *Meetings.* The Board shall meet no less than four times a year, and more often as determined the Chairman and the District Manager. All meetings shall be properly noticed, and an agenda shall be prepared and posted in compliance with South Carolina State Statutes and County Ordinances. The Board shall approve an annual meeting schedule by December 31, which shall be posted upon adoption.

D. *Quorum.* Three members of the Board shall constitute a quorum.

E. *Attendance:* Members may not be absent from three consecutive called meetings. A member who fails to meet the minimum attendance requirements shall be deemed to have forfeited the membership and shall be removed without further action by the Board or the County Council. The secretary shall notify the Board, the absent member, and the County Council (through the Clerk to Council) of the absences, removal, and vacancies, on the Board. The County Council shall fill the vacancy created thereby in the manner of the original appointment, for the unexpired term of the member.

F. *Procedures.* The Board shall adopt by-laws establishing rules and procedures consistent with State law and County ordinances.

G. *Decisions.* Decisions of the Board are final. Appeals of Board decisions shall be made to the court of competent jurisdiction. All decisions of the Board shall be made in writing, and a copy, either by mail or electronic format, shall be provided to all parties in interest. For purposes of appeals, the date on the written decision shall be the official decision date.

## **§157.015 APPEALS**

A. Appeals of Stormwater Service Fees

- i. Appeals of Stormwater Service Fees shall be made to the District Manager. Appeals shall be filed within 60 days of receipt of the tax bill on a form provided by the Department.
- ii. Within 30 days of receipt of an appeal, the District Manager shall issue a written decision.
- iii. If the property owner objects to the District Manager's decision, the property owner may file a notice of appeal with the Board within 30 days after the date of the decision. The appeal shall be on a form provided by the Department. The appeal must clearly state the grounds for appeal.



iv. The District Manager shall be responsible for convening the Board within 30 days of the notice being filed or as soon thereafter as possible. The Board will conduct a hearing on the matter after notifying the appellant and the District Manager of the date, time and place of the hearing. Such notice shall not be less than seven days before the date of the hearing. At such hearing, the Board may accept testimony, documents, or other materials from the property owner and the District Manager. The Board shall issue a final decision within 30 days of the hearing.

v. Should the District Manager or Board determine the Stormwater Service Fee has been incorrectly billed, they may only apply a refund for a maximum of four years preceding the appeal.

#### B. Appeals of Administrative Decisions

i. Any person aggrieved by a written administrative decision by the District Manager, may appeal the decision within 30 days from the date of the written decision. The appeal must be submitted on the application form provided by the Department and must state with specificity the grounds for the appeals. The person appealing may submit supporting documentation with the appeals application.

ii. Upon receipt of an appeal, the District Manager must convene the Board within 30 days or as soon thereafter as possible. The Board will conduct a hearing on the matter after notifying the appellant and the District Manager of the date, time, and place of the hearing. Such notice shall not be less than seven days before the date of the hearing. At the hearing, the Board may accept testimony, documents, or other materials from the property owner and the District Manager. The Board shall issue a final written decision within 30 days of the hearing.

### **§157.016 ENFORCEMENT AND PENALTIES**

For any non-payment of all or any part of the Stormwater Service Fee, the property owner shall be assessed a civil fine, each consecutive year the fee(s) is not paid, as follows:

- Tier 1: \$250 first year, \$500 second year, and \$1,000 third year and all subsequent years;
- Tier 2: \$1,000 first year and all subsequent years; and
- Tier 3: \$150 first year, \$250 second year, \$500 third year, and \$1,000 fourth year and subsequent years.

The District Manager shall send written notice of the civil fine via United States mail to the property address maintained by the Tax Assessor. If the property owner fails to pay the total fee and civil fine owed or an equitable settlement has not been reached within 30 days of the date of notice, the County may seek relief in civil court.

### **SECTION 3. Public Hearing Required.**

The York County Council shall conduct a public hearing after publishing a notice of the date, time and place of such hearing at least fifteen (15) days in advance of such hearing before final legislative action is taken for the adoption of this ordinance.

### **SECTION 4. Severability.**

The provisions of this ordinance are hereby declared to be severable, and if any provision or section of this ordinance is declared to be unconstitutional or unenforceable by the final order of a court of competent jurisdiction, such declaration shall not affect the constitutionality, legality, or enforceability of any other section or provision of this ordinance, which shall be deemed severable, valid, enforceable, and effective.

**SECTION 5. Repeal of inconsistent sections and ordinances.**

All sections of the York County Code of Ordinances and all York County ordinances in conflict with this ordinance are hereby amended to the extent of such conflict.

**SECTION 6. Effective date.**

This ordinance shall take effect immediately upon adoption.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

YORK COUNTY COUNCIL

By: \_\_\_\_\_

J. Britt Blackwell, O.D., Chairman  
York County Council

Attest: \_\_\_\_\_

William P. Shanahan, Jr.  
County Manager

1<sup>st</sup> Reading: \_\_\_\_\_

2<sup>nd</sup> Reading: \_\_\_\_\_

Public Hearing: \_\_\_\_\_

3<sup>rd</sup> Reading: \_\_\_\_\_