

**AN ORDINANCE
ESTABLISHING THE SUMTER COUNTY STORMWATER UTILITY
AND THE SERVICES AND CHARGES RELATING THERETO.**

WHEREAS, The Federal Clean Water Act, 33 U.S.C. §1251 *et seq.*, section 402, establishes the National Pollutant Discharge Elimination System (NPDES) in which subsection 402 (p)(6) authorizes the Administrator of the Environmental Protection Agency (EPA) to issue regulations governing stormwater discharges to protect water quality and to establish a comprehensive program to regulate designated stormwater sources; and

WHEREAS, the EPA regulations (A) establish priorities, (B) establish requirements for state stormwater management programs, and (C) establish expeditious deadlines; and

WHEREAS, the Federal Clean Water Act, subsection 402 (b) allows states to administer their own permit program according to certain guidelines set forth in that Act; and

WHEREAS, The State of South Carolina has been granted a National Pollutant Discharge Elimination (NPDES) permit for Storm Water Discharges from Regulated Small Municipal Separate Storm Sewer Systems, which Permit Number SCS0000000 was issued January 30, 2006, effective March 1, 2006; and

WHEREAS, Sumter County discharges storm water from the municipal separate stormwater sewer system located in Sumter County into streams, creeks and branches which flow into rivers which are receiving waters of the State of South Carolina which, in turn flow into Federal Navigable Waters and ultimately the Atlantic Ocean; and

WHEREAS, Sumter County is a regulated Small Municipal Separate Storm Sewer System as published in Appendix A of the South Carolina NPDES General Permit Number SCS0000000;

WHEREAS, South Carolina Department of Health and Environmental Control has granted Sumter County permission to discharge stormwater into the rivers of South Carolina in accordance with the conditions set forth in the State of South Carolina NPDES General Permit for Storm Water Discharges from Regulated Small Municipal Separate Storm Sewer Systems, SCR030000; and

WHEREAS, in accordance with the conditions of the permission to discharge stormwater Sumter County has enacted the required stormwater management and sediment control regulations which are codified in Chapter 14, Article II, sections 14-19 through 14-110; and

WHEREAS, in order to have the necessary funds to enforce the provisions of its ordinances, Sumter County must either add millage to the *ad valorem* taxes it collects or create a Storm Water Utility Fee,

NOW THEREFORE:

Sec. 14-111¹. Findings.

The Sumter County Council, South Carolina makes the following findings of fact:

- (1) The county council finds that a schedule of stormwater utility service charges is an appropriate means of allocating the cost of stormwater management services and stormwater management systems and facilities throughout the county. Such charges can be complemented by other funding methods which address specific needs, including but not limited to allocations of other revenues available to the county, special service fees, special assessments, and other revenues as deemed appropriate by the county council.
- (2) The county council finds that credits against stormwater utility service charges are an appropriate means of adjusting fees, rates, rentals, and charges in certain cases, and should be granted for properties providing on-site or off-site services, systems, facilities, activities, or assets which reduce or otherwise mitigate the impact of said property on the county's cost of providing stormwater management services and/or stormwater management systems and facilities, and that such credits should be conditional upon continuing provision of such services, systems, facilities, activities, or assets in a manner complying with the standards and codes as determined by the county administrator or designee. Credits for on-site stormwater management systems and facilities shall be generally proportional to the effect that such systems reduce the peak rate of runoff from the property and increase the volume of on-site storm water retention.
- (3) The county council finds that a stormwater utility rate fee has been defined and determined which accurately addresses the current financial needs to manage, maintain, protect, regulate and enhance the stormwater systems and facilities of Sumter County.
- (4) The county council finds that the application of the utility shall be countywide, in that the stormwater program provides stormwater drainage system maintenance beneficial to all county residents, in addition to the portions of the county that are currently regulated under the coverage of a state or federal stormwater permit, or maintain an intergovernmental agreement with the county to provide stormwater services.
- (5) The county council finds that it is imperative that all revenues raised or otherwise allocated specifically to stormwater management services and stormwater management systems and facilities be dedicated solely to those purposes and therefore directs that such revenues shall be deposited into the accounting fund of the stormwater utility and shall remain in that fund and be dispersed only for stormwater management capital, operating, and non-operating costs and debt service of bonds for stormwater management purposes. As said revenues shall be used solely for stormwater purposes, the county shall publically

¹ The ordinance section headings and numbering are suggested for the codification of the Ordinance into the Code of Ordinances, Sumter County, South Carolina after current section 14-110.

disclose and publish all stormwater related revenue allocations and expenditures annually in the audited Annual Financial Report.

Sec. 14-112. Authority.

This article shall be cited as the Stormwater Utility Ordinance and is adopted pursuant to S.C. Code Ann. § 48-14-10, *et seq.*, the Home Rule Act, Section 4-9-30(5), *Code of Laws of South Carolina*, Section 6-1-330, *Code of Laws of South Carolina* and S.C. Land Resources Conservation Commission Regulations 72-300 to 72-316.

Sec. 14-113. Establishment of utility and enterprise fund.

Rules of language and interpretation.

- (1) The word "shall" is mandatory; the word "may" is permissive.
- (2) The particular shall control the general.
- (3) Words used in present tense shall include the future, and words used in the singular include the plural, and plural the singular, unless the context clearly indicates the contrary.

The county council hereby establishes a stormwater utility within the stormwater department under the direction of public services which shall be responsible for stormwater management throughout the county's unincorporated limits, or incorporated areas agreed to by intergovernmental agreement, and shall provide for the management, maintenance, protection, control, regulation and enforcement, use, and enhancement of stormwater systems and facilities.

The county council directs that a stormwater fund be established in the county budget and accounting system for the purpose of dedicating and protecting all funding applicable to the purposes and responsibilities of the utility, including but not limited to rentals, rates, charges, fees, and licenses as may be established by the county council. All revenues and receipts of the stormwater utility shall be placed in the stormwater fund and all expenses of the utility shall be paid from the stormwater fund, except that other revenues, receipts, and resources not accounted for in the stormwater utility fund may be applied to stormwater management operations and capital investments as deemed appropriate by the county.

The county council hereby transfers to the stormwater utility the existing stormwater systems and facilities owned and operated by the county and other interests and assets including but not limited to easements, rights-of-entry and access, and certain equipment. The county council declares that the economic value to the county of the stormwater systems, facilities, and other interests and assets hereby transferred to the utility is equal to the economic value to the county of the utility assuming future responsibility for the management, maintenance, protection, control, regulation, use, and enhancement of the stormwater systems, facilities, and programs.

Sec. 14-114. Boundaries and jurisdiction.

The boundaries and jurisdiction of the stormwater utility shall extend to the unincorporated limits of the county and incorporated areas of the county as agreed to through the establishment of an intergovernmental agreement to provide stormwater services.

Sec. 14-115. Limitation of the Stormwater Utility System

The stormwater system shall be limited to those drainage ways, channels, ditches, swales, storm sewers, culverts, inlets, catch basins, head walls and other structures which control and/or convey stormwater and which:

- (1) Are located within public streets, rights-of-way, and easements except in case those facilities are owned by the South Carolina Department of Transportation or are within the South Carolina Department of Transportation's right-of-way;
- (2) Are subject to rights-of-entry, rights-of-access, rights-of-use, or other permanent provisions for adequate access for operation, maintenance, and/or improvement of systems and facilities; or
- (3) Are located on public lands to which the county has adequate access for operation, maintenance, and/or improvement of systems and facilities.
- (4) Stormwater systems and facilities which are located on private or public property not owned by the county and which are not subject to public dedication of the systems, facilities, easements, rights-of-way, or other adequate access for operation, maintenance, and/or improvement of the systems and facilities shall be and remain the responsibility of the property owner, except as that responsibility may be affected by the laws of the State of South Carolina and the United States of America.

Sec. 14-116. Requirements for on-site stormwater systems; enforcement methods and inspections.

(1) All property owners and developers of real property to be developed within the county shall provide, manage, maintain, and operate on-site stormwater systems and facilities sufficient to collect, convey, detain, control, and discharge stormwater in a safe manner consistent with all county development regulations and the laws of the State of South Carolina and the United States of America. Any failure to meet this obligation shall constitute a nuisance if the owner fails to properly abate within such reasonable time as allowed by the court, the county may enter upon the property and cause such work as is reasonably necessary to be performed, with the actual cost thereof charged to the owner in the same manner as a stormwater service charge.

(2) The county shall have the right, pursuant to the authority of this article, for its designated officers and employees to enter upon private property and public property owned by other than

the county, upon reasonable notice to the owner thereof, to inspect the property and conduct surveys and engineering tests thereon in order to assure compliance with this article.

Sec. 14-117. Definitions.

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

Agricultural use properties shall include all properties assessed by the county as agriculture and include farming, livestock, poultry houses, swine activities and other property assessed as pertaining to agriculture. Processing and distribution facilities associated with these activities are considered industrial properties and are not covered under this definition.

Credit shall mean 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; and/or continuing provision of a service or activity that reduces the stormwater utility's cost of providing stormwater management services and stormwater management systems and facilities; and/or on the direct discharge of runoff to a receiving water that is not operated, maintained, improved, and regulated, now or in the future, by the county.

Commercial properties shall include all properties developed initially for the retail of goods and services, or other business activities, office buildings or property otherwise assessed as commercial use, and multi-family residences with 5 or more units. In the case of multi-family residences, the parcel(s) shall be defined as commercial property, in lieu of the individual residences, and subject to the stormwater utility fee as such.

Non-Profit properties shall include churches, government buildings or property otherwise assessed as non-taxable due to its use for a non-profit activity.

Customers of the stormwater utility shall include those persons, properties, and entities served by and/or benefiting from the utility's acquisition, management, maintenance, extension, and improvement of the public stormwater systems and facilities and regulation of public and private stormwater, stormwater systems, facilities, and activities related thereto, and persons, properties, and entities which will ultimately be served or benefited as a result of the stormwater management program.

Developed land shall mean property altered from its natural state by construction or installation of more than two hundred (200) contiguous square feet of impervious surfaces as defined in this division.

Equivalent Drainage Unit (EDU) is the basis of assessment for the stormwater utility fee, currently defined as 8,000 square feet of impervious surface.

Impervious surfaces 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.

Industrial Properties shall include all properties developed for uses other than residential and commercial properties, as defined in this article.

Residential properties shall include but are not limited to the following categories which will be identified as the appropriate dwelling unit classifications to be utilized in applying the stormwater utility fee structure to the designations contained within Sumter County. Properties, as identified below, shall be considered individual residential units unless said parcel contains multi-family residences of 5 or more units within the individual parcel or contiguous parcel(s), under the ownership or operation of a single property owner. In such a case, the units would collectively be defined as commercial property, due to increased impervious cover, and the parcel(s) shall be subject to the stormwater utility fee for commercial properties.

- Single-family
- Duplexes
- Triplexes
- Quadruplexes
- Townhouses
- Condominiums
- Mobile homes

Stormwater management services are those activities and functions conducted by the county that together result in the collection, conveyance, and disposal of stormwater runoff, including support activities and functions necessary to accomplish the mission of the stormwater management program, and shall include but not be limited to the administration, engineering, operation and maintenance, regulation and enforcement, and improvement of systems and facilities, review of development proposals and of the installation and maintenance of stormwater systems on private properties, provision of stormwater quality management programs to eliminate or mitigate the impact of pollutants contained in stormwater runoff, and flood emergency response and recovery measures.

Stormwater management systems and facilities include, but are not limited to, rivers, streams, creeks, lakes, ponds, channels, ditches, swales, gutters, other drainage ways, storm sewers, culverts, inlets, catch basins, headwalls, dams, reservoirs and other impoundments, flumes, stormwater detention and retention storage areas, filters, riparian areas, plants, works, instrumentalities, properties, and other structural and nonstructural components that control, capture, collect, convey, route, restrict, store, detain, retain, infiltrate, cleanse, or otherwise affect or influence the flow of stormwater within the county and the quality of stormwater discharged from the county.

Stormwater service charges shall mean the periodic service charge imposed pursuant to this division by the county for the purpose of funding costs related to stormwater management services and stormwater management systems and facilities. The use of the area of impervious surface on each property as a stormwater service charge rate parameter shall not preclude the use of other parameters, or of grouping of properties having similar characteristics into classes or categories, grouping of properties having similar characteristics through the use of ranges or rounding up or down to a consistent numerical interval, or the use of flat-rate charges for one (1) or more classes of similarly-situated properties whose impact on county's cost of providing stormwater management services and stormwater management systems and facilities is relatively consistent. Stormwater service charges may also include special charges to individual properties or persons for services, systems, or facilities related to stormwater management, including but not limited to charges for development plan review, inspection of development projects and on-site stormwater control systems, and enhanced levels of stormwater service above and beyond the levels normally provided by the county.

Sec. 14-118. Stormwater service charge rates.

Stormwater service charge rates may be determined and modified from time to time by the county council so that the total revenue generated by said charges and any other sources of revenues or other resources allocated by the county council to the stormwater utility shall be sufficient to meet the cost of stormwater management services, systems, and facilities, including but not limited to the payment of principal and interest on debt obligations, operating expense, capital outlays, non-operating expense, provisions for prudent reserves, and other costs related to stormwater as deemed appropriate by the county council. The basis of the service charge rate is one (1) EDU as defined in this ordinance. The stormwater service charge for one (1) EDU is \$54.00 per year. The initial stormwater service charge rates shall apply:

- (1) *Residential properties.* Residential properties, as defined by this ordinance, shall be billed for the stormwater service charges, as defined in this article, of ½ EDU, equivalent to \$27.00 per year. This represents a flat rate for all county residential properties relative to their average contribution to, and use of, roads which are served by the stormwater drainage system.
- (2) *Commercial properties and Non-Profit properties.* Commercial properties, as defined by this ordinance, and Non-Profit properties, as defined by this ordinance, shall be billed for the stormwater service charges, as defined in this article, of 1½ EDU, equivalent to \$81.00 per year. Commercial properties will be evaluated during the initial 2-year implementation of the program to define final EDU values based on actual impervious cover, which may result in either an increase or decrease of the EDU value of the individual property. To initiate immediate assessment of a commercial property, see Section 14-120 of this ordinance.
- (3) *Industrial properties.* Industrial properties, as defined by this ordinance, shall be billed for the stormwater service charges, as defined in this article, of 3 EDU, equivalent to \$162.00 per year. Industrial properties will be evaluated during the initial 2-year

implementation of the program to define final EDU values based on actual impervious cover, which may result in either an increase or decrease of the EDU value of the individual property. To initiate immediate assessment of an industrial property, see Section 14-120 of this ordinance.

- (4) *Agricultural use properties.* Poultry houses, swine farrowing and confinement operations and gin operations shall be billed for the stormwater service charges, as defined in this article, of 1½ EDU, equivalent to \$81.00 per year. Poultry houses, swine farrowing and confinement operations and gin operations will be evaluated during the initial 2-year implementation of the program to define final EDU values based on actual impervious cover, which may result in either an increase or decrease of the EDU value of the property. All other agriculture use properties as defined by this ordinance shall be exempt from a stormwater service charge. Processing, production and distribution facilities associated with agriculture activities are considered industrial facilities and shall be subject to the stormwater service charge as identified in (3).
- (5) *Developed land.* The minimum stormwater service charge for developed land, as defined in this article, shall be billed for ½ EDU, equivalent to \$27.00 per year, except where exempt from a stormwater service charge as defined in Section 14-118 (4) of this ordinance.

Sec. 14-119. Stormwater service charge billing, delinquencies and collections.

A stormwater service charge bill may be sent through the United States mail or by alternative means, notifying the customer of the amount of the bill, the date the payment is due, and the date when past due. These fees shall be levied, collected and paid in the same manner as user fees applied to annual tax bills. The stormwater service charge bill may also be billed and collected along with other charges, including but not limited to other county assessments, or property taxes, as deemed most effective and efficient by the county council. Failure to receive a bill is not justification for nonpayment. Nevertheless, if a customer is underbilled or if no bill is sent for developed land, the county may backbill for a period of up to one-year.

Sec. 14-120. Appeals.

Any commercial, industrial or agricultural use customer aggrieved by a final assessment of the provisions of this division may appeal the decision in the following manner and sequence.

- (1) An appeal must be filed in writing with the county administrator (or designee). At the discretion of the county, the appeal may require a survey prepared by a registered land surveyor or professional engineer containing information on the total property area, the impervious surface area, and any other features or conditions that influence the hydrologic response of the property to rainfall events. During the 2-year initial implementation of the program, the county will assist in the assessment of impervious cover and EDU calculations for commercial, industrial, or agricultural use customers.

(2) Using information provided by the appellant, a technical committee comprised of the Stormwater Department Director and two (2) other persons appointed by the county administrator shall conduct a technical review of the conditions on the property and respond to the appeal in writing within thirty (30) days. In response to an appeal, the Stormwater Department Director or designee may adjust the stormwater service charge applicable to the property in conformance with the general purposes and intent of this division. During the 2-year initial implementation of the program, the county may waive the technical review requirement.

(3) A decision of the technical committee that is adverse to an appellant may be further appealed to the county administrator within thirty (30) days of the adverse decision. Notice of the appeal shall be delivered to the county administrator by the appellant, stating the grounds for further appeal. The county administrator shall issue a written decision on the appeal within thirty (30) days. All decisions by the county administrator shall be served on the customer personally or by registered or certified mail, sent to the billing address of the customer. All decisions of the county administrator shall be final, except that this provision shall not abridge the right of any person to seek relief in a court of competent jurisdiction.

Sec. 14-121. Unlawful damage to, alteration of, or tampering with county's stormwater system.

Misdemeanor to damage, alter or tamper with stormwater system. It shall be unlawful and a violation of this chapter for any person to damage, deface, alter, change, or tamper with the county's stormwater system; and upon conviction, said person shall be guilty of a misdemeanor and punished by a fine of up to \$500.00 and/or sentenced to serve up to 30 days; and such person shall be subject to paying full costs incurred by the county as a way of restitution.

This Ordinance shall take effect upon third reading.

THE COUNTY COUNCIL FOR SUMTER COUNTY,
SOUTH CAROLINA

BY: _____
ITS: Chairman of County Council

ATTEST:

BY: _____
ITS: Clerk to Council

First Reading _____, 2010

Second Reading: _____, 2010

Public Hearing: _____, 2010

Third Reading: _____, 2010