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**AN ORDINANCE TO ESTABLISH A STORMWATER UTILITY FOR THE TOWN OF CHAPEL HILL ( )**

BE IT ORDAINED by the Council of the Town of Chapel Hill as follows:

Section 1. Chapter 23, Article I of the Town Code is hereby revised to read as follows:

“ARTICLE I. STORMWATER UTILITY

**Sec. 23-1. Findings.**

The Council does hereby find that:

- (a) North Carolina General Statute Chapter 160A, Article 16 authorizes the Town to acquire, construct, establish, enlarge, improve, maintain, own, operate, and contract for the operation of a public enterprise, including stormwater management programs and structural and natural stormwater and drainage systems of all types, to furnish service to the town and its citizens.
- (b) The establishment, by ordinance, of a stormwater management utility which shall be accounted as a separate enterprise fund, will facilitate the provision of stormwater management programs and structural and natural stormwater and drainage system service.
- (c) North Carolina General Statute 160A-314 authorizes the Town of Chapel Hill to establish and revise from time to time a schedule of rates and charges to fund the stormwater management programs and structural and natural stormwater and drainage systems of the stormwater management utility.

**Sec. 23-2. Purpose.**

This ordinance establishes a stormwater management utility as an identified fiscal and accounting fund for the purpose of addressing the stormwater management needs of the Town from a comprehensive approach including stormwater management programs designed to protect water quality by controlling the level of pollutants in, and the quantity and flow of, stormwater and structural and natural stormwater and drainage systems of all types. It sets forth a schedule of charges and defines the control, collection, and disbursement of funds including penalties, appeals and credits.

**Sec. 23-3. Definitions.**

For the purpose of this Article, the following words, terms, and phrases shall have the meanings given to them in this section, except where the context clearly indicates a different meaning:

*Credits* shall mean on-going reductions in the stormwater service charge applicable to a given property in recognition of on-site or off-site systems, facilities, measures, and actions taken

‘DRAFT’

by customers to reduce or mitigate the impact of their properties or actions on quantity or quality impacts that would otherwise be managed in the public system. Credits shall be conditioned on the continuing performance of the systems, facilities, measures, or actions in reference to standards adopted by the utility upon which the credits are granted, and may be revised or rescinded. In no case shall credits exceed the amount of the stormwater service charge.

*Detached single-family residential* shall mean developed land containing one (1) structure which is not attached to another dwelling unit and which contains one (1) or more rooms with a bathroom and kitchen facilities designed for occupancy by one (1) family and shall include single family houses, single family units, manufactured homes, and mobile homes located on individual lots or parcels of lands. Developed land may be classified as 'detached single-family residential' despite the presence of incidental structures associated with residential uses such as garages, carports or small storage buildings. 'Detached single-family residential' shall not include developed land containing: structures used primarily for non-residential purposes; manufactured homes and mobile homes located within manufactured home or mobile home parks; or other multiple unit residential properties such as apartments, condominiums and town homes.

*Developed land* shall mean property altered from a natural state that contains impervious surface equal to or greater than 500 square feet.

*Drainage system* shall mean natural and structural channels, swales, ditches, swamps, rivers, streams, creeks, wetlands, branches, reservoirs, ponds, drainage ways, inlets, catch basins, gutters, pipes, culverts, bridges, head walls, storm sewers, lakes, and other physical works, properties, and improvements which transfer, control, convey or otherwise influence the movement of stormwater runoff.

*Equivalent Rate Unit (ERU)* shall mean two thousand (2,000) square feet of impervious surface or any fraction thereof.

*Impervious surfaces* shall mean those areas within developed land which prevent or significantly impede the infiltration of stormwater into the soil. Common impervious surfaces include, but are not limited to roof tops, sidewalks, walkways, patio areas, roads, driveways, parking lots, storage areas, brick or concrete pavers, compacted gravel surfaces (roads, driveways, parking and storage areas), and other surfaces which prevent or significantly impede the natural infiltration of stormwater into the soil.

*Natural state* shall mean where the existing landform, water, soil, and vegetation characteristics generally appear to have been affected primarily by the forces of nature and where development or human disturbances are substantially unnoticeable.

*Other properties* shall mean any developed land not fitting the definition of detached single-family residential. 'Other properties' shall include, but not be limited to, attached single-family houses, townhouses and condominiums, apartments, boarding houses, hotels and motels, churches, commercial properties which include dwelling units, manufactured home or mobile home parks, commercial and office buildings, storage areas, parking lots and other impervious

‘DRAFT’

areas, parks, recreation properties, public and private schools and universities, hospitals and convalescent centers, office buildings, airports, agricultural uses involving impervious surfaces, and water and wastewater treatment plants. Real properties which are used for other than single-family residential use located in single-family residential structures or duplexes shall be deemed other properties for the purpose of calculating the stormwater service charge. The definition of 'other properties' shall be broadly construed such that any property having areas of impervious surface coverage shall be subject to the stormwater service charge unless otherwise provided.

*Service charge* shall mean the stormwater service charges applicable to a parcel of developed land which is generally reflective of a parcel's impact or demand for services provided by the Town, resulting in the cost of providing services and facilities to properly control stormwater runoff quantity and/or quality. The service charge will vary from one parcel of developed land to another based upon the amount of impervious surfaces.

*Stormwater* shall mean the runoff from precipitation that travels over natural state or developed land surfaces and enters a drainage system.

*Stormwater management program* shall mean programs designed to protect, restore or manage water quality by controlling, reducing, or managing the level of pollutants in, and controlling, reducing, or managing the velocity, volume, and peak flow of, stormwater.

*Stormwater service* shall mean that organization including its employees as well as other designated personnel that is responsible for implementing the Town's stormwater management program.

*Stormwater utility* shall mean a management structure that is responsible solely and specifically for the stormwater management program and system and that is supported through a rate structure that is based on the amount impervious surface found on individual properties.

*Undeveloped land* shall mean land that does not meet the definition of developed lands.

#### **Sec. 23-4. Establishment of a Stormwater Management Utility and Enterprise Fund.**

- (a) There is hereby established a Stormwater Management Utility for the Town which shall be responsible for stormwater management programs and which shall provide for the management, protection, control, regulation, use, and enhancement of stormwater and drainage systems.
- (b) There is hereby established a Stormwater Management Enterprise Fund for the Town or the purpose of dedicating and protecting all funding applicable to the purposes and responsibilities of the Stormwater Management Utility including but not limited to, rents, rates, fees, charges, and penalties as may be established, after notice and a public hearing, by the Town Council and other funds that may be transferred or allocated to the Stormwater Management Utility. All revenues and receipts of the Stormwater Management Utility shall be placed in the Stormwater Management Enterprise Fund and all expenses of the utility shall be paid from the Stormwater Enterprise Fund,

‘DRAFT’

except that other revenues, receipts, and resources not accounted for in the stormwater utility enterprise fund may be applied to stormwater management programs, and stormwater and drainage systems as deemed appropriate by Town Council.

**Sec. 23-5. Jurisdiction.**

The boundaries and jurisdiction of the stormwater management utility shall extend to the corporate limits of the Town, including all areas hereafter annexed thereto, and such additional areas lying outside the corporate limits of the Town as shall be approved by Town Council.

**Sec. 23-6. Impervious Coverage and Rate Unit.**

- (a) *Impervious coverage.* The amount of impervious coverage of real property is a key factor in the peak rate of stormwater runoff and the pollutant loadings of stormwater runoff discharged to the structural and natural drainage systems and facilities. Therefore, the amount of impervious coverage shall be the primary parameter for establishing the rate structure to distribute the cost of systems and facilities through a schedule of rates, fees, charges, and penalties related to the use and operation of the stormwater utility and public enterprise as established in Section 23.4.
- (b) *Establishment of the equivalent rate unit.* The area of 2,000 square feet of impervious surface shall be the basis of one equivalent rate unit. The rate unit is based on an analysis of impervious surface throughout the Town.
- (c) *Application of the equivalent rate unit.* Differences in the level and cost of services and facilities across the Town constitute sufficient reason to differentiate in the application of the equivalent rate unit for individual properties.

**Sec. 23-7. Schedule of fees and charges.**

- (a) *Fee schedule adopted.* The schedule of fees and charges set out in this section is hereby adopted and shall apply to all properties within the Town except as altered by credits or exemptions.
  - (1) *Detached single-family residential.* Each developed detached single-family residential property shall be billed and shall pay pursuant to the number of equivalent rate units determined for each individual property but shall not exceed three equivalent rate units. There shall be no charge for detached single-family residential property with fewer than 500 square feet of impervious surface.
  - (2) *Other properties.* All other developed properties having impervious coverage, including but not limited to multi-family residential properties with three or more living units, commercial properties, industrial properties, public and institutional properties, church properties, public and private school properties, and publicly owned properties, unless specifically exempted, shall be billed for one (1) Equivalent Rate Unit for each 2,000 square feet or fraction thereof of impervious

‘DRAFT’

coverage on the subject property. There will be no service charge for Other Properties with fewer than 200 square feet of impervious surface.

- (b) *Charge per Equivalent Rate Unit (ERU).* The monthly service charge per Equivalent Rate Unit shall be \$2.92 per month.

**Sec. 23-8 Billing and Collection**

- (a) *Method of billing.* Billing and collection of the stormwater service charge and any other rents, rates, fees, charges, and penalties for stormwater management services and facilities shall be administered by the Town Manager.
- (b) *Delinquencies.* A stormwater utility service charge billing or other billing for rents, rates, fees, charges, and penalties associated with the stormwater utility shall be declared delinquent if not paid on the following January 5. A delinquent billing shall accumulate an additional penalty at the rate as established for delinquent, unpaid property taxes and shall run from the date of the original billing. This penalty shall be termed a delinquency penalty charge.
- (c) *Appeal of disputed bills, adjustments.* If any customer disputes the stormwater utility service charge or any other rents, rates, fees, charges, or penalties adopted pursuant to this chapter, that customer must appeal the billing within 60 days of the charge, stating the reasons for the appeal, and providing information pertinent to the calculation of the bill. A timely appeal shall stay the penalty deadlines. An appeal of a disputed bill shall be filed with the Stormwater Manager, who may direct that the appeal be reviewed and resolved by the Town Stormwater Utility staff. If the customer is not satisfied with the disposition of the appeal, the customer may further appeal the disputed charge to the Town Manager or his designee who shall make the final ruling on the validity of the appeal. The administrative remedies provided in this chapter shall be exhausted before recourse to a court of competent jurisdiction.

**Sec. 23-9. Disposition of Service Charges and Fees.**

Stormwater Management Utility service charge and fee revenues shall be assigned and dedicated solely to the stormwater management enterprise fund in the Town budget and accounting system, which shall be and remain separate from other funds, and shall be used only to fund stormwater management programs and structural and natural stormwater and drainage systems. The services charges and fees paid to and collected by virtue of the provision of this Article shall not be used for general or other governmental or proprietary purposes of the Town, except to pay for costs incurred by the Town in rendering services to the stormwater management utility.

**Sec. 23-10. Credits and exemptions.**

- (a) *Credit for mitigation measures.* Credits against stormwater management utility service charges are an appropriate means of adjusting fees, rates, rentals, charges, fines, and

‘DRAFT’

penalties in certain cases. Crediting mechanisms may be established by Town Council and, when established, a credit manual shall be issued that will set forth the appropriate process and documentation to obtain such credits. No exception, credit, offset, or other reduction in stormwater service charges shall be granted based on age, race, tax status, economic status, or religion of the customer, or other condition unrelated to the stormwater utility’s cost of providing stormwater services and facilities.

- (b) *Exemptions.* Except as provided in this Sec. 23-7, no public or private property shall be exempt from stormwater service charges or receive a credit against such service charges. The following exemptions shall be allowed:
- (1) Improved public road rights-of-way which have been conveyed to and accepted for maintenance by the North Carolina Department of Transportation and are available for use in common for vehicular transportation by the general public shall be exempt from storm water service charge.
  - (2) Railroad right-of-way used exclusively for trackage and related safety appurtenances shall be exempted from stormwater service charge and are deemed to be pervious for application of charges.”

Section 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3. Any part or provision of this ordinance found by a court of competent jurisdiction to be in violation of the Constitution or laws of the United States or North Carolina is hereby deemed severable and shall not affect the validity of the remaining provisions of the ordinance.

Section 4. This ordinance shall become effective upon its enactment.

This the \_\_\_\_ day of \_\_\_\_\_, 2004.