

2016-07

**TOWN OF ARLINGTON
STORMWATER
UTILITY ORDINANCE**

June 1, 2016

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STORMWATER UTILITY ORDINANCE

ORDINANCE NO. 2016-04

WHEREAS, The Federal Clean Water Act, 33 U.S.C. 1251 et seq., requires certain political entities, such as the Town, to implement stormwater management programs 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;

WHEREAS, Tennessee Code Annotated, § 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,”

WHEREAS, Tennessee Code Annotated, § 68-221-1105 provides that among other 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 or not owned and operated by the municipality;
- (2) Adopt any rules and regulations deemed necessary to accomplish the purposes of this statute, 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 subdivisions or commercial developments;
- (5) Issue permits for stormwater discharges, and 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;
- (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, The Town desires to develop a stormwater utility to be responsible for the operation, construction and maintenance of stormwater facilities; for stormwater system planning, and for review of stormwater development plans for compliance with stormwater management codes.

NOW THEREFORE, BE IT ENACTED BY THE MAYOR AND BOARD OF ALDERMEN OF THE TOWN OF ARLINGTON, TENNESSEE, THAT:

Section 1. Legislative findings and policy. The Mayor and Board of Aldermen of the Town of Arlington, Tennessee 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 Town 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 2. Creation of stormwater utility. For those purposes of the Federal Clean Water Act and of Tennessee Code Annotated, § 68-221-1101 et seq., there is created a stormwater utility which shall consist of a manager or director and such staff as the Town's governing body shall authorize.

The stormwater utility, under the legislative policy, supervision and control of the governing body of the Town, shall:

- (1) Administer the acquisition, 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, 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 Town's governing body and other Town departments on matters relating to the utility;
- (4) Prepare and revise a comprehensive drainage plan for adoption by the Town's governing body;
- (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;
- (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 3. Definitions. For the purpose of this ordinance, the following definitions shall apply: Words used in the singular shall include the plural, and the plural shall include the singular; words used in the present tense shall include the future tense. The word "shall" is mandatory and not discretionary. The word "may" is permissive. Words not defined in this section shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary.

- (1) "Base rate" means the stormwater user's fee for a detached single family residential property in the Town.
- (2) "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;
- (3) “Developed property” means real property which has been altered from its natural state by the creation or addition of impervious areas, by the addition of any buildings, structures, pavement or other improvements.
 - (4) “Equivalent residential unit” or “ERU” means the average square footage of a detached single family residential property determined pursuant to this ordinance.
 - (5) “Exempt property” means all properties of the federal, state, county, and local governments, and any of their divisions or subdivisions, and property that does not discharge stormwater runoff into the stormwater or flood control facilities of the Town.
 - (6) “Fee” or “Stormwater user’s fee” means the charge established under this ordinance 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 Town. The stormwater user’s fee is in addition to any other fee that the Town has the right to charge under any other rule or regulation of the Town.
 - (7) “Fiscal year” means July 1 of a calendar year to June 30 of the next calendar year, both inclusive.
 - (8) “Impervious surface” means a surface which is compacted or covered with material that is resistant to infiltration by water, including, but not limited to, most conventionally surfaced streets, roofs, sidewalks, patios, driveways, parking lots, and any other oiled, graveled, graded, compacted, or any other surface which impedes the natural infiltration of surface water.
 - (9) “Impervious surface area” means the number of square feet of horizontal surface covered by buildings, parking lots, drives and other impervious surfaces. All building measurements shall be made between exterior faces of walls, foundations, columns or other means of support or enclosure.
 - (10) “Other developed property” means developed property other than single-family residential property. Such property shall include, but not be limited to, commercial properties, industrial properties, parking lots, hospitals, schools, recreational and cultural facilities, hotels, offices, and churches.
 - (11) “Person” means any and all persons, natural or artificial, including any individual, firm or association, and any municipal or private corporation organized or existing under the laws of this or any other state or country.
 - (12) “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.
 - (13) “Single family residential property” means a developed property which serves the

primary purpose of providing a permanent dwelling unit to a single family. A single family detached dwelling or a townhouse containing an accessory apartment or second dwelling unit is included in this definition.

- (14) "Stormwater" means stormwater runoff, snow melt runoff, surface runoff, street wash waters related to street cleaning or maintenance, infiltration, and drainage.
- (15) "Stormwater management fund" or "fund" means the fund created by this ordinance to operate, maintain, and improve the Town's stormwater system.
- (16) "Stormwater management" means the planning, design, construction, regulation, improvement, repair, maintenance, and operation of facilities and programs relating to water, flood plains, flood control, grading, erosion, tree conservation, and sediment control.
- (17) "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.
- (18) "User" shall mean the owner of record of property subject to the stormwater user's fee imposed by this ordinance.

Section 4. Funding of stormwater utility. Funding for the stormwater utility's activities may include, but not be limited to, the following:

- (1) Stormwater user's fees.
- (2) Civil penalties and damage assessments imposed for or arising from the violation of the Town'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 construct needed stormwater drainage facilities, the cost of the same may be paid from such Town funds as may be determined by the Town's governing body.

Section 5. Stormwater fund. All revenues generated by or on behalf of the stormwater utility shall be deposited in a stormwater utility fund and used exclusively for the stormwater utility.

Section 6. Operating budget. The Town's governing body shall adopt an operating budget for the stormwater utility each fiscal year. The operating budget shall set forth for such fiscal year the estimated revenues and the estimated costs for operations and maintenance, extension and replacement and debt service.

Section 7. Stormwater user's fees established. There shall be imposed on each and every developed property in the Town, except exempt property, a stormwater user's fee, which shall be set from time to time by ordinance or resolution, and in the manner and amount prescribed by this ordinance.

Prior to establishing or amending user's fees, the Town shall advertise its intent to do so by publishing notice in a newspaper of general circulation in the Town at least fifteen (15) days in advance of the meeting of the Town's governing body which shall consider the adoption of the fee or its amendment.

Section 8. Equivalent residential unit (ERU).

- (1) Establishment. There is established for purposes of calculating the stormwater user's fee the equivalent residential unit (ERU).
- (2) Definition. The ERU is the average square footage of a detached single family residential property.
- (3) Setting the ERU. The ERU shall be set by the Town's governing body from time to time by ordinance or resolution.
- (4) Source of ERU. The Town's governing body shall have the discretion to determine the source of the data from which the ERU 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 Town's governing body shall 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.
- (5) **Within the Town of Arlington, the average impervious area of a single family residence (i.e., the ERU) is established as 3,500 square feet.**

Section 9. Property classification for stormwater user's fee.

- (1) Property classifications. For purposes of determining the stormwater user's fee, all properties in the Town are classified into one of the following classes:
 - (a) Single family residential property;
 - (b) Other developed property;
 - (c) Exempt property.
- (2) Single family residential fee. The Town's governing body finds that the intensity of development of most parcels of real property in the Town classified as single family residential is similar and that it would be excessively and unnecessarily expensive to determine precisely the square footage of the improvements (such as buildings, structures, and other impervious areas) on each such parcel. Therefore, all single family residential properties in the Town shall be charged a flat stormwater management fee, equal the base rate, regardless of the size of the parcel or the improvements.
- (3) Other developed property fee. The fee for other developed property (i.e., non-single-family residential property) in the Town shall be the base rate multiplied by the numerical factor obtained by dividing the total impervious area (square feet) of the property by one ERU. The impervious surface area for other developed property is the square footage for the buildings and other improvements on the property. The minimum stormwater management fee for other developed property shall equal the base rate for single family residential property.
- (4) Exempt property. There shall be no stormwater user's fee for exempt property. The following categories of property are exempt from the stormwater user's fee:
 - a. Undeveloped (i.e., vacant) property
 - b. Property located within the 100-year flood plain which has not been filled above the Base Flood Elevation as defined by FEMA
 - c. All properties of the federal, state, county, and local governments, and any

- of their divisions or subdivisions
- d. Property that does not discharge stormwater runoff into the stormwater or flood control facilities of the Town.

Section 10. Base Rate. The Town's governing body shall, by ordinance or resolution, establish the base rate for the stormwater user's fee. The base rate shall be calculated to insure adequate revenues to fund the costs of stormwater management and to provide for the operation, maintenance, and capital improvements of the stormwater system in the Town.

For Fiscal Year 2016-2017, the Base Rate is established at \$2.00 per month per ERU.

Section 11. Adjustments to stormwater user's fees. The stormwater utility shall have the right on its own initiative to adjust upward or downward the stormwater user's fees with respect to any property, based on the approximate percentage on any significant variation in the volume or rate of stormwater, or any significant variation in the quality of stormwater, emanating from the property, compared to other similar properties. In making determinations of the similarity of property, the stormwater utility shall take into consideration the location, geography, size, use, impervious area, stormwater facilities on the property, and any other factors that have a bearing on the variation.

Section 12. Property owners to pay charges. The owner of each non-exempt lot or parcel shall pay the stormwater user's fees and charges as provided in this ordinance.

Section 13. Billing procedures and penalties for late payment.

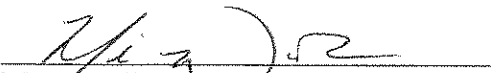
- (1) **Rate and collection schedule.** The stormwater user's fee must be set at a rate, and collected on a schedule, established by ordinance or resolution. The stormwater user's fee shall be billed and collected monthly with the utility services bill for the property.
- (2) **Delinquent bills.** The stormwater user's fee shall be billed through Memphis Light, Gas and Water (MLGW), and paid as per MLGW requirements. The stormwater user's fee shall become delinquent as of sixty (60) days following the billing. Any unpaid stormwater user's fee shall bear interest at the legal rate if it remains unpaid after one hundred twenty (120) days following the billing.
- (3) **Penalties for late payment.** Stormwater user's fees shall be subject to a late fee established by ordinance or resolution. The Town shall be entitled to recover attorney's fees incurred in collecting delinquent stormwater user's fees. Any charge due under this ordinance which shall not be paid may be recovered at law by the Town.
- (4) **Mandatory statement.** Pursuant to Tennessee Code Annotated § 68-221-1112, each bill that shall contain stormwater user's fees shall contain the following statement in bold:

THIS FEE HAS BEEN MANDATED BY CONGRESS.

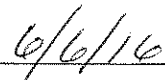
Section 14. Appeals of fees. (1) **Generally.** Any person who disagrees with the calculation of the stormwater user's fee, as provided in this ordinance, or who seeks a stormwater user's fee adjustment based upon stormwater management practices, may appeal such fee determination to the stormwater utility within thirty (30) days from the date of the last bill containing stormwater user's fees charges. Any appeal shall be filed in writing and shall state the grounds for the appeal. The stormwater utility director may request additional

information from the appealing party.

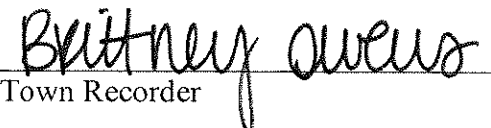
- (2) Adjustments. Stormwater user's fee adjustments for stormwater management practices may be considered for: reductions in runoff volume including discharge to a non-Town drainage system; and properly designed constructed and maintained existing retention facilities, i.e. evaporation and recharge. Based upon the information provided by the utility and the appealing party, the stormwater utility shall make a final calculation of the stormwater drainage fee. The stormwater utility shall notify the parties, in writing, of its decision.



Mayor Mike Wissman



Date



Town Recorder



Date

APPENDIX A

Calculating Stormwater User Fees

Calculating Stormwater User Fees can be done in a simple, equitable manner. The annual budget of the Stormwater Utility is divided by the total number of Equivalent Residential Units (ERU's) in the Stormwater System limits. Division of the result by 12 would yield the monthly fee per ERU. An Equivalent Residential Unit is based on the average impervious area (in square feet) of a detached single family residential property. **Within the Town of Arlington, the average impervious area of a single family residence is 3,500 square feet.** Each detached single residential family property would be one (1) ERU. Other developed properties would divide their total amount of impervious surface area (in square feet) by the number of square feet in an ERU, to get the number of ERU's for that property. The sum of all other developed property ERU's and single family residential ERU's would be the total number of ERU's.

Annual Budget. The annual costs for the storm drainage system includes permitting, maintaining, planning, designing, reconstructing, constructing, environmentally restoring, regulating, testing, inspection of the system, management and administration, and the establishment of a reserve balance.

Equivalent Residential Unit (ERU). The average square footage of a single family residential property is equivalent to one ERU.

Total ERU's. The Total ERU's within the limits of the stormwater utility is calculated according to the following formula:

$$\text{Total ERU's} = \text{Other Developed Property ERU's} + \text{Single Family Residential ERU's}$$

Single Family Residential User Fee. The fee that residential users within the limits of the stormwater utility pay for their share of the annual budget. The fee is calculated according to the following formula:

$$\text{Single Family Residential User Fee} = \frac{\text{Annual Budget}}{\text{Total ERU's within Stormwater Utility limits}}$$

This number should be divided by 12 to establish the monthly User Fee:

$$\text{Single Family Residential User Fee} \div 12 = \text{Monthly Single Family Residential User Fee}$$

Other Developed Property User Fee. The fee that other developed property users within the limits of the stormwater utility pay for their share of the annual budget. The fee is calculated according to the following formula:

Other Developed Property ERU's = Impervious Surface Area square feet ÷ 3,500 square feet

Monthly Other Developed Property User Fee = Monthly Single Family Residential User Fee x Other Developed Property ERU's

Example: Town X Stormwater Utility Department has an annual budget of \$200,000. There are 5,000 homes in Town X, an apartment complex, Maxwell House Apartments, with a total impervious surface area of 5 acres, or 217,800 square feet (sq. ft.), a motel, Red Lite Inn, with a total impervious surface area of 2 acres, or 87,120 square feet, GoodDay Tire and Rubber Company with a total impervious surface area of 15 acres, or 653,400 square feet, and a Super Wally World with a total impervious surface area of 10 acres, or 435,600 square feet. Per the Town X Area Association of Realtors, the average detached single family residential property has 3,500 square feet.

1 ERU = 3,500 square feet

Single Family Residential ERU's = 5,000 ERU's

Other Developed Property ERU's = $\frac{(217,800 + 87,120 + 653,400 + 435,600 \text{ sf})}{3,500 \text{ sq ft}} = \frac{1,393,920 \text{ sf}}{3,500 \text{ sq ft}}$
= 398 ERU's

Total ERU's = 398 Other Developed Property ERU's + 5,000 Single Family Residential ERU's
= 5,398 ERU's

Single Family Residential User Fee = \$200,000 annually ÷ 5,398 ERU's = \$37.05 annually/ERU

OR

(\$37.05 annually/ERU) ÷ (12 mo./year) = \$3.09 monthly/ERU = Monthly Single Family Residential User Fee

Maxwell House Apartments:

Maxwell House Apartment's ERU's: $217,800 \text{ sq ft} \div 3,500 \text{ sq ft/ERU} = 62.2 \text{ ERU's}$

Maxwell House Apartment's Monthly User Fee:

$\$3.09 \text{ monthly/ERU} \times 62.2 \text{ ERU's} = \mathbf{\$192.20} = \mathbf{\text{Maxwell House Apartment's Monthly User Fee}}$

Red Lite Inn:

Red Lite Inn's ERU's: $87,120 \text{ sq ft} \div 3,500 \text{ sq ft/ERU} = 24.9 \text{ ERU's}$

Red Lite Inn's Monthly User Fee:

$\$3.09 \text{ monthly/ERU} \times 24.9 \text{ ERU's} = \mathbf{\$76.94} = \mathbf{\text{Red Lite Inn's Monthly User Fee}}$

Super Wally World:

Super Wally World's ERU's: $435,600 \text{ sq ft} \div 3,500 \text{ sq ft/ERU} = 124.5 \text{ ERU's}$

Super Wally World's Monthly User Fee:

$\$3.09 \text{ monthly/ERU} \times 124.5 \text{ ERU's} = \mathbf{\$384.71} = \mathbf{\text{Super WallyWorld's Monthly User Fee}}$

GoodDay Tire and Rubber Company:

GoodDay Tire and Rubber Company's ERU's = $653,400 \text{ sq ft} \div 3,500 \text{ sq ft/ERU} = 186.7 \text{ ERU's}$

GoodDay Tire and Rubber Company's Monthly User Fee:

$\$3.09 \text{ monthly/ERU} \times 186.7 \text{ ERU's} = \mathbf{\$576.90} = \mathbf{\text{GoodDay Tire and Rubber Company's Monthly User Fee}}$