

City of Anderson

Stormwater Management Utility Ordinance

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**AN ORDINANCE ESTABLISHING A STORMWATER
MANAGEMENT UTILITY FOR THE PURPOSE OF PLANNING,
DESIGNING, CONSTRUCTING, FUNDING AND MAINTAINING
STORMWATER MANAGEMENT PROGRAMS AND FACILITIES,
AND PROVIDING FOR FEES, ADMINISTRATION, AND
ENFORCEMENT**

WHEREAS, the Stormwater Management and Sediment Reduction Act, S. C. Code Section 48-14-10 *et seq.* (the Act) authorizes establishment by a municipality of a stormwater management utility; and the South Carolina Land Resources Commission has promulgated regulations for implementation of the stormwater management utility; and

WHEREAS, City Council desires to adopt a program for implementing the City responsibilities under the Act which Council has determined to be in the best interests of the citizens of the City, the economy, environment and water quality; now, therefore,
BE IT ORDAINED by the Mayor and Council of the City of Anderson, South Carolina:

SECTION 1. Purpose.

This ordinance is adopted in compliance with South Carolina Code Sections 48-14-10, *et seq.*, and Sections 42-201, *et seq.*, of the Code of the City of Anderson, to establish a stormwater management utility.

SECTION 2. Findings of Council.

The Council finds:

- (a) The management of stormwater runoff and sediment is necessary to reduce pollution, siltation, sedimentation, local flooding, and stream channel damage, all of which impact adversely on land and water resources, and the health, safety, property, and welfare of the citizens of the City;
- (b) The City maintains a system of dedicated stormwater management facilities, including but not limited to: inlets, conduits, manholes, channels, ditches, drainage easements, retention and detention basins, infiltration facilities, and other components, as well as, natural waterways;

- (c) It is necessary that the stormwater management facilities and components of the City be regularly rehabilitated, upgraded or expanded, and that additional stormwater management facilities and measures be installed throughout the City.
- (d) The City desires to upgrade its capability to maintain existing and future stormwater management facilities and measures;
- (e) Every parcel of real property in the City uses or benefits from the stormwater management system; and the improvement of existing facilities and construction of additional facilities in the system will directly benefit the owners of all real estate;
- (f) Continued growth in the City will contribute to the need for improvements in and maintenance of the stormwater management system;
- (g) The extent each parcel of real property uses capacity in the stormwater management system is dependent on factors that influence runoff such as total area, land use, intensity of development, amount of impervious surface, and location in a particular watershed or basin;
- (h) Owners of real property and users should finance the stormwater management system to the extent they contribute to the need for the system, and derive special benefits therefrom, and charges bear a substantial relationship to the cost of the service; and
- (i) It is in the best interests of the citizens of this City and, most specifically, the owners and users of real property, that a stormwater management utility and stormwater management utility fee be established by ordinance.

SECTION 3. Adoption.

The City Code is hereby amended by adding the following:

STORMWATER MANAGEMENT UTILITY

Sec. 3-1. Article designation and authority.

This article may be cited as the Stormwater Management Utility Ordinance and is adopted pursuant to S. C. Code Sections 48-14-10, *et seq.*, S. C. Code Section 5-7-30 and S. C. Land Resources Conservation Commission Regulations 72-300 to 72-316.

Sec. 3-2. Definitions.

- (a) Runoff Coefficient. The proportion of rainfall volume that runs off an area, also known as the "C" factor.
- (b) Credit. Stormwater credits are conditional reductions in the amount of a stormwater service charge to an individual property based on the provision and continuing presence of an effectively designed, constructed, maintained and operational on-site stormwater system, facility, service, or activity that reduces the stormwater utility's costs. Credits for on-site stormwater systems should be generally proportional to the effect that such systems have on the peak rate of runoff from the site. Credits shall be granted as provided in the City's Storm Water Utility Credit & Appeals Manual.
- (c) Equivalent Residential Unit (ERU). ERU's shall be used as the basis for determining storm water service charges to all properties within the City. One ERU is 0.4 acres of developed land with a runoff coefficient (C) of 0.40.
- (d) Dwelling Unit. A dwelling unit is a single unit providing complete, independent living facilities for one family, including permanent provisions for living, sleeping, eating, cooking, and sanitation. Examples of dwelling units are single-family homes, apartment units, and duplex units.
- (e) Impervious Surface. Impervious surfaces are those areas that prevent or impede the

infiltration of stormwater into the soil as it entered in natural conditions prior to development including, but not limited to, roofs, sidewalks, parking lots, and other similar structures.

- (f) Utility Customer (also known as Users). Customers of the Stormwater Management Utility shall include all persons, properties, and entities served by and/or benefiting from the utility's acquisitions, management, maintenance, extension, and improvement of the public stormwater management systems and facilities and regulation of public and private stormwater systems, facilities, and activities related thereto, and persons, properties, and entities which will ultimately be served or benefited by the stormwater management program.

Unless the context specifically indicates otherwise, the meanings of all other words and terms used in this article shall be as set forth in S. C. Land Resources Conservation Commission Regulation 72-301.

Sec. 3-3. Establishment of stormwater management utility; administration; duties and powers.

There is hereby established a stormwater management utility to carry out the purposes, functions and responsibilities set forth in this Article. The City Manager or his designee shall administer the utility, which shall have the following powers and duties:

- (1) Stormwater management planning and preparation of comprehensive watershed master plans for stormwater management;
- (2) Regular inspections of public and private stormwater management facilities and measures and the construction thereof;
- (3) Maintenance and improvement of stormwater management facilities and infrastructure that have been accepted by the City for that purpose;
- (4) Plan review and inspection of sediment control and stormwater management plans, measures and practices;
- (5) Retrofitting designed watersheds to reduce existing flooding problems or to improve

water quality;

- (6) Acquisition of interests in land, including easements;
- (7) Design and construction of stormwater management facilities and acquisition of equipment;
- (8) Water quantity and water quality management, including monitoring and surveillance; and
- (9) Any and all powers and duties delegated or granted to it as a local government implementing agency under the laws and regulations of the State of South Carolina and the ordinances of the City.

Sec. 3-4. Boundaries and jurisdiction.

The boundaries and jurisdiction of the utility shall extend to the limits of the City, including areas annexed to the City, and such additional areas outside the City as shall be designated by intergovernmental agreement.

Sec. 3-5. Regulation of land disturbing activity.

City Council shall establish by ordinance a system regulating land disturbing activities, including, but not limited to, provisions for reviewing and approving stormwater management and sediment control plans; creating design requirements for such plans and land disturbing activities; and providing operational and maintenance requirements for stormwater management facilities and measures.

Sec. 3-6. Stormwater utility fees.

City Council shall establish by ordinance the amount or amounts and classifications of fees to be implemented to help fund the utility and its programs and projects. In establishing the fees, City Council shall consider, among other things, the following criteria:

- (1) The fees shall be reasonable and equitable so that users pay to the extent they contribute to the need for the utility, and the fees shall be apportioned with approximate equality and upon a reasonable basis with due regard for the benefits conferred. It is recognized that these benefits, while substantial, in many cases cannot be measured directly.
- (2) The cost factors considered in the calculations used to establish fees include, but may not

be limited to, the following cost factors, which may be associated with the resolution of stormwater problems which the utility shall seek to alleviate.

- a. Stormwater management planning and preparation of comprehensive watershed master plans;
 - b. Regular inspections of public and private stormwater management facilities and measures and the construction thereof;
 - c. Maintenance and improvement of stormwater management facilities and infrastructure accepted by the City for the purpose of stormwater management;
 - d. Plan review and inspection of stormwater management and sediment control plans, measures and practices;
 - e. Retrofitting designated watersheds to reduce existing flooding problems or to improve water quality;
 - f. Acquisition of interests in land, including easements;
 - g. Design and construction of stormwater management facilities and the acquisition of equipment;
 - h. Administration and enforcement;
 - i. Water quantity and water quality management, including monitoring, surveillance and maintenance inspection of publicly and privately owned facilities;
 - j. Debt service and financing costs; and
 - k. Administration and implementation of the National Pollutant Discharge Elimination System (NPDES) Phase II Stormwater Program.
- (3) The City Manager or his designee shall develop rules and regulations that allow for an on-going reduction in a utility customer's stormwater fee for non-residential properties. The credit shall be allowed for certain qualifying activities that reduce either the impacts of stormwater runoff or the City's costs of providing stormwater management services. The City Manager or his designee shall have the authority to charge utility customers a stormwater credit application fee, which shall be based upon the estimated costs of reviewing, processing, and administering the credit application and mechanism.
- (4) In addition to permanent utility accounts, the fee shall also apply to temporary residential and non-residential accounts, such as construction projects.

Sec. 3-7. Billing of stormwater management utility fee.

The stormwater management utility fee may be billed monthly to users on a combined utility system bill. Non-payment may result in termination of all utility services, including of water, sewer, stormwater management, or outside fire service protection. Where a user does not have a utility

account, the property owner will be billed separately on a regular cycle. Owners of vacant dwelling units and owners of unimproved real estate will likewise be billed on a regular cycle. The storm water management utility fee may also be billed on the annual tax notice and, any bill remaining unpaid for thirty (30) days after mailing shall constitute a lien upon the property, collectible in the same manner as taxes assessed against such property.

Sec. 3-8. Investment and reinvestment of funds and borrowing.

Funds generated for the utility from fees, bond issues, other borrowing, and other sources shall be utilized only for those purposes for which the utility has been established, including but not limited to: planning; acquisition of interests in land including easements; design and construction of facilities; maintenance and improvements of the stormwater system; billing and administration; and water quantity and water quality management, including monitoring NPDES Stormwater Phase II Program administration and implementation, surveillance, inspection of publicly and privately owned facilities, construction inspection, and other activities which are reasonably required. Such funds shall be invested and reinvested pursuant to the same procedures and practices established by the City for investment and reinvestment of funds. Any form of borrowing authorized by law to fund capital acquisitions or expenditures for the utility may be used.

Sec. 3-9. Appeals.

Any utility customer, real property owner or other person aggrieved by the amount of utility fee charged with respect to property, or by any other matter arising out of the operation of the utility, may appeal by filing a written explanation of the grounds of the appeal with the City Engineer, or his designee, within thirty (30) days of the date of the notification of the fee of any other matter being appealed. If a fee is appealed, the fee may be increased or decreased as appropriate. A decision shall be rendered in writing within thirty (30) days after receipt of the written appeal. Any person aggrieved by an adverse decision may appeal that decision by written request to the City Manager within thirty (30) days of the receipt of such decision, which request sets forth the ground or grounds of the appeal. The City Manager shall within thirty (30) days after receipt of such request hear the appeal. The appellant may or may not be represented by an attorney at the appeal. The appellant will be furnished with a written result of the appeal within ten (10) days of the hearing date in which

a decision is reached. Any person aggrieved by an adverse decision of the City Manager may appeal that decision to the court of common pleas within thirty (30) days of receipt of the decision.

- (1) An appeal review fee of \$25.00 for residential parcels of land, or an appeal review fee of \$100 for non-residential parcels of land, shall be paid at the time the appeal is filed. Each parcel requires an additional appeal review fee. The appeal review fee may be refunded if the result of the appeal is in favor of the appellant.
- (2) Changes in the stormwater management utility user fee, which may result from an appeal, may be retroactive. Payments made during the appeal will be appropriately adjusted.
- (3) During the pendency of the appeal process set forth above, if timely pursued, no enforcement shall be attempted and the appeal shall act as a stay of all enforcement proceedings as set forth in the next section of this article.

Termination of stormwater management utility credits

The adopted system of credits as provided in this Ordinance shall expire on December 31, 2012, unless re-enacted by a separate ordinance of the City Council following a majority approval vote of the electorate. Notwithstanding the foregoing, the City Council may, by a separate ordinance and a four-fifths (4/5) vote, extend the expiration date of system of credits for an additional five (5) years. Such ordinance shall be enacted during the first six months of the expiration year. The City Council may enact subsequent extensions (not to exceed five years), by a separate ordinance and a four-fifths (4/5) vote, during the first six months of the then effective expiration year.

Sec. 3-10. Enforcement and penalties.

- (a) The City Engineer or his designee shall be the enforcement officer(s) for the provisions of this article.
- (b) It shall be unlawful for any person to violate any provision of this article, and any such violation shall be punished as prescribed in the general penalty provisions of this code.

Each day a violation continues constitutes a separate offense.

- (c) In addition to any other penalties provided in this article, a civil penalty not to exceed one thousand dollars (\$1,000.00) against any person violating any provision of this article may be assessed in the manner provided in S. C. Code § 6-11-285. Each day of a violation constitutes a separate violation.
- (d) In addition to any other penalties or remedies provided in this article, the City, upon the recommendation of the City Attorney, may institute a civil action in the appropriate court to obtain injunctive compliance with the provisions of this article or remedy or prevent the violation or threatened violation of any provision of this article.

Sec. 3-11. Municipal liability.

Nothing in this article and no action or failure to act under this article shall or may be construed to:

- (a) Impose any liability on the City, or its departments, agencies, officers or employees for the recovery of damages; or
- (b) Relieve any person engaged in a land disturbing activity of duties, obligations, responsibilities, or liabilities arising from or incident to operations associated with such activity or imposed by the provisions of this article or the laws and regulations pursuant to which it was adopted.

SECTION 4. Repeal.

All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed.

SECTION 5. Severability.

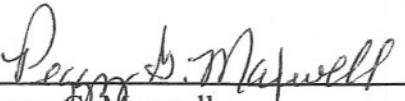
If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court or competent jurisdiction, such provision and such holding shall not affect the validity of the remaining portions of this ordinance.

SECTION 6. Effective Date.

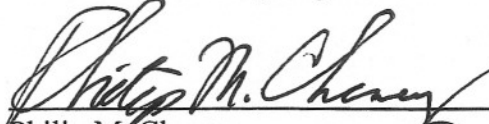
This Ordinance shall be effective on the date of final reading.

ADOPTED THIS 25th DAY OF June, 2007.

ATTESTED TO:

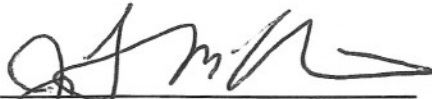

Peggy G. Maxwell
City Clerk/Treasurer

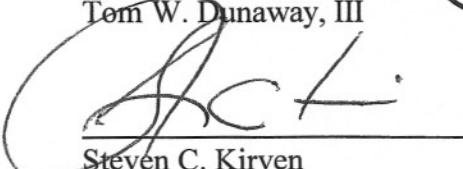

Terence V. Roberts, Mayor



Philip M. Cheney


Tom W. Dunaway, III

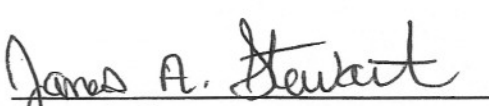
APPROVED AS TO FORM:


J. Franklin McClain
City Attorney


Steven C. Kirven

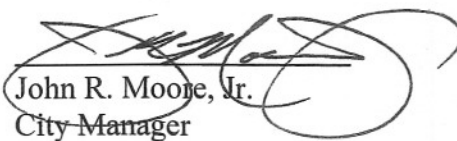

Dennis H. McKee, Mayor Pro Tem

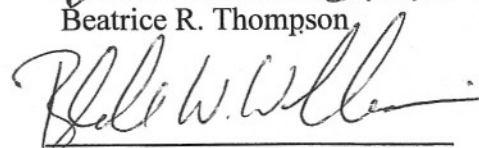

A. B. Roberts


James A. Stewart


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REVIEWED BY:


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City Manager


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COUNCIL MEMBERS