

FILED  
OFFICE OF CLERK  
OF COURT

2017 SEP 15 PM 2:12

STATE OF SOUTH CAROLINA

CLERK OF COURT  
LANCASTER, SC  
ORDINANCE NO.: 2017-1455

COUNTY OF LANCASTER

**AN ORDINANCE**

**TO ESTABLISH THE LANCASTER COUNTY STORMWATER MANAGEMENT UTILITY, TO AMEND LANCASTER COUNTY'S UNIFORM DEVELOPMENT ORDINANCE (UDO) SO AS TO ADD THERETO THE TERMS, CONDITIONS AND PROVISIONS OF THE LANCASTER COUNTY STORMWATER MANAGEMENT UTILITY, INCLUDING A DETERMINATION OF THE GEOGRAPHIC BOUNDARIES SUBJECT TO THE UTILITY'S MANAGEMENT OVERSIGHT AND THE FEES ASSOCIATED THEREWITH.**

**WHEREAS**, on November 28, 2016, Council passed ordinance 2016-1422, legislation that approved a new Uniform Development Ordinance; and

**WHEREAS**, Lancaster County is required by federal law [33 U.S.C. 1342(p) and 40 CFR 122.26] to obtain coverage under a National Pollutant Discharge Elimination System (NPDES) permit from the South Carolina Department of Health and Environmental Control (DHEC) for stormwater discharges as detailed in Exhibit A attached hereto and incorporated herein by reference as fully as if repeated verbatim; and

**WHEREAS**, the NPDES permit requires the County to impose controls to reduce the discharge of pollutants in stormwater to the maximum extent practicable using management practices, control techniques and system design and engineering methods, and such other provisions that are determined to be appropriate for the control of such pollutants; and

**WHEREAS**, it is the purpose of this ordinance to protect, maintain and enhance the environment of Lancaster County and the short-term and long-term public health, safety and general welfare of its citizens by establishing requirements and procedures to control the potential adverse effects of increased stormwater runoff associated with both future development, including redevelopment, and existing developed land. Further, it is the purpose of this ordinance to direct the development and implementation of the Stormwater Management Program and to establish legal authority to authorize Lancaster County at a minimum to take all necessary action to obtain and comply with federal and state requirements.

**NOW, THEREFORE,** by the power and authority granted to the Lancaster County Council by the Constitution of the State of South Carolina and the powers granted to the County by the General assembly of the State, it is ordained and enacted that:

**Section 1. Title.**

This ordinance shall be known as the “Stormwater Management Ordinance of Lancaster County, South Carolina.”

**Section 2. Authority.**

This ordinance is adopted pursuant to the power and authority granted to the Lancaster County Council by the Constitution of the State of South Carolina and the powers granted to the County by the general assembly of the State and in compliance with the requirements imposed upon the County by the National Pollutant Discharge Elimination System (NPDES) permit No. SCR030000 issued in accordance with the federal Clean Water Act, the South Carolina Pollution Control Act and regulations promulgated thereunder.

**Section 3. Ordinance Amendment.**

The terms, conditions and provisions of the ordinance shall be included within existing Lancaster County Ordinance No.: 2016-1422, otherwise known as the Uniform Development Ordinance (UDO), and to that extent Section 8.11, et seq. of the UDO ordinance is amended so as to add thereto the following:

8.11 – Stormwater management utility.

8.11.1 - Council findings.

The county council has made the following findings:

- (A) The management and regulation of stormwater runoff and sediment is necessary to reduce pollution, siltation, sedimentation, local flooding and stream channel erosion, all of which impact adversely land and water resources and the health, safety, property and welfare of the residents of the county;
- (B) There is a system of stormwater management facilities, including, but not limited to, inlets, conduits, manholes, outlets, ponds, and certain drainage easements within the County’s designated MS4;
- (C) The stormwater management facilities and components within the MS4 need to be regularly maintained, rehabilitated, upgraded and improved, and additional stormwater management facilities and measures will need to be installed throughout the county;
- (D) The county needs to upgrade its capability in order to maintain existing and future stormwater management facilities and measures;



- (E) All parcels of real property in the county, particularly those with improvements, both use or benefit from the stormwater management system and program. The improvement of existing facilities and construction of additional facilities in the system will directly or indirectly benefit the owners of all real property;
- (F) Continued growth in the county will contribute to the need for improvements in and maintenance and regulation of the stormwater management system;
- (G) The county can best manage and regulate the control of stormwater by a policy that regulates the use of real property, both private and public, and which takes reasoned, measured steps to involve the county in additional methods of participation and regulation;
- (H) Owners of real property shall finance the stormwater management system to the extent they, and the persons they permit to utilize their property, contribute to the need for the system. Therefore, fees or other charges shall bear a substantial relationship to the cost of the service;
- (I) It is in the best interests of the citizens of this county and, most specifically, the owners of real property, that a stormwater management utility and stormwater management utility fee system be established by ordinance and implemented as part of the county's utility special revenue fund, by whatever name designated.

#### 8.11.2 – Stormwater management utility established; administration; powers and duties.

The county council hereby establishes a stormwater management utility within the designated MS4 to carry out the purposes, functions and responsibilities set forth in this article. The governing body of the stormwater management utility shall be the county council. The administrator shall administer the stormwater management utility through the public works department or such other departments and divisions as the county administrator shall designate. The stormwater management utility shall have the following powers and duties, which powers and duties are not necessarily exclusive to the stormwater management utility:

- (A) Stormwater management planning to include preparation of comprehensive watershed master plans for stormwater management.
- (B) Regular inspections and maintenance of public stormwater management facilities and measures for the construction thereof, as well as regular inspections of private stormwater management facilities.
- (C) Maintenance and improvements of stormwater management facilities that have been accepted by the county for purposes of stormwater management.
- (D) Plan review and inspection of sediment control and stormwater management plans, measures and practices.
- (E) Retrofitting designated watersheds to reduce existing flooding conditions or to improve water quality.
- (F) Acquisition of interests in land, including easements.
- (G) Design and construction of stormwater management facilities and measures and acquisition of equipment.

- (H) Water quantity and water quality management, including monitoring surveillance.
- (I) 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 and the ordinances of the county.

#### 8.11.3 - Boundaries and jurisdiction.

All real properties located in Lancaster County north of the following boundary: from a point at the western boundary with York County along Highway 5 until its intersection with Highway 521, then proceeding briefly in a southerly direction along Highway 521, then in a northeasterly direction until its intersection with the Union County, North Carolina state line, then further northward along the North Carolina state line, all as depicted and delineated on that map incorporated herein and identified as Exhibit A-4.

##### 8.11.3.1 - Amount and classifications of fees.

###### (A) Criteria for establishing fees.

The county council hereby establishes the amount and classifications of fees to be implemented to fund the storm water management utility and its programs and projects. In establishing such fees, the county council has considered, among other things, the following criteria:

- (1) The fee system must be reasonable and equitable so that users pay to the extent they contribute to the need for the storm water management utility, and so that fees or other charges bear a substantial relationship to the cost of service. The county council recognizes that these benefits, while substantial, in many cases cannot be measured directly.
- (2) The components of the calculations used to establish fees must include, but may not be limited to, the following cost factors, which may be associated with the resolution of storm water problems which the stormwater management utility shall seek to alleviate:
  - (a) Storm water management planning and preparation of comprehensive watershed master plans for storm water management;
  - (b) Regular inspection and maintenance of public stormwater management facilities and measures for the construction thereof, as well as regular inspections of private stormwater management facilities;
  - (c) Maintenance and improvement of stormwater management facilities that have been accepted by the county for purposes of storm water management;
  - (d) Plan review and inspection of sediment control and stormwater management plans, measures and practices;
  - (e) Retrofitting designed 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 measures and acquisition of equipment;

- (h) Administration and enforcement;
  - (i) Water quantity and water quality management, including monitoring surveillance; and
  - (j) Debt service and financing costs.
- (3) The components of the calculations used to establish fees must be based on an equivalent residential unit (ERU), determined and approved by the county council, with reasonable general adjustments being made for, but not limited to, the following factors:
- (a) Commercial service and industrial land uses other than single-family residential;
  - (b) Open and/or forested land;
  - (c) The amount of site that is impervious; and
  - (d) Other generally accepted factors relevant to such calculations based upon the provisions of this article.
- (4) The practical difficulties and limitations related to establishing, calculating and administering such fees should be addressed with due regard for fairness, efficiency, ease of comprehension, and ease of administration.
- (B) Fee structure. Stormwater management utility fees shall be fixed from time to time in the budget ordinance as approved by county council and are set forth in the fee schedule in the MSSD of the UDO. Fee categories are as follows:
- (1) Developed, single family residential property
  - (2) Non-single family residential property, developed commercial property, developed industrial property.

#### 8.11.4 - Determination of amount of impervious area.

The administrator or designee will determine the amount of impervious area on each developed commercial/industrial property. A determination will be made using information derived from digital and other photographic data, as maintained by the administrator or designee, commonly designated as Geographic Information System (GIS) Data, and such additional information, if available, as may reliably supplement such data. Upon written request, an owner, or lawful occupant obligated to the owner for payment of the fee, shall be provided a written determination of the amount of impervious area for which a fee has been established.

#### (A) Collection of fees.

- (1) Taxable property. The administrator or his designee shall prepare and forward all information necessary to the county tax collector or his designee for the purpose of an annual billing of the stormwater management utility fee. Notice of the fee shall be included on the property owner's notice of ad valorem real property taxes, and the fee shall be due and payable simultaneously with the taxes. By Resolution, the county council may authorize the county administrator to implement other reliable means of billing.



- (2) Nontaxable property. The county council recognizes that nontaxable as well as taxable properties generate stormwater runoff and benefit from the stormwater management system and that the principle of fairness dictates that such properties be charged. The administrator or his designee shall make arrangements for billing for nontaxable property in the same manner as taxable property. By Resolution, the county council may authorize the county administrator to implement other reliable means of billing.
  - (3) Date of imposition of fee for developed properties. Developed properties shall become subject to the imposition of the stormwater management utility fee at the billing cycle following final approval of site development by the county.
- (B) Use of revenue; investment of funds; borrowing. Funds generated for the stormwater management utility from fees, bond issues, other borrowing and other sources shall be utilized only for those purposes for which the storm water management utility has been established, including, but not limited to, regulation, planning, acquisition of interests in land, including easements, design and construction of facilities, maintenance of the stormwater management system, billing and administration, and water quantity and water quality management, including monitoring, surveillance, private maintenance inspection, 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 county for investment and reinvestment of funds. The county council may use any form of borrowing authorized by law to fund capital acquisitions or expenditures for the storm water management utility. The county council, in its discretion and pursuant to standard budgetary procedures, may supplement such funds with amounts from the general fund.
- (C) Requests for reconsideration; appeals.
- (1) Request for reconsideration.
    - (a) A property owner of record, or a lawful occupant obligated to the owner for payment of the fee, may request a reconsideration of any determination or interpretation by the administrator or designee in the operation of the storm water management utility. Such request must be in writing and filed with the administrator or designee, or such other person as the county administrator may designate, within 30 days of receipt of notification of the determination or interpretation.
    - (b) The county shall review the application and make a decision on the request within 30 days of receipt of the request.
    - (c) The request shall be made upon such forms and be accompanied by such information as the county, by written policy, shall require.
  - (2) Appeals.
    - (a) Persons who are authorized to make a request and who are aggrieved by a decision of the county under subsection 8.11.4(C)(1) shall have the right to appeal to the county administrator, or such person, committee or board as he may establish for such purpose.

- (b) The appeal shall be in writing and shall set forth, in detail, the grounds upon which relief is sought. The person designated to review such appeal shall provide a hearing on the appeal within 30 days of filing and render a decision within 60 days of filing.
  - (c) The person designated to review such appeal shall have full authority to affirm, modify or reverse a decision being reviewed upon determining whether the decision was made in compliance with the standards, policies and criteria of this division.
- (3) Payment of fee required. No provision of this division allowing for a request for reconsideration or for an administrative appeal shall be deemed to suspend the due date of the fee with payment in full. Any adjustment in the fee for the person pursuing a request for reconsideration or appeal shall be made by refund of the amount due.

#### **Section 4. Geographic Area of Impact; Fee**

This ordinance and the requirements of the Stormwater Management Utility shall be applicable to the following parcels:

All real properties located in Lancaster County north of the following boundary: from a point at the western boundary with York County along Highway 5 until its intersection with Highway 521, then proceeding briefly in a southerly direction along Highway 521, then in a northeasterly direction until its intersection with the Union County, North Carolina state line, then further northward along the North Carolina state line, all as depicted and delineated on that map incorporated herein and identified as Exhibit A-4.

The stormwater utility fee is based on the amount of impervious surface on your property. Impervious surface area is any surface that does not readily absorb water and impedes the natural infiltration of water in to the soil. The majority of Stormwater Utilities use impervious areas as an equitable way to set fees. Customers pay a fee related to the amount of runoff generated from their property. Impervious surfaces generate runoff at a much higher rate than undisturbed land.

Residential properties will be billed based on a Residential Equivalent Unit (ERU). An ERU is set as 3,500 square feet of impervious area. It was determined by taking a representative sample of residential properties in Lancaster County and measuring the impervious surfaces based on aerial photography. The commercial property fees are based on individual measurement and analyses of approximately 430 properties in the MS4 area. The impervious area for each was divided by 3,500 sq. ft. to determine the number of equivalent ERUs the property contained. The ERU is presently set at \$60 annually to cover minimum effort required to comply with new regulations in the panhandle of Lancaster County. The number of ERUs was multiplied by \$60 to determine an annual fee. The fee will be included along with annual tax billing invoices.



The fee applicable to this ordinance regarding the Stormwater Management Utility is established and shall be set in accordance with the proposed annual revenue and the proposed annual budget as set forth in both Exhibit B (revenue) and Exhibit C (budget), each being attached hereto and incorporated herein by reference as fully as if repeated verbatim. The County Council, having reviewed in detail the specifics of both Exhibit B and Exhibit C, has determined and so find that there is a rational nexus between the annual revenue and the annual budget; and, accordingly, adopt the following fees for 2017 as follows:

- A. Real property parcels having located thereon a residential structure - \$60.00 annually.
- B. Real property parcels having located thereon commercial structure(s) – see Lancaster County Tax Map Numbers noted on Exhibit B attached hereto and incorporated herein by reference as fully as if repeated verbatim. For all those commercial properties noted thereon that are subject to a real property tax or an incentive fee, the stormwater fee for any single parcel shall not exceed thirty-five (35%) percent of the real property tax or incentive fee due for each ensuing year. For those commercial properties that are exempt from real property taxes (schools, churches, government facilities, etc.), the 35% cap is not applicable and the entire stormwater fee shall be chargeable to those parcels.
- C. Real property considered as agricultural lands, forest lands or undeveloped lands – South Carolina Code Section 6-1-330(D) exempts such property from the imposition of a stormwater fee.

#### **Section 5. Severability**

If any section, subsection or clause of this ordinance is held to be unconstitutional or otherwise invalid, the validity of the other sections, subsections and clauses shall not be affected.

#### **Section 6. Conflicting Provisions.**

To the extent this ordinance contains provisions that conflict with provisions contained elsewhere in the Lancaster County Code or other County ordinances, the provisions contained in this ordinance supersedes all other provisions and this ordinance is controlling.

#### **Section 7. Effective Date.**

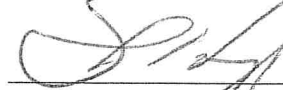
This ordinance is effective upon passage of Third Reading.



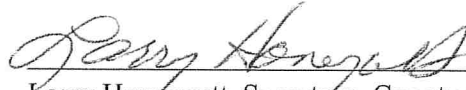
**AND IT IS SO ORDAINED**

Dated this 12<sup>th</sup> day of September, 2017

**LANCASTER COUNTY, SOUTH CAROLINA**




Steve Harper, Chair, County Council



Larry Honeycutt, Secretary, County Council

ATTEST:



Sherrie Simpson, Clerk to Council

First Reading:	July 17, 2017
Second Reading:	August 14, 2017
Third Reading:	September 12, 2017
Public Hearing:	August 28, 2017



Catherine E. Heigel, Director

*Promoting and protecting the health of the public and the environment*

April 14, 2016

Jeff Catoe  
Public Works Director  
Lancaster County  
PO Box 1809  
Lancaster, SC 29721

Re: Designation of a portion of Lancaster County as a Small Municipal Separate Storm Sewer Systems (SMS4) to Authorize Discharges to all Waters of the State under the State of South Carolina National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges from Regulated Small Municipal Separate Storm Sewer Systems (SMS4), SCR030000.

Dear Mr. Catoe,

We at the South Carolina Department of Health and Environmental Control (SCDHEC) appreciate the opportunity to meet with you to review Lancaster County's SMS4 Notice of Intent (NOI).

According to the 2010 U.S. Census, at least five distinct portions of Lancaster County became part of the Charlotte NC – SC Urbanized Area (UA). Based on that classification, SMS4s owned or operated by Lancaster County became automatically designated for regulation under Phase II of the NPDES Storm Water Program for Discharges from SMS4.

In addition, the Department is required to consider, and designate, portions of the SMS4 where it is determined that discharges from the SMS4 result, or have the potential to result, in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

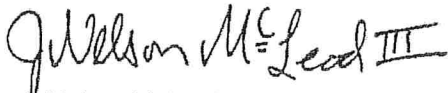
After water quality factors stated above were considered, the South Carolina Department of Health and Environmental Control (SCDHEC) is designating the portion of Lancaster County north of South Carolina Highway 5 as a Regulated Small Municipal Separate Storm Sewer System (SMS4). This area is comprised of TMDL watershed areas (Waxhaw and Twelvemile Creeks), and includes Sugar Creek, listed in the 2014 303(d) list of impaired waters in addition to the 5 portions of Lancaster County included in the Charlotte NC – SC UA as required in South Carolina Water Pollution Control Permits Regulation 61-9 §122.32.

There are waiver provisions from designation for Storm Water Permitting requirements contained in SC R. 61-9 §122.32.(e) & (h). However, these waiver provisions are not applicable to regulated SMS4s with population of 10,000 or more.

Designating the area north of South Carolina Highway 5 as the Lancaster County regulated SMS4 will allow Lancaster County an opportunity to ensure that development in this high growth area occurs in a manner that will meet the County's goals of protecting waters quality. SCDHEC will place a draft certificate of coverage on public notice giving the public an opportunity to comment. A fact sheet supporting the designation of the regulated SMS4 as the area north of South Carolina Highway 5 located in the jurisdiction of Lancaster County will be prepared.

Looking forward to the successful implementation of the NPDES Phase II Municipal Stormwater Program in Lancaster County.

Sincerely,

A handwritten signature in black ink that reads "Nelson McLeod III". The signature is written in a cursive style with a large initial "N" and "M".

Nelson McLeod III, PE  
Environmental Engineer  
MS4 Program

Attachments.

cc: John Gast, Keck & Wood, Inc, 215 Hampton Street, Suite 100, Rock Hill, South Carolina 29730



## References

SC Water Pollution Control Permits Regulation 61-9 §122.32 Criteria for regulation of a small MS4:

- (a)(1) Small MS4 located in urbanized area
- (c) Waiver requirements
- (f)(1)(i) Small MS4 located in urbanized area
- (f)(1)(ii) Total population and population density
- (f)(1)(iii) Adjacent to and impacting a designated MS4
- (g)(1)(i) On 303d list of impaired waters
- (g)(1)(iii) Population growth
- (g)(1)(iv) Three miles of urbanized area
- (g)(2)(i) Contributing to violation of water quality standard
- (g)(2)(vi) MS4 approaches two or more criteria
- (h) Waivers and phasing

SC Water Pollution Control Permits Regulation 61-9 §124.10      Public notice of  
permit actions and public comment period

List of Impaired 303d

[http://www.scdhec.gov/HomeAndEnvironment/Docs/tmdl\\_14-303d.pdf](http://www.scdhec.gov/HomeAndEnvironment/Docs/tmdl_14-303d.pdf)

List of Approved TMDLs

[http://www.scdhec.gov/HomeAndEnvironment/Docs/tmdl\\_08sites.pdf](http://www.scdhec.gov/HomeAndEnvironment/Docs/tmdl_08sites.pdf)