

**AN ORDINANCE TO AMEND AND REENACT
THE ISLE OF WIGHT COUNTY CODE
CHAPTER 14A. STORMWATER MANAGEMENT.
ARTICLE X. STORMWATER MANAGEMENT FEE.**

WHEREAS, as a result of federal and state mandates, the Isle of Wight County Board of Supervisors has created a stormwater management program; and,

WHEREAS, in order to properly fund the stormwater management program the Isle of Wight County Board of Supervisors deems it necessary to equitably impose upon all property owners of Isle of Wight County, Virginia, a stormwater management fee in order to offset costs associated with operating the stormwater management program.

NOW, THEREFORE, BE IT ORDAINED by the Isle of Wight County Board of Supervisors, Virginia, that Chapter 14A. Stormwater Management. be amended and reenacted, effective July 1, 2013, by adding Article X. Stormwater Management Fee as follows:

Article X. Stormwater Management Fee

Sec. 14A-38. Findings and determinations.

(a) Isle of Wight County (County) has a system of manmade and natural components of a stormwater management infrastructure to both limit and manage the volume of stormwater to control flood events and to prevent degradation of the County's waterways through stormwater quality management. These facilities are in part regulated by federal and state laws and regulations.

(b) Stormwater runoff is associated with all improved properties in the County, whether residential or nonresidential, and the quantity and quality of runoff is correlated to the amount of impervious surface and land-disturbing activities on each parcel.

(c) The elements of the stormwater management infrastructure provide benefit to properties within the County through direct protection of property, control of flooding of critical components of the infrastructure, and enhancement of water quality and the County's natural environment.

(d) The costs of monitoring, operating, maintaining, and constructing the stormwater management system required in the County, both to meet stormwater pollution control regulations and to address identified water quality degradation, erosion and flooding needs, should therefore be allocated, to the extent practicable, to all property owners based on their contribution to the stormwater runoff.

Sec. 14A-39. Definitions.

The following words and terms used in this section shall have the following meanings:

(a) *Agricultural property* means land used for the tilling, planting or harvesting of agricultural, horticultural or forest crops or land used for raising livestock. For purposes of this ordinance, an agricultural property containing impervious surface is considered a developed residential property.

(b) *Credits* means a reduction in a nonresidential customer's stormwater user fee given for certain qualifying activities that either reduce the impact of increased stormwater runoff or reduce the County's costs of providing stormwater management.

(c) *Department* means the Isle of Wight County Department of General Services.

(d) *Manufactured home park* means a lot or parcel on which are located, or which is arranged or equipped for the accommodation of, two or more manufactured homes occupied for living purposes.

(e) *Developed nonresidential property* means developed property that does not serve a primary purpose of providing permanent dwelling units. Such property shall include, but not be limited to, commercial properties, industrial properties, parking lots, recreational and cultural facilities, hotels, offices, hospitals, churches, manufactured home parks, apartment buildings, and other multifamily properties with more than four (4) dwelling units.

(f) *Developed property* means a real property that has been altered in whole or in part from its "natural" state by the addition of any improvements such as buildings, structures, paving and/or other impervious surfaces.

(g) *Developed residential property* means a developed property containing at least one (1), but no more than four (4), dwelling unit, accessory structure, or other improvement. Such properties shall include, but not be limited to, those with single family houses, condominiums, duplexes, triplexes, quadruplexes, townhouses and manufactured homes (that are not located in a manufactured home park), sheds, garages, and other accessory structures.

(h) *Director* means the Director of the Department or the Director's authorized representative.

(i) *Dwelling unit* means a single housing unit, manufactured home, townhouse, or condominium providing complete, independent living facilities for one (1) or more persons, including provisions for living, sleeping, eating, cooking and sanitation. For purposes of this ordinance, apartment buildings and manufactured homes located within a manufactured home park are considered developed nonresidential property.

(j) *Equivalent residential unit* or *ERU* means the equivalent impervious area of a single-family developed residential property per dwelling unit located within the County based on the statistical average horizontal impervious area of a single-family residence in the County. One (1) ERU shall equal two thousand fifty (2,050) square feet of impervious surface area. ERU's shall be rounded to the closest whole number—0.01 to 0.49 shall be rounded down, whereas 0.50 to 0.99 shall be rounded up.

(k) *ERU rate* means the fee charged for one (1) equivalent residential unit, as established in the fee schedule of the annual budget ordinance.

(l) *Private stormwater facilities* means various stormwater and drainage works not under the control or ownership of the County, state or federal government which may include inlets, conduits, pipes, pumping stations, manholes, structures, channels, outlets, retention or detention basins, other structural components and equipment designed to transport, move, treat or regulate stormwater.

(m) *Public stormwater facilities* means various stormwater and drainage works under the control or ownership of the County, state, or federal government which may include inlets, conduits, pipes, pumping stations, manholes, structures, channels, outlets, retention or detention basins, other structural components and equipment designed to transport, move, treat or regulate stormwater.

(n) *Stormwater management revenues* or *revenues* mean all rates, fees, assessments, rentals, other charges or other income received in connection with the management and operation of the system, including amounts received from the investment or deposit of moneys in any fund or account and any amounts contributed by the County, “fees-in-lieu-of” provided by developers or individual residents, and the proceeds from sale of utility bonds.

(o) *Stormwater management system* or *system* means the stormwater management infrastructure and equipment of the County and all improvements thereto for stormwater control in the County. Infrastructure and equipment shall include structural and natural stormwater control facilities of all types, including, without limitation, retention and detention basins, storm drainage pipes, conduits, pumping stations, and other plants, structures, and real and personal property used for support of the system. The system does not include privately owned farm ditches and other private drainage systems serving industrial, commercial, homeowners association or other facilities serving privately owned property.

(p) *Stormwater management utility, stormwater utility, or utility* means the enterprise fund created by this Article to operate, maintain and improve the County's stormwater management system.

(q) *Undeveloped property* means any parcel which has not been altered from its natural state to disturb or alter the topography or soils on the property in a manner which substantially reduces the rate of infiltration of stormwater into the earth.

(r) *Utility fees* means the user fees based upon the ERU rate applied to property owners of developed residential property and developed nonresidential property, all as more fully described in this article. The minimum utility fee is one (1) ERU multiplied by the ERU rate.

Sec. 14A-40. Establishment of stormwater management utility.

(a) Pursuant to the statutory authority granted to localities in §15.2-2114 of the Code of Virginia, 1950, as amended, to provide for the general health, welfare and safety of the County and its residents, there is hereby established a stormwater utility, which shall be the operational means of implementing and otherwise carrying out the functional requirements of the stormwater management system. The Board of Supervisors of Isle of Wight County hereby

designates the Director of General Services or an authorized designee as the Administrator of the stormwater management utility fee. The general purposes of the utility include administration, management, operation and maintenance of the County's stormwater infrastructure; studies and programs; regulation of drainage; and financing of existing and future repairs, replacements, improvements and extensions of the stormwater infrastructure.

(b) The stormwater management utility shall be administered and operated under the direction of the County's Director, who shall organize, direct and manage the utility in accordance with this article and other appropriate legal requirements.

(c) The utility shall deposit in a separate ledger account all revenues collected pursuant to this article. The funds deposited shall be used exclusively for the operation, maintenance and capital costs related to the stormwater management system. Operation, maintenance and capital costs related to the system shall include, but not be limited to, the following:

(1) Acquisition, as permitted by Section 15.2-1800 of the Code of Virginia (1950, as amended), of real or personal property, and interest therein necessary to construct, operate and maintain stormwater control facilities;

(2) The cost of administration of such programs, to include the establishment of reasonable operating and capital reserves to meet unanticipated or emergency requirements of the system and all associated legal and collection costs;

(3) Engineering, planning, design, inspection, debt retirement and construction costs for new facilities and enlargement or improvement of existing facilities including the enlargement or improvement of dams, levees, floodwalls, and pump stations, whether publicly or privately owned, that serve to control stormwater;

(4) The operation and maintenance of facilities and equipment including the maintenance of dams, levees, floodwalls and pump stations, whether publicly or privately owned, that serve to control stormwater;

(5) Monitoring of the quantity and quality of stormwater and associated control devices;

(6) Other activities consistent with the state or federal regulations or permits governing stormwater management, including, but not limited to, public education, watershed planning, inspection and enforcement activities, and pollution prevention planning and implementation; and

(7) Activities on private properties whereby the overall public benefit exceeds the overall private benefit, as determined by the Director.

Sec. 14A-41. Imposition of utility fees.

The Isle of Wight County Board of Supervisors, as provided by this article, shall set appropriate levels of utility fees so that adequate revenues will be generated to provide for a balanced operating and capital improvement budget for operation and maintenance of the County's

stormwater management system. Revenue from utility fees shall not exceed actual costs incurred for providing for the operation and maintenance of the County's stormwater management system described in this article. Utility fees shall be charged to owners of all developed property in the County.

(a) For purposes of determining the utility fee, all properties in the County are classified into one of the following classes:

- (1) Developed residential property;
- (2) Developed nonresidential property; or
- (3) Undeveloped property

(b) The utility fee for developed residential property shall equal the ERU rate; provided, however, where more than one (1) residence or dwelling unit is located on a single property the owner of the property shall be charged a utility fee which is equal to the ERU rate multiplied by the number of residences or dwelling units located on the property.

(c) The utility fee for developed nonresidential property shall be the ERU rate multiplied by the numerical factor obtained by dividing the total impervious surface area of a developed nonresidential property by one (1) ERU. The numerical factor will be rounded to the nearest whole number. The minimum utility fee for any developed nonresidential property shall equal the ERU rate.

(d) The utility fee for vacant developed property, both residential and nonresidential, shall be the same as that for occupied property of the same class.

(e) Undeveloped property shall be exempt from the utility fee until such time it is developed.

(f) Each developed property situated on a parcel devoted to agricultural use, as defined herein, shall be charged a fee equal to the ERU rate.

(g) The charge defined as the ERU rate is established from time to time by action of the Isle of Wight County Board of Supervisors to raise revenues to cover the costs of the stormwater management system.

Sec. 14A-42. Billing and payment, interest, liens.

a) Billing for the stormwater utility fee shall be rendered on a semi-annually basis to all chargeable property owners and shall represent the fee for the preceding six (6) months and any unpaid balances and interest on an account. Any parcel or dwelling unit owner who has remitted payment of the stormwater utility charges and believes that it is incorrect may submit an adjustment request as provided for in this article. The stormwater utility fee is to be paid by the owner of each parcel or dwelling unit that is subject to the charge. The owner of each parcel or dwelling unit in the County, except undeveloped property, shall be mailed a statement for the stormwater utility fees.

b) The stormwater utility fee due the County from property owners for stormwater management shall be based on the ERU rate of seventy-two dollars (\$72.00) per ERU per year. When applicable, the utility fee shall be prorated at six dollars (\$6.00) per ERU per month.

c) All properties, except undeveloped property, shall be rendered bills or statements for a stormwater utility fee. Billing for the utility fee shall be rendered in arrears to all chargeable persons and shall represent charges for each day of the preceding billing period with interest added as stated on the bill. In the event charges are not paid when due, interest thereon shall commence on the due date and shall accrue at the rate of ten (10) percent per annum until such time the delinquent charges and accrued interest are paid.

d) The bills or statements shall include a date by which payment shall be due. All statements shall be mailed at least thirty (30) days prior to the payment due date stated thereon. All bills for charges prescribed by this Article shall be deemed delinquent if not paid in full to the Treasurer's Office by the end of the business day it is due, or the next working day in the event the due date is a County recognized holiday or weekend day.

e) Any delinquent bill, including unpaid fees and accrued interest, shall be collected by any means available to the County. Notice to the owner shall be provided in every case when stormwater charges incurred by a tenant or occupant become more than ninety (90) days delinquent. Unpaid fees and interest accrued shall constitute a lien against the property, ranking on a parity with liens for unpaid taxes. Records of all unpaid fees and interest, indexed by the name of the record owner of the real estate, shall be maintained in the County Treasurer's office.

f) When previously undeveloped properties are brought into the system or in the event of alterations or additions to developed nonresidential property that alter the amount of impervious surface and/or the number of dwelling units, a utility fee will accrue as determined by the Director:

- (1) Upon issuance of a Certificate of Occupancy; or
- (2) Upon substantial completion of the improvements; or
- (3) In the event completion of the improvements is not diligently pursued,

upon establishment of the impervious area or dwelling unit that affects stormwater runoff. A bill or statement will be issued and said charges will be prorated for the number months for which the parcel is subject to the utility fee.

Sec. 14A-43. Adjustment of fees, exemptions.

a) Full waiver of the utility fee shall be provided to properties owned by federal, state, and local government agencies when those agencies own and provide for maintenance of storm drainage and stormwater control facilities, and the agency has the appropriate permits issued by the state, and the agency's stormwater system does not discharge to waters or outlets requiring Isle of Wight County maintenance.

b) Full waiver of the utility fee shall be provided to property owned or operated by the County and other local government agencies.

c) A partial waiver of the utility fee may be provided to cemeteries, as determined by the Director.

d) Public roads and street rights-of-way that are owned and maintained by state or local agencies including property rights-of-way acquired through the acquisitions process shall be exempt from the utility fee.

e) Agricultural properties shall be exempt from the utility fee; provided however, each developed property situated on a parcel devoted to agricultural use shall be charged a fee equal to the ERU rate.

f) Developed properties with less than 400 square feet of impervious surface are exempt from the utility fee until such a time the property exceeds 400 square feet of impervious surface.

g) Any property owner charged a utility fee greater than one (1) ERU who has paid his utility fees and who believes his utility fees to be incorrect may make application in writing to the Director or his designee for an adjustment to the stormwater management utility fee. All such requests must be submitted prior to the end of the fiscal year for which the request applies. The property owner shall substantiate the claim to the satisfaction of the Director with plans, engineering calculations and related documents prepared by a licensed professional engineer or land surveyor. The Director may waive the licensed professional requirement if in his opinion the specific adjustment request does not warrant such a requirement.

(1) New construction utility fee adjustment applications for new construction shall be made in conjunction with the relevant site plan or development plan submittal or a request for waiver of normal site plan processing requirements. Action on such applications shall be within the response times specified for such submittals and requests. Approved adjustments shall be effective from the date of approval and will be prorated from the first day of the month in which the adjustment is approved.

(2) Any owner of a developed parcel or dwelling unit who believes his utility fee to be incorrect may make application for adjustment of the charge to the Director. Response to such requests shall be made by the Director within sixty (60) calendar days of receipt of a complete request. The Director shall develop an administrative policy regarding the refund or credit of overpaid fees.

h) Any owner charged a utility fee greater than one (1) ERU may appeal the Director's decision to the County Administrator but must do so in writing within fifteen (15) calendar days of the date of the Director's response. The County Administrator shall respond to the appeal within fifteen (15) calendar days and such response shall be final.

i) The Director may extend such County response times as appropriate to ensure full and complete evaluation of the application. In these cases, the Director shall notify the applicant of the action by certified mail.

j) Adjustments/Credits: The Director shall prepare a Utility Adjustment/Credit policy that shall become effective upon adoption by the Board of Supervisors to any developed nonresidential property that installs, operates, and maintains a stormwater management facility

that achieves a permanent reduction in stormwater flow or pollutant loadings. The amount of the credit will be based in part on the percentage reduction in stormwater flow or pollutant loadings, or both, from pre-installation to post-installation of the facility. Credits will not be provided to any property that does not obtain a stormwater permit from the Department of Conservation and Recreation or the Department of Environmental Quality when such permit is required by statute or regulation.

Sec. 14A-44. Severability.

The provisions of this chapter shall be deemed severable; and if any of the provisions hereof are adjudged to be invalid or unenforceable, the remaining portions of this chapter shall remain in full force and effect and their validity unimpaired.

Adopted this ____ day of _____, 2013.

JoAnn W. Hall, Chairman
Board of Supervisors

Attest:

Carey Mills Storm, Clerk

Approved as to Form:

Mark C. Popovich
County Attorney