

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA

The 18th day of November, 2013.

No. 39808-111813.

An ORDINANCE adding Chapter 11.5, Stormwater Utility, to the Code of the City of Roanoke (1979), as amended; authorizing the City Manager to take appropriate actions to facilitate an effective transition and implement the Ordinance; providing for effective dates; and dispensing with the second reading by title of this Ordinance.

WHEREAS, during the past several years, City Council and City Staff have periodically held briefings, discussions, and studied the establishment of a Stormwater Utility for the City and the need for such Utility;

WHEREAS, during the past year, City Council has been briefed by City Staff on the need for the establishment of a Stormwater Utility for the City in order to address significant stormwater capital projects within the City, increase maintenance of the City's stormwater infrastructure, and to comply with emerging Federal and Commonwealth of Virginia environmental regulations;

WHEREAS, during City Council's most recent briefing on September 3, 2013, by City Staff on the Stormwater Utility matter, it was recommended that the establishment of a Stormwater Utility for the City move forward and allow Council to consider adopting a Stormwater Utility Ordinance in order to create such a Utility; and

WHEREAS, Council has held a public hearing in accordance with Section 15.2-2114(B) of the Code of Virginia (1950), as amended, on October 21, 2013, at which public hearing citizens were afforded the opportunity to present their opinions and views in support of or in opposition to the proposed the Stormwater Utility Ordinance.

THEREFORE, BE IT ORDAINED by the Council of the City of Roanoke as follows:

1. Adding a new Chapter 11.5, Stormwater Utility, to the Code of the City of Roanoke (1979), as amended, to read and provide as follows:

CHAPTER 11.5 STORMWATER UTILITY

Sec. 11.5-1. Authority and effective date.

The City is authorized by the provisions of § 15.2-2114, Code of Virginia (1950), as amended, to establish a utility to support stormwater management activities consistent with the Virginia Stormwater Management Act, § 10.1-603.1 et seq., Code of Virginia (1950), as amended, and other state and federal stormwater regulations.

This Chapter shall be effective July 1, 2014, with the initial stormwater utility fee bill due and payable on or before October 5, 2014 in the same manner prescribed in § 32-16 et seq., Code of the City of Roanoke (1979), Real Estate Taxes. Notwithstanding, the City Manager is authorized to develop policies, procedures, and manuals necessary to implement this Chapter in accordance with § 11.5-2 and to accept applications for credits in accordance with § 11.5-7 prior to July 1, 2014.

Sec. 11.5-2. Purpose and organization.

City Council finds that an adequate, sustainable source of revenue for stormwater management activities is necessary to protect the general health, safety, and welfare of the residents of the City. Further, Council finds that parcels, as that term is defined in Appendix A to the City's Zoning Ordinance, § 36.2-100 et seq., Code of the City of Roanoke (1979) (City Code), with higher amounts of impervious surfaces contribute greater amounts of stormwater and pollutants to the City's stormwater management system and that the owners of such parcels should carry a proportionate burden of the cost of such system. Therefore, Council determines that a stormwater utility (utility) based on a parcel's impervious surface cover is in the best interest of the public.

The utility shall be operated under the direction of the City Manager, who shall organize, direct, and manage the utility, including the development of necessary policies, procedures, and manuals as authorized by this Chapter.

Sec. 11.5-3. Stormwater utility fee.

- (a) There is hereby established a stormwater utility fee (fee) imposed on all improved parcels in the City that exist on January 1 of each year regardless of whether the parcel is subject to taxation under § 32-16 et seq., Code of the City of Roanoke (1979), Real Estate Taxes. All revenue

from the fee shall be deposited into a stormwater utility enterprise fund for the sole purpose of funding the activities described in § 11.5-5.

- (b) The monthly utility fee rate for each billing unit as defined in § 11.5-10 shall be set by City Council by separate resolution or with the adoption of the City budget. Each improved parcel in the City shall be charged in accordance with § 11.5-6.
- (c) Except as otherwise provided in this Chapter, the impervious surface of a parcel shall be determined by the City using one or more of the following, at the discretion of the City Manager: aerial photography; as-built drawings; final approved site plans; building permits; field surveys; or other appropriate engineering and mapping analysis tools.

Sec. 11.5-4. Exemptions.

Notwithstanding § 11.5-3 above, the following parcels shall be exempt from the stormwater utility fee:

- (a) Unimproved parcels as defined in § 11.5-10;
- (b) Parcels owned by a federal, state, or local government, or public entity, that holds a permit to discharge stormwater from a municipal separate storm sewer system, except that this exemption shall apply only to parcels or portions of parcels covered by any such permit and shall not apply to parcels owned and maintained by the City of Roanoke that are not otherwise exempt under subsection (c) below; and,
- (c) Public roads and street rights-of-way that are owned and maintained by the Commonwealth of Virginia, the City of Roanoke, or a local agency, including property rights-of-way acquired through the acquisitions process.

Sec. 11.5-5. Stormwater utility enterprise fund.

There shall be established a stormwater utility enterprise fund (fund) from the deposit of all fees, charges, and other revenue collected by the utility, as well as any other revenue as may be determined by Council or the City Manager, including but not limited to grants and special appropriations. The fund shall be used exclusively to pay or recover costs for the following:

- (a) The acquisition by gift, purchase, or condemnation, as authorized by law, of real and personal property, and interest therein, necessary to construct, operate, and maintain stormwater control facilities;
- (b) The cost of administration of such programs;

- (c) Planning, design, engineering, construction, and debt retirement 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;
- (d) Facility operation and maintenance, including the maintenance of dams, levees, floodwalls, and pump stations, whether publicly or privately owned, that serve to control stormwater;
- (e) Monitoring of stormwater control devices and ambient water quality monitoring; and
- (f) 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.

Sec. 11.5-6. Stormwater utility fee calculation.

- (a) Except as otherwise provided, the minimum stormwater utility fee shall be the rate established for one billing unit and shall be calculated for each parcel in the following manner:
 - (1) Determine the impervious surface of the parcel in square feet.
 - (2) Divide the impervious surface of the parcel by the billing unit.
 - (3) Round the resulting calculation to the nearest whole number to determine the number of billing units.
 - (4) Multiply the number of billing units determined in subsection (3) above by the rate established in § 11.5-3 to obtain the stormwater utility fee for the parcel.
- (b) Where a parcel with impervious surface is held in common ownership, the fee shall be calculated in accordance with subsection (a) above. The City Manager may directly bill the entity responsible for the parcel held in common ownership, or distribute the resulting fee equally among those owning an interest in the parcel held in common ownership. In addition, the City Manager, in his or her sole discretion, may develop alternative methodologies for billing a parcel held in common ownership on a case-by-case basis.

Sec. 11.5-7. Stormwater utility fee credits.

Section 15.2-2114.B, Code of Virginia (1950), as amended, recognizes that a continued investment in an on-site stormwater management facility results in a reduced impact on the public stormwater management system.

The City Manager is authorized to adopt policies, procedures, and manuals necessary to implement, administer, and enforce this section.

- (a) Credit Eligibility. Only on-site stormwater management facilities meeting the following criteria are eligible for a credit against the stormwater utility fee:
- (1) The parcel owner must submit a Credit Application Form provided by the City in accordance with subsection (c) below.
 - (2) The parcel owner must maintain the structure and function of a stormwater management facility and operate the stormwater management facility.
 - (3) The parcel owner must have a properly executed maintenance agreement with the City that has been properly recorded in the land records of the Office of the Clerk of the Circuit Court of the City of Roanoke.
 - (4) The parcel owner must demonstrate to the City's satisfaction that the facility is functioning as originally designed. The structure must be maintained to the satisfaction of the City Manager in accordance with the properly executed maintenance agreement.
 - (5) The facility must have met the criteria in existence at the time of construction in at least one of the following sections of the City Code, or their predecessor sections of the City Code, if applicable:
 - (i) § 11.4-16, Water Quality; or
 - (ii) Both § 11.4-17, Stream Channel Erosion, and § 11.4-18, Flooding.
 - (6) Facilities that do not meet the minimum criteria in subsection (5) above may still be considered on a case-by-case basis at the discretion of the City Manager if it is demonstrated that the facility achieves a permanent reduction in post-development stormwater flow and pollutant loading. The credit may be prorated based on an analysis of the benefits of the reduction.
 - (7) The City Manager shall have the discretion to modify one or more of the credit eligibility requirements set forth in this section for residential credit applications, including establishing the definition of residential properties for purposes of residential credit applications. The definition of residential properties entitled to submit residential credit applications and any such other

modifications shall be included in the policies, procedures, or manuals adopted by the City Manager pursuant to this Section 11.5-7.

(b) Credit Amounts.

- (1) The maximum credit allowed is 50% of the total annual stormwater utility fee, except as provided in subsection (6) below.
- (2) For an on-site stormwater management facility, the credit amount is based on the amount of impervious surface located on the parcel draining to the facility, and not the total amount of impervious surface cover on the parcel.
- (3) Credits for on-site stormwater management facilities are as follows if the facility was required under the provisions of Chapter § 11.4, Stormwater Management, of the City Code:
 - (i) A ten percent (10%) credit is allowed if the facility, or facilities, provide water quality benefits in accordance with § 11.4-16 of the City Code.
 - (ii) A ten percent (10%) credit is allowed if the facility, or facilities, provide both stream channel erosion control benefits in accordance with § 11.4-17 of the City Code and flood control benefits in accordance with § 11.4-18 of the City Code.
- (4) At the City Manager's discretion, a credit of up to five percent (5%) in addition to that provided in subsection (3) above may be granted for a facility that achieves benefits above those required by the City Code.
- (5) If an on-site stormwater management facility is part of a voluntary retrofit, the amount of credit the facility is eligible to receive in accordance with subsections (3) and (4) above shall be doubled.
- (6) The owner of an eligible facility that treats off-site impervious surface located within the City may take a credit for treating the off-site impervious surface. The off-site credit amount shall be calculated in the same manner as if the facility was located on the off-site parcel. However, in no case shall the total credit exceed the total amount of the annual stormwater utility fee charged to the parcel owner.

(c) Application and Maintenance Verification.

- (1) There is no fee for a credit application.
- (2) To apply for the initial credit for an on-site stormwater management facility, the parcel owner must submit, at his or her own expense, a Credit Application Form to be provided by the City Manager. The Credit Application Form shall require the following information:

- (i) A description of the type of facility (or facilities), the stormwater control standard met by the facility, and the year the facility was built;
 - (ii) A drainage area map, drawn to scale, for the facility showing the drainage boundaries and the impervious area treated by the facility in square feet;
 - (iii) As-built or other acceptable engineering plans for the facility;
 - (iv) A narrative of the known maintenance history of the facility, including routine maintenance and significant structural maintenance and repair;
 - (v) A copy of the City's standard maintenance agreement that has been executed by the City and properly recorded in the land records of the Office of the Clerk of the Circuit Court of the City of Roanoke. If there is no existing facility maintenance agreement, then one must be completed and properly recorded;
 - (vi) Information on any public funds used to construct, repair, upgrade, or retrofit the facility, including the amount and the date(s);
 - (vii) Calculations to determine the monetary amount of the claimed credit; and
 - (viii) A completed inspection checklist certifying that the facility is functioning as originally designed. "Functioning as originally designed" means that the facility is operating in accordance with the original design specifications, regardless of the standard in effect at the time of the installation. The checklist must be signed and sealed by a Professional Engineer. The inspection checklist shall be no more than one year old at the time of application.
- (3) Once approved, the parcel owner will continue to receive the credit as long as the facility continues to function as originally designed, and subject to reporting requirements established by the City Manager. The City Manager may revoke the credit if an inspection by the City Manager or a designated representative determines that the facility is no longer being properly maintained or functioning as designed. Such revocation will be effective thirty (30) days after the City Manager has notified the parcel owner in writing of the deficiency(s) and if the problems are not resolved. The revocation may be delayed for an additional period, at the discretion of the City Manager, provided that the parcel owner is diligently pursuing work to eliminate deficiencies.

- (4) Any maintenance or functional deficiencies must be remedied at the owner's expense before a facility may qualify, or re-qualify (after revocation), for a credit.
 - (5) The City Manager shall have the discretion to modify the application and maintenance verification criteria and the Credit Application Form for residential credit applications, including the definition of residential properties qualified to submit residential credit applications and any such other modifications shall be included in the policies, procedures, or manuals adopted by the City Manager pursuant to this Section 11.5-7.
- (d) Public Improvements to Private Facilities. A privately owned and operated facility that was constructed or upgraded using City provided funds shall be treated in the following manner:
- (1) Newly Constructed Facility. The parcel owner shall not be eligible for a credit until such time that the cumulative amount of credit that otherwise would have been allowed if the facility was constructed using private funds equals or exceeds the City's investment.
 - (2) Existing, Non-Functioning Facility Upgraded to Function Properly. The parcel owner shall not be eligible for a credit until such time that the cumulative amount of credit that otherwise would have been allowed if the upgrade or retrofit was constructed using private funds equals or exceeds the City's investment.
 - (3) Existing, Functioning Facility Upgraded and Eligible for Higher Credit. The parcel owner shall be eligible for the original credit. At such time that the cumulative difference between the original credit and the higher credit equals or exceeds the City's investment, the parcel owner shall also be eligible for the higher credit.
- (e) Credit for Industrial Stormwater Permits. Subject to the maximum credit in subsection (b)(1) above, a ten percent (10%) credit is allowed for any parcel, or portion of a parcel, that is subject to, and in compliance with, an individual or general Virginia Pollutant Discharge Elimination System industrial stormwater permit issued in accordance with 9VAC25-31-120, Virginia Administrative Code, as amended. To apply for the initial credit, the parcel owner must provide the City Manager with proof of permit coverage, the date of permit expiration, and a cover letter affirming that the parcel is in full compliance with the permit requirements. The credit will expire on permit expiration unless the parcel owner provides proof to the City Manager that the permit has been renewed.
- (f) Affirmative Duty and Timing. It is the sole responsibility of the parcel owner to apply for a credit in accordance with policies, procedures, and manuals adopted by the City Manager. A credit that is approved by

January 1 of a given year thereafter will be applied in full to the upcoming billing cycle.

Sec. 11.5-8. Billing, penalties, and interest.

- (a) The stormwater utility fee shall be billed and payable on the same schedule as prescribed in § 32-18, Code of the City of Roanoke (1979), Real Estate Taxes, and shall be subject to the same penalties and interest as prescribed in § 32-19, unless a petition for adjustment has been submitted and is under active consideration by the City Manager in accordance with § 11.5-9 below. The stormwater utility fee may be billed separately or may be combined with other billings, and, when combined, payment will be applied first to the stormwater utility fee and then to all other taxes and fees, as determined by the City Treasurer, in accordance with § 15.2-2114.G, Code of Virginia (1950), as amended.
- (b) A delinquent stormwater utility fee, along with cumulative interest and penalties, shall constitute a lien on the parcel ranking in parity with liens for unpaid taxes and shall be collected in the same manner as provided for the collection of unpaid real estate taxes.

Sec. 11.5-9. Petitions for adjustments.

- (a) Any parcel owner may request an adjustment of the stormwater utility fee by submitting a request in writing to the City Manager no later than thirty (30) days after the date the bill is mailed or issued to the parcel owner. Grounds for adjustment are limited to the following:
 - (1) An error was made regarding the square footage of impervious surface;
 - (2) The parcel is exempt under the provisions of § 11.5-4;
 - (3) There is a mathematical error in the fee calculation;
 - (4) The identification of the parcel owner invoiced is in error; or
 - (5) An approved credit was incorrectly applied.
- (b) The parcel owner shall complete a Stormwater Utility Fee Adjustment application form supplied by the City Manager.
- (c) If the request for adjustment is regarding an error in the measured impervious surface, a plan view of the parcel's impervious surface must be submitted with the application, and shall be prepared at the owner's expense. The plan must meet the following criteria:

- (1) The plan must show all impervious surfaces and label their dimensions within the parcel boundaries; and
 - (2) The plan must be signed and sealed by a Professional Engineer or Professional Land Surveyor licensed in the Commonwealth of Virginia attesting to the accuracy of the impervious surface measurements.
- (d) The requirement for a plan view of the parcel's impervious surfaces required in subsection (c) above may be waived, if in the sole discretion of the City Manager the error is obvious and is the result of a technical error or oversight by the City. In such case, the City shall be responsible for recalculating the impervious surface of the parcel.
 - (e) The City Manager shall make a determination within thirty (30) days of receipt of a complete submittal for the request for adjustment. In the event that the City Manager finds that the appeal is deficient or incomplete, the City Manager shall offer the owner thirty (30) days to supply the missing information from the time of the determination. If the information is not provided to the City Manager within the additional thirty (30) day period, the request will be deemed withdrawn.
 - (f) The City Manager's decision on a fee adjustment petition is a final decision from which an aggrieved party may appeal to the Circuit Court of the City of Roanoke within thirty (30) days after the date of such decision, after which time no further appeal shall be allowed.

Sec. 11.5-10. Definitions.

Words and terms used in this Chapter, and which are defined in Section 11.4-30 of the City Code, shall have the meaning ascribed to such words and terms as set forth in Section 11.4-30 of the City Code, except as provided below, or the context clearly indicates otherwise.

- (a) *Billing unit* means five-hundred (500) square feet of impervious surface.
- (b) *Impervious surface* means any area improved, graded, and/or surfaced with impervious material or resulting in impervious conditions. An impervious material or condition is present when the natural infiltration of water into the soil is significantly impeded or prevented. An impervious surface includes that portion of the land surface covered by an elevated structure, such as a bridge or deck, regardless of whether the land surface itself remains pervious or impervious.
- (c) *Improved parcel* means any parcel regardless of zoning district, zoning classification, or land use that has two hundred fifty (250) or more square feet of impervious surface.

- (d) *Unimproved parcel* means any parcel regardless of zoning district, zoning classification, or land use that has less than two hundred fifty (250) square feet of impervious surface.

END OF CHAPTER 11.5

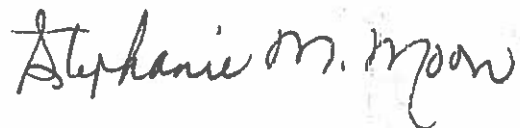
2. The City Manager is hereby authorized to take all steps necessary and/or advisable, in his or her discretion, to implement an effective transition of Chapter 11.5 of the Code of the City of Roanoke (1979), as amended, prior to the effective date of Chapter 11.5, including, but not limited to, developing policies, procedures, and manuals necessary to implement Chapter 11.5, accepting applications for stormwater utility fee credits, and proposing to City Council a stormwater utility fee. Any proposal for a stormwater utility fee that the City Manager may propose will be acted on by Resolution by City Council or with the adoption of the City Budget. All fees and expenses incurred prior to July 1, 2014, will be included as City of Roanoke General Fund or Capital Projects expenditures funded by local revenue.

3. Paragraph 1 of this Ordinance shall be in full force and effect on and after July 1, 2014.

4. Paragraph 2 of this Ordinance shall be in full force and effect upon passage of this Ordinance.

5. Pursuant to the provision of Section 12 of the City Charter, the second reading of this Ordinance by title is hereby dispensed with.

ATTEST:



City Clerk