

ORDINANCE NO. 2021-12

AN ORDINANCE AMENDING CHAPTER 102 (UTILITIES) OF THE CODE OF THE CITY OF FAIRFAX, VIRGINIA, TO ADD A NEW ARTICLE V, PERTAINING TO THE ESTABLISHMENT OF A STORMWATER UTILITY, TOGETHER WITH A STORMWATER MANAGEMENT ENTERPRISE FUND, AND THE IMPOSITION OF AN ASSOCIATED STORMWATER UTILITY FEE.

BE IT ORDAINED, by the City Council of the City of Fairfax, Virginia, that Chapter 102 of the Code of the City of Fairfax, Virginia, is amended to add thereto a new Article V, to read in its entirety as follows:

“ARTICLE V. – STORMWATER UTILITY.

Sec. 102-200. Authority.

The city is authorized pursuant to Code of Virginia, § 15.2-2114 to establish a utility, and to enact a system of service charges, to support a local stormwater management program consistent with the Virginia Stormwater Management Act (Code of Virginia, Title 62.1, Chapter 3.1, Article 2.3) or any other applicable state or federal regulation governing stormwater management.

Sec. 102-201. Purpose.

The city council finds that an adequate and sustainable source of revenue for stormwater management is necessary to protect the general health, safety, and welfare of the residents of the city. Further, the city council finds that higher amounts of impervious area contribute greater amounts of stormwater and pollutants to the stormwater management system and waters of the Commonwealth, including the Chesapeake Bay. Therefore, the city council determines that it is in the best interest of the city, and the public generally, to enact a stormwater utility fee that allocates stormwater management program costs to property owners based on impervious area.

Sec. 102-202. Definitions.

The following definitions shall apply to this article unless the context clearly indicates otherwise:

Billing unit means 500 square feet of impervious area.

Director means the director of public works or designee.

Impervious area means area covered by hard surfaces such as structures, paving, compacted gravel, concrete, or other manmade features that prevent, restrict, or impede the downward passage of stormwater into the underlying soil. The director may develop a more detailed definition of impervious area as it relates to this article.

Improved parcel means any parcel regardless of zone or land use that has 500 square feet or more of impervious area. For the purpose of this article, an improved parcel shall not include a parcel where the amount of impervious area within the city limits is less than 500 square feet regardless of whether the overall parcel has 500 square feet or more of impervious area. For purposes of multi-owner and/or multi-unit condominium structures, improved parcel shall apply to the entirety of the development housing the condominiums.

Sec. 102-203. Stormwater utility established; stormwater utility fee created and imposed.

(a) A stormwater utility is hereby established, to be effective and in existence as of July 1, 2022, and a fee is hereby imposed on: (i) all eligible, improved parcels in the city that appear on the real property assessment rolls as of January 1 of each year, and (ii) all eligible properties for which no real estate tax assessment is calculated, and any eligible Public Service Corporation (PSC) properties listed in the applicable land book held by the Commissioner of Revenue, in each case as of January 1st of each year. All stormwater utility fees and other income from the fees shall be deposited into the stormwater management enterprise fund described in section 102-206.

(b) The rate per billing unit to be used for calculating the stormwater utility fee shall be reviewed annually and set by the city council as part of the annual budget process.

(c) Except as otherwise provided in this article, the impervious area for a property shall be determined by the city using aerial photography, as-built drawings, final approved site plans, field surveys or other appropriate engineering and mapping analysis tools.

(d) Notwithstanding subsection (a), and consistent with Code of Virginia, § 15.2-2114, the stormwater utility fee shall be waived in its entirety for the following:

(1) 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 the waiver of charges shall apply only to property covered by any such permit;

(2) 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.

Sec. 102-204. Stormwater utility fee calculation.

(a) Unless otherwise specified in this article, the stormwater utility fee for each parcel in the city shall be calculated in the following manner:

(1) Determine the impervious area of the parcel in square feet.

(2) Divide the impervious area of the parcel by the billing unit.

(3) Round the resulting calculation to the next lowest whole number to determine the number of billing units.

(4) Multiply the number of billing units determined in subsection (a)(3) by the rate established in subsection 102-203(b) to obtain the stormwater utility fee for the parcel.

(b) The fee for any parcel or impervious area held by a common interest community association, as defined in Code of Virginia, § 55.1-1800, shall be calculated in the same manner described in subsection (a) and distributed based on par value, or evenly pro-rated where the par value is not available, among the property owners other than the common area that constitute the common interest community, or (ii) billed to the common interest community association if that association is the owner of record of the subject parcel or parcels generating a stormwater utility fee charge. The director, with the consent of the common interest community association, may adopt alternative methodologies for distributing the fee associated with the common area.

Sec. 102-205. Stormwater utility fee credits.

(a) The city council shall adopt by resolution a system of credits in accordance with Code of Virginia, § 15.2-2114.D that provide for full or partial waivers of charges to any person who installs, operates, and maintains a stormwater management facility that achieves a permanent reduction in stormwater flow or pollutant loadings or such other facility, system, or practice whereby stormwater runoff produced by the property is retained and treated on site in accordance with a stormwater management plan approved pursuant to Code of Virginia, Title 62.1, Chapter 3.1. The city shall base the amount of the waiver in part on the percentage reduction in stormwater flow or pollutant loadings, or both, from pre-installation to post-installation of the facility. The system of credits may also, in accordance with Code of Virginia, § 15.2-2114.E, provide for full or partial waivers of charges to cemeteries, property owned or operated by the city, and public or private entities that implement or participate in strategies, techniques, or programs that reduce stormwater flow or pollutant loadings, or decrease the cost of maintaining or operating the public stormwater management system.

(b) The director shall develop written policies to implement the system of credits and present those policies to the city council for formal adoption by resolution. These written policies shall include, but not be limited to, provisions to reduce or eliminate the amount of credit if the director determines that the stormwater management facility is not functioning as intended or that the stormwater positive activity for which credit has been approved has not been executed consistent with the credit criteria for the activity in question. No credit will be authorized until the city council approves written policies to implement the system of credits. Nothing shall prevent the

city council from modifying the adopted system of credits, and such modifications may apply to holders of existing credits.

Sec. 102-206. Stormwater management enterprise fund.

(a) A stormwater management enterprise fund is hereby established as a dedicated, separate fund for the sole purpose of recovering costs for the following:

- (1) The acquisition, as permitted in Code of Virginia, § 15.2-1800, of real and personal property, and interest therein, necessary to construct, operate, and maintain stormwater control facilities;
- (2) The cost of administration of the activities in subsection (a);
- (3) Planning, design, engineering, construction, and debt retirement for new facilities and enlargement or improvement of existing facilities, whether publicly or privately owned, that serve to control stormwater;
- (4) Facility operation and maintenance;
- (5) Monitoring of stormwater control devices and ambient water quality; and
- (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.

(b) The fund shall consist of revenue generated by the stormwater utility fee, any other deposits that may be made from time to time by the city council, including but not limited to, federal or state grants and revenue from the sale of bonds, and all interest or other income earned on the investment of money in the fund.

Sec. 102-207. Billing, interest, and enforcement.

(a) The stormwater utility fee shall be billed to the record owner of each parcel subject to the fee in combination with and in the same manner as prescribed by the city for the real property tax. Any fee not paid in full by the applicable due date of the real property tax bill, unless a petition for adjustment has been made in accordance with section 102-208, in which case the due date shall be 30 calendar days after the date of a final determination of a petition for adjustment, shall be considered delinquent. Payment of the combined stormwater utility fee and the real property tax bill will be applied in the following order: first to any delinquent amounts due, then to the real property tax, then to the stormwater utility fee and then to any other taxes and fees.

(b) A delinquent stormwater utility fee, in accordance with Code of Virginia, § 15.2-2114.G, shall be subject to a penalty and the legal rate of interest, not to exceed the maximum rate provided by law. Such penalties and interest shall be applied to late payments of the stormwater utility fee at the same time and in the same manner as such interest would be applied to a late payment of the real property tax.

(c) A delinquent stormwater utility fee, along with cumulative penalties and interest, shall constitute a lien on the property ranking on a parity with liens for unpaid taxes and shall be collected in the same manner as provided for the collection of unpaid taxes.

Sec. 102-208. Petitions for adjustments.

(a) Any owner of a parcel subject to the stormwater utility fee may request an adjustment to the fee by submitting a request in writing to the director within 30 calendar days after the date the bill is mailed or otherwise issued to the owner. Grounds for adjustment of the fee are limited to the following:

- (1) An error was made regarding the square footage of the impervious area attributed to a parcel;
- (2) The property is exempt under the provisions of subsection 102-203(d);
- (3) There is a mathematical error in calculating the stormwater utility fee;

- (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 in a format approved by the director.
- (c) If the application alleges an error in the amount of the impervious area, a plan view of the parcel's impervious area will be provided by the city with labeled dimensions of all impervious areas within the parcel boundaries. If the parcel owner continues to believe that the amount of impervious area is in error, the parcel owner may submit a revised plan signed and sealed by a professional engineer or professional land surveyor licensed in the Commonwealth of Virginia, attesting to the accuracy of the impervious area measurements.
- (d) The requirement for a plan view of the parcel's impervious area required in subsection (c) above, may be waived by the director, if at the sole discretion of the director 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 area of the property.
- (e) The director shall make a determination within 30 calendar days of receipt of a complete submittal for the request for adjustment. In the event that the director finds that the submittal is deficient or incomplete, the director shall offer the owner 30 calendar days to supply the missing information. The 30 calendar days for a decision will begin at such time as the requested information is provided. If the information requested is not provided to the director within 60 calendar days of the original request, the petition will be deemed withdrawn.
- (f) A parcel owner may appeal the decision of the director to the city manager within 30 calendar days of a decision. A decision by the city manager on any such appeal shall be final and non-appealable.”

This Ordinance shall become effective as provided by law and in accordance with its terms.

INTRODUCED: November 30, 2021

PUBLIC HEARING: December 14, 2021

ADOPTED: December 14, 2021

Walt Meyer

Mayor

12-21-2021

Date

ATTEST:

Melanie Shilby

Acting City Clerk

VOTE:

Councilmember Harmon	Aye
Councilmember Lim	Naye
Councilmember Miller	Aye
Councilmember Ross	Aye
Councilmember Stehle	Aye
Councilmember Yi	Naye