

ORDINANCE 2007-14

AN ORDINANCE ESTABLISHING A STORMWATER MANAGEMENT UTILITY FOR THE PURPOSE OF PLANNING, DESIGNING, FUNDING, CONSTRUCTING AND MAINTAINING STORMWATER MANAGEMENT, SEDIMENT AND EROSION CONTROL, AND FLOOD AND STORMWATER DISCHARGE PROGRAMS, PROJECTS AND FACILITIES, AND REVIEWING AND APPROVING STORMWATER MANAGEMENT AND SEDIMENT CONTROL PLANS FOR LAND DISTURBING ACTIVITIES, AND PROVIDING FOR THE ADMINISTRATION AND ENFORCEMENT THEREOF.

BE IT ORDAINED AND ENACTED BY THE MAYOR AND COUNCIL MEMBERS OF THE CITY OF ISLE OF PALMS, SOUTH CAROLINA, IN CITY COUNCIL ASSEMBLED:

SECTION 1 Findings.

A. The South Carolina General Assembly adopted The Stormwater Management and Sediment Reduction Act (Act), South Carolina Code Annotated, Section 48-14-10 et seq. which authorizes a local government to establish a stormwater management utility and adopt a fee system to help fund program administration, and the South Carolina Land Resources Commission has promulgated comprehensive regulations under the Act which regulates implementation of a Stormwater Management Utility.

B. The federal Clean Water Act, as amended by the Water Quality Act of 1987 (33 U.S.C. 1251 et seq.), other amendments, and rules promulgated by the United States Environmental Protection Agency pursuant to the Clean Water Act and its amendments, has placed increased requirements and emphasis on the role of local governments in developing, implementing and funding stormwater management programs which address water quality impacts of stormwater runoff.

C. City Council desires to create and implement a comprehensive stormwater management program that is in compliance with state and federal laws, rules and regulations and in the best interests of the citizens of the City of Isle of Palms and the economy, environment, and water quality of the City.

D. The management of stormwater runoff and sediment in the City is necessary to reduce pollution, siltation, sedimentation, flooding, inflow and infiltration of stormwater into the public sewer collection system and stream channel erosion, all of which impact adversely on the land and water resources and the health, safety, property and general welfare of the citizens of the City.

E. The City, the County of Charleston and the State of South Carolina maintain a system of stormwater management facilities in the City, 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.

F. The stormwater management facilities and components of the City need to be expanded, and additional stormwater management facilities and measures need to be implemented and installed throughout the City.

G. There is a lack of resources of equipment, manpower, and funds in the City to address stormwater runoff in a comprehensive manner and within a defined time frame.

H. In the City there is current and anticipated growth which will contribute to the need for a comprehensive stormwater management system.

I. The extent of use of the stormwater management system by each classification of real property is dependent on a variety of 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.

J. Real property owners should finance the stormwater management system to the extent they contribute to the need for the system and benefit from the system, and charges should bear a reasonable relationship to the cost of the service.

K. A utility provides the most practical and appropriate means of properly delivering stormwater management services and benefits throughout the City.

L. That it is in the best interests of the City to enter into inter-governmental agreements with the County of Charleston for assistance from the County in implementing and administrating the City's stormwater utility and implementing, billing and collecting the City's stormwater utility fees to provide effective, economical and efficient stormwater management.

SECTION 2. That the following Title 3, Chapter 3, Stormwater Regulations, Article A, Stormwater Management Utility, is hereby adopted:

Sec. 3-3-1 Article Designation and Authority. This Article may be cited as the Stormwater Management Utility Ordinance and is adopted pursuant to South Carolina Code Annotated, Sections 48-14-10 et seq.; Section 5-7-30; and South Carolina Code Annotated, Regulations 72-300, et seq. and Section 5-31-10, et seq.

Sec. 3-3-2 Definitions. Unless otherwise stated herein or the context specifically indicates otherwise, the meaning of words and terms used in this Ordinance shall be as set forth in South Carolina Code Annotated, Section 48-10-20 and South Carolina Code Annotated, Regulation 72-301.

The following words, terms and phrases, when used in this Ordinance, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

“City” means the City of Isle of Palms, South Carolina.

“City Council” means the elected officials of the City of Isle of Palms, South Carolina.

“City Administrator” means the city administrator of the City.

“Equivalent Residential Unit” means a unit of measure which relates a typical single family residential property to all other properties.

“Stormwater Management Systems and Facilities” means those natural and man-made channels, swales, ditches, swamps, rivers, streams, creeks, branches, reservoirs, ponds, drainage ways, inlets, catch basins, pipes, head walls, storm sewers, lakes and other physical works, properties, and improvements which transfer, control, convey, or otherwise influence the movement of stormwater runoff.

“Utility customer” means the owner of record of real property.

“Zoning Administrator” means the zoning administrator of the City.

Sec. 3-3-3 Establishment of a Stormwater Management Utility; Administration; Duties and Powers. City Council hereby establishes a Stormwater Management Utility (the “Utility”) to carry out the purposes, functions and responsibilities set forth herein. The governing body of the Utility shall be City Council. The City Administrator shall administer the Utility under the City’s Department of Building, Planning and Licensing; provided, however, that City Council may delegate some or all of the City Administrator’s or the Zoning Administrator’s duties hereunder to Charleston County or its duly authorized representatives pursuant to an inter-governmental agreement providing for same. The Utility shall have the powers and duties set forth below, which powers are not necessarily exclusive to the Utility, to wit:

- A. Stormwater management planning and preparation of comprehensive watershed master plans for stormwater management;
- B. Regular inspections of public and private stormwater management facilities and measures and the construction thereof;
- C. Maintenance and improvements of stormwater management facilities that have been accepted by the City for that purpose;
- D. Plan review and inspection for sediment control and stormwater management 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 measures and acquisition of equipment;
- H. Water quantity and water quality management, including monitoring and surveillance;
- I. Billing and collecting a stormwater management utility fee shall be pursuant to the City’s Stormwater Management Utility Fee Ordinance that sets forth the amount of the fees;
- J. Make reasonable regulations relating to the administration of this Ordinance; and

- K. 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.
- L. Entering into inter-governmental agreements with the County of Charleston to provide for the County and its duly authorized representatives to assist the City in the implementation and administration of the Utility, enforcement of the ordinances or other regulations governed by the Utility, and the implementation, billing, collection and expenditure of the City's stormwater management fees.

Sec. 3-3-4 Boundaries and Jurisdiction. The boundaries and jurisdiction of the Stormwater Management Utility shall encompass all area contained within the corporate boundaries of the City, as they may exist from time to time.

Sec. 3-3-5 Regulation of Land Disturbing Activity. City Council shall establish by ordinance a program 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 maintenance requirements for stormwater management facilities and measures.

Sec. 3-3-6 Stormwater Utility Fees. City Council shall establish by ordinance the amounts and classifications of stormwater management utility fees to be implemented to help fund the Utility and its programs and projects.

City Council shall consider, among other things, the following criteria in establishing fees:

- A. The fee system shall be reasonable and equitable so that users pay to the extent they contribute to the need from the Utility, and the fee shall be apportioned with approximate equality and upon a reasonable basis of equality with due regards for the benefits conferred. City Council recognizes that these benefits, while substantial, in many cases cannot be measured directly.
- B. The components of the calculations used to establish fees shall include, but shall not be limited to, the following cost factors:
 - 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 improvements of stormwater management facilities that have been accepted by the City for that purpose;
 - 4. Plan review and inspection for sediment control and stormwater management plans, measures, and practices;

5. Retrofitting designated watersheds to reduce existing flooding problems or to improve water quality;
 6. Acquisition of interest of land, including easements;
 7. Design and construction of stormwater management facilities and measures and acquisition of equipment;
 8. Administration of enforcement;
 9. Water quantity and water quality management, including monitoring and surveillance; and
 10. Debt service and financing costs.
- C. The practical difficulties and limitations related to establishing, calculating, and administering such fees.
- D. The components of the calculations used to establish fees shall be based on an “equivalent residential unit,” to be determined and approved by City Council with reasonable general adjustments being made for, but not limited to, the following factors:
1. Land use;
 2. Lot or tract size;
 3. The amount of site that is impervious; and
 4. Other generally accepted factors relevant to such calculations based upon the provisions of this Ordinance.

Pending the adoption of a permanent fee system and rate structure, City Council may adopt an interim fee system and rate structure to help fund the establishment of the Utility, pending the completion and adoption of a Stormwater Utility Rate Study.

Sec. 3-3-7 Investment and Reinvestment of Funds and 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 utility has been established, including but not limited to: planning; acquisition of interests in land including easements; design and construction of facilities; maintenance of the stormwater system, billing and administration; and water quality and water quantity management, including monitoring, surveillance, private maintenance inspection, construction inspection and other activities which are reasonably required. Such funds may be invested and reinvested pursuant to the same procedures and practices established by the City for investment and reinvestment of funds. City Council may use any form of borrowing authorized by the laws of the State of South Carolina to fund capital acquisitions or expenditures for the Stormwater Management Utility.

Sec. 3-3-8 Billing of Fee; Delinquency. City Council shall establish by ordinance the method of billing for the fee, any late payment fees, and the manner of collecting unpaid fees.

Sec. 3-3-9 Written Notice of Objection.

A. A utility customer may request a reconsideration of any determination or interpretation by the Zoning Administrator or his designee in the operation of the stormwater management utility. Such request must be in writing specifically explaining the grounds for the request including the following:

TMS # for the property;

Utility customer information: name, address, and telephone number;

A statement outlining the reasons for the appeal, including any law or authority, upon which the utility customer relies;

A statement of facts supporting the utility customer's position; and

The amount which the utility customer considers the fair amount of the fee.

The written request is a notice of objection for purposes of the section. The failure to serve written request within the time period constitutes a waiver of the utility customer's right of protest for that year.

B. Request for reconsideration of the annual fee amounts shall be submitted within thirty (30) days after the date the fee shall be due and payable.

C. In cases where the applicant believes the fee to be inappropriate based on the actual impervious area of the property in which he has interest, the applicant should submit technical data such as a site survey of said property to assist in the evaluation. The survey should be prepared by a licensed Land Surveyor in accordance with the minimum state survey standards. The survey should include the following:

Property boundary;

Parking areas;

Driveway(s);

Building(s);

Storm drainage facilities;

Any other surface improvements; and

Calculation of total impervious area.

Calculation of total pervious area

Date when the field survey was conducted.

D. The Zoning Administrator or his designee shall render a written decision on the request within thirty (30) business days of the receipt of the written request for reconsideration.

E. The utility customer may appeal the decision to the City's Code Board of Adjustments and Appeals within thirty (30) days after the date of the decision. The Zoning Administrator shall provide the petition form to the utility customer.

Sec. 3-3-10 Petition for Relief.

A. The petition must be accompanied with a \$50.00 fee that will be used to partially defray the costs incurred in connection with the administration of petitions filed pursuant to this section.

B. The Code Board of Adjustments and Appeals shall hear the petition to determine if the annual stormwater management utility fee does not apportion the fee with approximate equality, based upon a reasonable basis of classification and with due regard to the benefits conferred by providing stormwater management services to the utility customer and the requirements of public health, safety or welfare. The determination of the annual fee by the Code Board of Adjustments and Appeals is entitled to a presumption of correctness, and the petitioner has the burden of rebutting the presumption of correctness.

C. The Code Board of Adjustments and Appeals shall render a written decision on each petition that is heard, and such written decision shall be issued within twenty (20) calendar days from the day the Board heard the petition. The decision of the Code Board of Adjustments and Appeals shall contain findings of fact and conclusions of law, and the decision shall be sent to the petitioner by first class mail.

D. The decision of the Code Board of Adjustments and Appeals shall be final unless the petitioner appeals the decision to the circuit court in Charleston County within thirty (30) days after the date of the decision of the Code Board of Adjustments and Appeals. Prior to bringing an action to contest an annual fee, the petitioner shall pay to the County treasurer not less than the amount of the annual fee which he admits in good faith is owing. Payment of the fee shall not be deemed an admission that the annual fee was due and shall not prejudice the petitioner in bringing an action as provided herein.

Sec. 3-3-11 Enforcement and Penalties.

A. The Zoning Administrator and such other officials as the City Administrator shall designate shall be the Enforcement Officers to enforce the provisions of this Ordinance.

B. In addition to any other penalties provided in this Ordinance, the City may assess a civil penalty not to exceed One Thousand Dollars (\$1,000) against any person violating any provision of this Ordinance. Each day a violation continues constitutes a separate violation that may be the subject of such a penalty. The Enforcement Officer shall make a written demand for

payment upon the person responsible for the violation and set forth in detail the violation for when the penalty has been invoked. If full payment of the penalty is not made within thirty (30) days after such demand is made, a civil action may be filed in the circuit court of Charleston County to recover the amount of the penalty.

C. When the City has reasonable cause to believe that any person is violating or is threatening to violate the requirements of this ordinance, it may, either before or after the institution of any other action or proceeding authorized by this Ordinance, institute a civil action in circuit court for injunctive relief to restrain the violation or threatened violation. The institution of an action for injunctive relief under this subsection does not relieve any party to the proceeding from any civil penalty prescribed for violations of this Ordinance.

D. The amount of the fee shall be pursuant to the City's Stormwater Management Utility Fee Ordinance.

Sec. 3-3-12 Liability. Nothing in this article and any 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, offices or employees for the recovery of damages; or

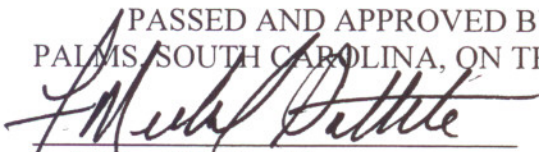
B. Relieve any person engaged in a land disturbing activity of duties, obligations, responsibilities, or liabilities arising from or incident to operations associated with such activity or imposed by provisions of this article or the laws and regulations pursuant to which it was adopted."

SECTION 3. That should any part of this Ordinance be held invalid by a Court of competent jurisdiction, the remaining parts shall be severable therefrom and shall continue to be in full force and effect.

SECTION 4. That all ordinances or parts of ordinances conflicting with the provisions of this Ordinance are hereby repealed insofar as the same affect this Ordinance.

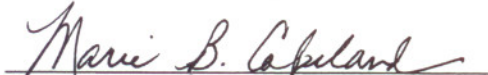
SECTION 5. That this Ordinance take effect and be in full force immediately.

PASSED AND APPROVED BY THE CITY COUNCIL FOR THE CITY OF ISLE OF PALMS, SOUTH CAROLINA, ON THE 28th DAY OF AUGUST, 2007.


F. Michael Sottile, Mayor

(Seal)

Attest:


Marie B. Copeland, City Clerk



First Reading: July 24, 2007
Public Hearing: August 28, 2007
Second Reading: August 28, 2007
Ratification: August 28, 2007