

**ORDINANCE \_\_\_\_\_**

ESTABLISHING A STORMWATER MANAGEMENT UTILITY FOR THE PURPOSE OF IMPLEMENTING THE BERKELEY COUNTY STORMWATER MANAGEMENT PROGRAM AND SATISFYING THE REGULATORY REQUIREMENTS OF THE STATE OF SOUTH CAROLINA NPDES GENERAL PERMIT FOR STORMWATER DISCHARGES FROM REGULATED SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS; PLANNING, DESIGNING, CONSTRUCTING, FUNDING, AND MAINTAINING STORMWATER MANAGEMENT, SEDIMENT CONTROL, AND FLOOD CONTROL 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..

WHEREAS, 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 storm water runoff; and

WHEREAS, South Carolina Department of Health and Environmental Control (SCDHEC) has granted Berkeley County permit coverage to discharge stormwater into the receiving waters of South Carolina and receiving waters of the United States in accordance with the conditions set forth in the State of South Carolina NPDES General Permit for Storm Water Discharges from Regulated Small Municipal Separate Storm Sewer Systems, SCR030000; and

WHEREAS, the South Carolina General Assembly adopted the Stormwater Management and Sediment Reduction Act (the Act), South Carolina Code Annotated, Section 48-14-10 which authorizes a local government to establish a Stormwater Management Utility, and adopt a fee system to help fund its stormwater management program, and the South Carolina Land Resources Commission promulgated comprehensive regulations as required by said Act which regulate implementation of a Stormwater Management Utility; and

WHEREAS, pursuant to Section 4-9-25 of the South Carolina Code Annotated, county governments are authorized to enact regulations and ordinances for government services deemed necessary and proper; and

WHEREAS, Berkeley County Council believes the implementation of the County Stormwater Management Program, including the adoption of this Ordinance, is in the best interests of the Citizens of Berkeley County and the economy, environment, and water quality in the County.

NOW THEREFORE, BE IT ENACTED, by County Council of Berkeley County that Section \_\_\_\_\_ of the code of Ordinances of Berkeley County be adopted, which shall provide as follows:

**Section 1. Findings of Fact**

Berkeley County Council makes the following findings:

- A. Berkeley County is a regulated Municipal Separate Storm Sewer System (MS4) community and must be in compliance with the State of South Carolina NPDES General Permit for Stormwater Discharges from Regulated Small Municipal Separate Storm Sewer Systems. Compliance with the NPDES MS4 permit requires substantial resources that cannot be supported without the adoption and implementation of a storm water utility program.
- B. The management of stormwater runoff is necessary to reduce pollutants, siltation, sedimentation, flooding, inflow and infiltration into the Berkeley County MS4 and receiving waters, all of which adversely impact land and water resources and the health, safety, property, and welfare of the citizens of the County.
- C. Berkeley County maintains, or must ensure maintenance of, a system of stormwater management facilities, 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.
- D. The stormwater management facilities of the County must be regularly maintained, rehabilitated, upgraded or expanded in order to satisfy the NPDES MS4 permit requirements, and additional stormwater management Best Management Practices (BMP's) and measures will need to be installed or implemented throughout the County in order to satisfy the NPDES MS4 permit requirements.
- E. There is no comprehensive mapping system, monitoring system, or base line data to assist the County in the analysis, design, development, and implementation of the Stormwater Management Program, and there is no long term comprehensive stormwater infrastructure and facility maintenance program/plan in Berkeley County.
- F. There is a lack of resources (equipment, manpower, funds) in Berkeley County to adequately implement the Stormwater Management Program comprehensively and within the time frame required by the NPDES MS4 permit.
- G. Current and anticipated growth within Berkeley County will contribute to the need for improvements in and maintenance of the stormwater management system.
- H. Berkeley County needs to enhance the ability to maintain existing and future stormwater management facilities and measures.
- I. Every built upon parcel of real property in Berkeley County either uses or benefits from the stormwater management system and the improvement of existing facilities and construction of additional facilities in the system will directly benefit the owners of all real property.
- J. In Berkeley County 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 land use, topography, intensity of development, amount of impervious surface, and location in a particular watershed or basin.

- K. In Berkeley County property owners and users should finance the stormwater management system to the extent they contribute to the need for the system and benefit from the system, and charges therefore should bear a reasonable relationship to the cost of the service, and every effort should be made to fairly and reasonably spread the cost of the system to all property owners and users.
- L. 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 with interim fees and classifications be established by ordinance and implemented as part of the County's utility enterprise system as authorized by South Carolina Code Annotated, Sections 48-14-10 to 48-14-150 (Supp. 1991); Section 5-7-30 (Supp. 1991); and other relevant laws and regulations of the State of South Carolina.
- M. Creating a permanent Stormwater Management Utility rate structure and schedule of fees is a difficult, time consuming and costly endeavor, and Berkeley County is committed to such an undertaking but finds it is necessary to provide for Interim Stormwater Management Utility Fees and Classifications until the completion of a Stormwater Management Utility Study. Thus, Council finds that a Stormwater Management Utility with interim fees and classifications should be established with the intent of establishing permanent Stormwater Management Utility Fees and Classifications based on the results of further study, to include determination of impervious surface areas throughout the County.
- N. The Interim stormwater utility fee will not be imposed on agricultural lands, forestlands, or undeveloped lands pursuant to the amendment of Section 6-1-330 of the 1976 Code (A75, R70, S453).

## **Section 2. 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 4-9-25 and 26 South Carolina Code Annotated, Regulations 72-300, et.seq.

## **Section 3. Definitions**

Unless the context specifically indicates otherwise, the meanings of words and terms used in this article shall be set forth in South Carolina Code Annotated, Section 48-14-20 (Supp. 1991) and 26 South Carolina Annotated, Regulation 72-301, (Supp. 1992).

**Section 4. Establishment of a Stormwater Management Utility; Administration; Duties and Powers**

County Council hereby establishes a Stormwater Management Utility (Utility) to carry out the purposes, functions, and responsibilities herein set forth. The governing body of the Utility shall be County Council. The County Engineer shall administer the Utility under the Berkeley County Stormwater Management Department. The Utility shall have the duties and powers set forth below, which powers are not necessarily exclusive to the Utility, to wit:

- A. Development and implementation of the County Stormwater Management Program.
- B. Development and implementation of the Minimum Control Measures (MCM's), Best Management Practices (BMP's) and other regulatory requirements as contained in the NPDES MS4 permit
- C. Stormwater management planning and preparation of comprehensive watershed master plans for stormwater management.
- D. Regular inspections of public and private stormwater management facilities and measures and the construction thereof.
- E. Maintenance and improvement of stormwater management facilities that have been accepted by the County for that purpose.
- F. Plan review and inspection of sediment control and stormwater management measures, and practices.
- G. Retrofitting existing stormwater management facilities to reduce existing flooding problems or to improve water quality.
- H. Acquisition of interests in land, including easements.
- I. Design and construction of stormwater management facilities and measures and acquisition of equipment.
- J. Water quantity and water quality management, including monitoring and surveillance.
- K. Billing and collecting stormwater management utility fees pursuant to this Ordinance.
- L. Any and all duties and powers 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 this County.

**Section 5. Boundaries and Jurisdiction**

The boundaries and jurisdiction of the Stormwater Management Utility shall encompass all those portions of the unincorporated County, as they may exist from time to time and such

additional areas lying inside the corporate limits of those jurisdictions within the County as shall be approved by Berkeley County Council.

### **Section 6. Stormwater Management Utility Fees**

County Council shall establish amounts and classifications for stormwater management utility fees to be implemented to help fund the Stormwater Utility and its' programs and projects. County Council shall consider, among other things, the following criteria in establishing fees:

- A. The fee system must be reasonable and equitable so that property owners and users pay to the extent they contribute to the needs for and benefit from the Utility. County Council recognizes that these benefits, while substantial, in many cases cannot be measured directly.
- B. Development and implementation costs of the Stormwater Management Program, costs associated with compliance with the NPDES MS4 permit, stormwater maintenance costs, construction costs and the overall operational costs of the stormwater system should be borne equally by all classifications of property owners in the County in that all will enjoy the direct and indirect benefits of an improved and well-maintained system;
- C. The components of the calculations used to establish fees shall be based on whatever is determined to be reasonable and fair, to be approved by County Council and may include, but shall not be limited to, the cost factors of administration, duties and powers found in Section 4:
- D. The practical difficulties and limitations related to establishing, calculating, and administering such fees.

### **Section 7. Stormwater Management Utility Rates**

Creating a permanent Stormwater Management Utility rate structure and schedule of fees is a difficult, time consuming and costly endeavor, and Berkeley County is committed to such an undertaking but finds it is necessary to provide for Interim Stormwater Management Utility Fees and Classifications until the completion of a Stormwater Management Utility Study. Thus, Council finds that a Stormwater Management Utility with interim fees and classifications should be established with the intent of establishing permanent Stormwater Management Utility Fees and Classifications based on the results of further study, to include determination of impervious surface areas throughout the County. The interim fees shall be as follows:

- A. For all parcels containing a single family residence an annual fee of \$36.00 per parcel shall be assigned. Parcels containing multiple residences on the parcel an annual fee of \$36.00 per unit shall be assigned.
- B. For all parcels containing multi-family residences, excluding mobile home parks, an annual fee of \$18.00 per unit shall be assigned.

- C. For all parcels containing mobile homes, an annual fee of \$18.00 per unit shall be assigned to every mobile home maintained onsite.
- D. For all developed parcels containing nonresidential land use (commercial or industrial), an annual fee of \$108.00 per parcel shall be assigned.
- E. For all developed tax-exempt and non-profit properties an annual fee of \$72.00 per parcel shall be assigned.

### **Section 8. Credit Policy**

The Berkeley County Engineer is authorized by this ordinance to establish a credit policy for certain parcels within the County that meet established criteria (i.e. self-containment of runoff, documented stormwater facility maintenance practices, implementation of water quality education programs, etc.) at the time a permanent stormwater utility fee structure is established.

### **Section 9. 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 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 shall be invested and reinvested pursuant to the same procedures and practices established by the County for investment and reinvestment of funds. County 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.

### **Section 10. Stormwater Management Utility Fee Billing, Delinquencies and Collection**

- A. The Stormwater Management Utility fee bill may be sent through the United States mail, or by alternative means, notifying the property owner of the amount of the bill, the date the payment is due, and the date when past due. These fees may be levied, collected and paid in the same manner as user fees applied to annual tax bills. The Stormwater Management Utility fee may also be billed and collected along with other charges, including but not limited to other County assessments, or property taxes, as deemed most effective and efficient. Failure to receive a bill is not justification for nonpayment. Nevertheless, if a property owner is underbilled or if no bill is sent for developed land, the County may backbill for a period of up to one year.
- B. In addition to any other penalties or remedies provided in this Chapter, the County, upon the recommendation of the County Attorney and approval of the County Supervisor, may institute a civil action in the appropriate court to obtain compliance with the provisions of

this Chapter or remedy or prevent the violation or threatened violation of any provision of this Chapter.

### **Section 11. County Liability**

Nothing in this article and no action or failure to act under this article shall or may be construed to:

- A. Impose any liability on the County, or its departments, agencies, officers, 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 the provisions of this article or the laws and regulations pursuant to which it was adopted.

### **Section 12. Requests for Reconsideration**

- A. A utility customer may request a reconsideration of any determination or interpretation by the County Engineer in the operation of the Stormwater Management Utility. Such request must be in writing specifically explaining the grounds for the request and filed with the County Engineer.
- B. The County Engineer shall review the application and make a decision on the request within thirty (30) working days.
- C. The request shall be made upon such forms and be accompanied by such information as the County Engineer, by written policy, shall require.

### **Section 13. Appeals**

Any person aggrieved by the stormwater management utility fee charged with respect to property in which he has an interest or against whom a civil penalty is imposed may appeal the fee or penalty by filing a written explanation of the grounds of the appeal with the County Engineer within thirty (30) days of the mailing or delivery of the notification of the fee or penalty to the utility customer, real property owner, or person. The County Engineer shall render his decision on the appeal in writing within thirty (30) days after receipt of the written appeal. Any person aggrieved by the decision of the County Engineer may appeal, pursuant to the foregoing procedures, to County Council, whose decision is final with respect to utility fees and civil penalties. At each level of appeal, the reviewing official or body shall conduct a de novo review of the fee or civil penalty, provide the appellant with notice of the review, and allow the appellant an opportunity to be heard orally or in writing upon request.

**Section 14. Severability**

If any provision of this article or its application to any circumstances is held by a court of competent jurisdiction to be invalid for any reason, then this holding does not affect other provisions or applications of this article which can be given effect without the invalid provisions or application, and, to this end, the provisions of this article are severable.

THE WITHIN ORDINANCE SHALL BECOME EFFECTIVE IMMEDIATELY UPON ITS ADOPTION BY THE COUNTY COUNCIL.

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2011.

**BERKELEY COUNTY, SOUTH CAROLINA**

\_\_\_\_\_  
DANIEL W. DAVIS, CHAIRMAN  
BERKELEY COUNTY COUNCIL

ATTEST:

\_\_\_\_\_  
Catherine R. Windham  
Acting Clerk of County Council

Approved as to form:

\_\_\_\_\_  
Nicole Scott Ewing, Esq.  
County Attorney

First Reading:  
Second Reading:  
Public Hearing:  
Third Reading: