9-20-05
10-11-05
11-15-05

ORDINANCE NO. 5135

AMENDING THE CITY OF MEMPHIS CODE OF ORDINANCES CHAPTER 33 ARTICLE IV BY ADDING THERETO A NEW DIVISION 3. STORM WATER ENTERPRISE FUND, ESTABLISHING A STORM WATER ENTERPRISE FUND, PROVIDING FOR THE POWERS, DUTIES AND RESPONSIBILITIES OF THE ENTERPRISE, ESTABLISHING A STORM WATER FEE; ESTABLISHING A POLICY REGARDING EXPENDITURE OF ENTERPRISE REVENUES.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MEMPHIS, TENNESSEE:

Section 1. Chapter 33 Article IV of the City of Memphis Code of Ordinances is hereby amended by adding thereto the following:

DIVISION 3. STORM WATER ENTERPRISE FUND

Part 1. Generally

Sec. 33-260. Definitions.

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

Bonds means revenue bonds, notes, loans or any other debt obligations issued or incurred to finance the costs of construction, engineering, and other studies.

City means the City of Memphis.

Contributor or *user* means any person owning, operating, or otherwise responsible for property within the City which directly or indirectly discharges storm water, surface or subsurface waters, to any portion of the storm water system, including direct or indirect discharges to the City's storm water drainage system, or which is directly or indirectly protected by the City's flood protection system or storm water drainage system. The term "contributor" or "user" means any person responsible for the direct or indirect discharge of storm water (surface or subsurface waters) to the City's storm water drainage system.

Costs of construction means costs reasonably incurred in connection with providing capital improvements to the system or any portion thereof, including but not limited to the costs of the following:

(1) Acquisition of all property, real or personal, and all interests in connection therewith including all rights-of-way and easements therefore;

(2) Physical construction, installation and testing including the costs of labor, services, materials, supplies and enterprise services used in connection therewith;

(3) Architectural, engineering, legal and other professional services;

(4) Insurance premiums during construction, to the extent not paid for by a contractor for construction and installation;

(5) Any taxes or other charges which become due during construction;

(6) Expenses incurred by the City or on its behalf with its approval in seeking to enforce any remedy against any contractor or subcontractor in respect of any default under a contract relating to construction;

(7) Principal and interest on any bonds; and

(8) Miscellaneous expenses incidental thereto.

Debt service means the amount of money necessary annually to pay the interest on outstanding debt and pay the principal of maturing debt.

Developed property means real property upon which a structure or impervious surface has been placed or constructed, thus increasing the amount of rainwater or surface water runoff.

Director means the Director of the Division of Public Works or designee.

#23

Dwelling unit means a singular residential housing unit or apartment providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

Single-Family Unit or *SFU* means the average impervious area of a single-family detached residential dwelling unit located within the City as periodically determined and established as provided in this article.

SFU rate means the dollar value periodically determined and assigned to each SFU as a charge for storm water services, and expressed as a dollar value per SFU per month.

Exempt property means public right-of-ways including public streets, alleys, sidewalks, and public drainage facilities.

Extension and replacement means costs of extensions, additions and capital improvements to or the renewal and replacement of capital assets or purchasing and installing new equipment for the system or land acquisition for the system and any related costs thereto or paying extraordinary maintenance and repair, including the costs of construction, or any other expenses which are not costs of operation and maintenance or debt service.

Fiscal year means a 12-month period commencing on July 1, and ending on June 30 of the succeeding year.

Flood protection system means the system of levees, floodwalls, floodgates, storm sewer gatewells, and storm water pumping stations lying adjacent to rivers, creeks, and streams within the City, including associated control and operating equipment and facilities whether adjacent to such rivers, creeks, or streams or remotely located, which are intended to provide flood protection to properties adjacent to such rivers, creeks, and streams.

Impervious area means the number of square feet of hard-surfaced areas which either prevent or retard the entry of water into the subsurface soil, as it entered under natural conditions as undeveloped property, and/or cause water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions as undeveloped property, including but not limited to roofs, roof extensions, patios, porches, driveways, sidewalks, concrete/asphalt pavement, gravel surfaces and athletic courts.

Multifamily residential property means a residential structure designed with two or more dwelling units to accommodate two or more families or groups of individuals living separately and not sharing the same living space.

Nonoperating revenues refers to revenues derived from activities other than the basic operations of the storm water enterprise fund, but excluding interest income on bond proceeds and on contributed capital.

Nonresidential property means any property developed for commercial, industrial, governmental, or institutional use, including churches, hospitals, and other eleemosynary institutions and including multiuse properties incorporating residential uses, but excluding undeveloped property, golf courses, nurseries, and property used exclusively for agricultural purposes.

Operating budget means the annual operating budget for the Storm Water Enterprise Fund adopted by the City Council for the succeeding fiscal year.

Operations and maintenance expense means the current expenses, paid or accrued, of operation, maintenance and current repair of the system, as calculated in accordance with sound accounting practice, and includes, without limiting the generality of the foregoing, insurance premiums, administrative expenses including recordkeeping, the cost of materials and supplies used for current operations, and charges for the accumulation of appropriate reserves for current expenses not annually incurred, but which are such as may reasonably be expected to be incurred in accordance with sound accounting practice.

Single-family residential property means a detached residential structure designed as a single dwelling unit to accommodate one family or group of individuals living together and sharing the same living space, but excluding multi-class (i.e. commercial, residential, industrial, institutional etc.) properties which include single-family residential uses.

Revenues means all rates, fees, assessments, rentals, civil penalties, fines, or other charges or other income received by the enterprise fund, in connection with the management and operation of the system, including amounts received from the investment or deposit of monies in any fund or account and any amounts contributed by the City, all as calculated in accordance with sound accounting practice.

Storm water drainage system means the system of publicly or privately owned or operated rivers, creeks, ditches, drainage channels, pipes, basins, street gutters, and lakes within the City through which or into which storm water runoff, surface water, or subsurface water is conveyed or deposited.

Storm water fee means the fee authorized by state law and this article which is established to pay operations and maintenance, extension, replacement and debt service of the storm water drainage system.

Storm Water Enterprise Fund or *enterprise* means the enterprise fund created by this article to operate, maintain and improve the storm drainage system and for such other purposes as stated in this article.

Storm water system or *system* means the existing storm water facilities, storm water drainage system, and flood protection system of the City and all improvements thereto which by this article are constituted as the property and responsibility of the enterprise, to be operated as an enterprise fund to, among other things; control discharges and flows necessitated by rainfall events; and incorporate methods to collect, convey, store, absorb, inhibit, treat, to prevent or reduce flooding, overdrainage, environmental degradation and water pollution or otherwise affect the quality and quantity of discharge from such system.

Total annual revenue requirements refers to the total amount of revenue required in one year to meet all expenditures incurred during that year for the financing of construction and for the operations and maintenance, including administration and renewal and replacement funding, of the storm water drainage system, including facilities for the collection, transportation, and treatment of storm water, and of the flood control protection system, including river levees and storm water pumping stations.

Undeveloped property means real property that has no impervious area.

Sec. 33-261. Declaration of purpose; establishment of enterprise service area.

(a) The City finds, determines, and declares it to be conducive to the health, welfare, safety and convenience of the City and its residents that a storm water service area be established within the City. Consequently, pursuant to Tennessee Code Sections 68-221-1101 through 68-221-1113, a Storm Water Enterprise Fund, to be known as The Memphis Storm Water Enterprise Fund, is established, and it is ordained and declared that the City limits shall be and constitute the Storm Water Enterprise Fund service area, and that the enterprise shall comprise and include elements of the City's storm water drainage and flood protection systems which provide for the collection, treatment and disposal of storm water, surface water, and groundwater. It is further found, determined, and declared that the elements of the Storm Water Enterprise Fund are of benefit and provide services to all real properties within the incorporated City limits, including property not directly served by the storm water drainage system, and that such benefits and services may include but are not limited to the provision of adequate systems of collection, conveyance, detention, treatment and release of storm water; the reduction of hazard to property and life resulting from storm water runoff and flooding; improvement in general health and welfare through reduction of undesirable storm water conditions and flooding; and improvement to the water quality in the storm water and surface water system and its receiving waters.

(b) It is further determined and declared to be necessary and conducive to the protection of the public health, welfare, safety and convenience of the City and its residents that charges be levied upon and collected from the owners or occupants of all lots, parcels of real estate, and buildings that discharge storm water (surface or subsurface waters), directly or indirectly, to the City storm water drainage system, and that the proceeds of such charges so derived be used for the purposes of operation, maintenance, repair, replacement and debt service for construction of the storm water drainage and flood protection improvements comprising the Storm Water Enterprise Fund.

Sec. 33-262. Powers, duties and responsibilities.

The Storm Water Enterprise Fund shall have the following powers, duties, and responsibilities:

(1) Prepare ordinances as needed to implement this article and forward the ordinances to the City Council for consideration and adoption, and adopt such regulations and procedures as are required to implement this article and carry out its duties and responsibilities.

(2) Prepare and administer an Adjustment and Credit Manual to set guidelines under which the City will grant adjustments and credits to stormwater user fees.

(3) Administer and enforce this article and all ordinances, regulations and

procedures adopted relating to the design, construction, maintenance, operation and alteration of the storm water drainage system, including but not limited to the quantity, quality and/or velocity of the storm water conveyed thereby.

(4) Prepare and revise a comprehensive drainage and flood protection plan for periodic review and adoption by the City Council.

(5) Establish and enforce regulations to protect and maintain water quality within the system in compliance with water quality standards established by state, regional and/or federal agencies as adopted or amended.

(6) Prepare an annual operating budget for the enterprise fund and make recommendations regarding the financing of the cost of extending, maintaining, and replacing the system.

Sec. 33-263. Organization.

The Storm Water Enterprise Fund shall be under the direction, management and control of the Director of the Division of Public Works. In that capacity, the Director or his designee shall supervise the day-to-day operation of the Storm Water Enterprise Fund, shall enforce this article and the provisions of all ordinances and regulations adopted pursuant to this article and shall carry out the policy.

Sec. 33-264. Establishment of SFU, SFU rate and Storm water fee; establishment of policy regarding expenditure of enterprise revenues.

(a) For purposes of this article, an SFU shall be equivalent to 3,147 square feet of impervious property.

(b) Except as provided in this article, every contributor owning or occupying a single-family residential property, multifamily residential property, or a nonresidential property, other than exempt property, shall pay to the City, at the same time payment is made for other City services, a storm water fee to be determined and billed as provided in this article. In the event the owner and the occupant of a particular property are not the same, the liability for payment of the storm water fee attributable to that property shall be joint and several as to the owner and occupant. The storm water fee shall be a monthly service fee and shall be determined by this article and the SFU rate which is established in this article and from time to time adjusted as provided in this article.

(c) The storm water fees provided in sections 33-264 through 33-268 of this article shall be applied and computed for each contributor during the customary billing periods.

(d) The SFU rate to be applied to residential and nonresidential properties for fiscal years 2007 through 2011 are identified below:

FY 2007	$2.54/SFU/month
FY 2008	$2.88/SFU/month
FY 2009	$3.30/SFU/month
FY 2010	$3.64/SFU/month
FY 2011	$4.02/SFU/month

(e) Any changes to the storm water fee shall be accomplished by adoption of an ordinance amending this section

(f) No revenues generated by the storm water enterprise user fee shall be used for any purpose other than storm water expenses.

Sec. 33-265. Storm water fee for single-family detached residential property.

(a) The storm water fee for a single-family detached residential property shall be the following percentage of the SFU rate:

Impervious Area of the Property (square feet)	Percentage of SFU Rate
1,841 or less	**58 %**
1,842 to 4,794	**100 %**
4,795 or more	**152 %**

(b) As to a new single-family detached residence, the storm water fee attributable to that residence shall commence upon the earlier of the following:

(1) The issuance of a permanent water-meter.

(2) If no electric-meter is issued for that development or if development has halted, on the date that the director or the director's designee determines in reasonable judgment that the development is substantially complete or has been halted for at least three months

(c) Any owner or occupant of a residential property aggrieved by the director's calculation of the storm water fee as provided in this section may appeal such determination to the director as provided in section 33-270 of this article.

Sec. 33-266. Storm water fee for multifamily residential property.

(a) The storm water fee for a non-single family detached residential property shall be the following percentage of the SFU rate multiplied by the number of dwelling units on the property:

Non-single residential Family Property Classification	Percentage of SFU Rate
Multifamily (excluding high rise multifamily, condominiums and mobile homes)	41 %
Town Home/Condominium	57 %
Mobile Home	77 %
High Rise Multifamily Apartment	13 %

Sec. 33-267. Reserved

Sec. 33-268. Storm water fee for nonresidential property.

(a) The storm water fee for nonresidential property shall be the SFU rate multiplied by the numerical factor obtained by dividing the total impervious area of a nonresidential property by the number of square feet in one SFU. The minimum fee for any nonresidential property shall be equal to one SFU rate. For newly developed nonresidential property, the fee attributable to that property shall commence or increase, for additional development to property which is already developed, upon the issuance of the certificate of occupancy for such additional development or, if no certificate of occupancy will be issued for that development or if development has halted, on the date that the director or the director's designee determines in reasonable judgment that the development is substantially complete or has been halted for at least three months.

(b) For separately electric-metered occupancy units within a nonresidential property with joint users of common impervious areas, the director shall either (1) calculate and allocate the pro rata storm water fee among the users based upon the proportionate share of the total building area for each occupancy unit, (2) calculate and allocate the storm water fee for the property to an existing electric meter that services the common impervious areas used by the occupants, or (3) a combination of these methods.

(c) Any owner or occupant of a nonresidential property aggrieved by the director's calculation of the storm water fee or allocation among users as provided in this section may appeal such determination to the director as provided in section 33-270 of this article.

(d) An adjustment to the storm water fee may be granted by the director who is hereby authorized to establish procedures and standards for the adjustment of fees.

Sec. 33-269. Reserved

Sec. 33-270. Appeal of impervious surface calculation.

(a) Any owner or occupant of a single-family residential property aggrieved by the initial or any subsequent determination of the storm water fee for such property, as provided in section 33-265 of this article, may appeal such determination and calculation to the director, utilizing information supplied by the appealing owner or occupant, provided such information is verified as correct by a registered professional engineer or registered land surveyor at the owner or occupant's expense.

(b) Any owner or occupant of a multifamily residential property aggrieved by the initial or any subsequent calculation of the storm water fee, as provided in section 33-266 of this article, may appeal such calculations and allocation to the director as outlined herein.

(c) Any owner or occupant of nonresidential property aggrieved by the initial or any subsequent calculation of the total impervious area of such property, calculation of the storm water fee for such property, as provided in section 33-268 of this article, may appeal such calculations or allocation to the director. Upon approval of such appeal, the storm water fee shall be recalculated using information obtained as provided in this section.

(d) An appeal by the owner, occupant, or occupant organization of a single-family or multifamily residential property must be filed in writing within 90 days after the initial billing of the storm water fee for that property or within 90 days after any billing showing a recalculation of the storm water fee for that property. For an appeal occurring within 90 days of the initial billing of a property, any adjustment of the storm water fee resulting from such appeal shall be retroactive to the date of the initial billing. For an appeal occurring within 90 days of a billing showing a recalculation of the storm water fee, any adjustment of the storm water fee resulting from such appeal shall be retroactive to the date the recalculated bill went into effect.

(e) The owner, occupant, or occupant organization of a nonresidential property, who is aggrieved (i) by the initial or any subsequent calculation of the impervious area of the property, (ii) by the calculation of the storm water fee, or (iii) by the allocation of such fee among occupants, may appeal such determinations, provided that such appeal must be filed in writing within 90 days after the initial billing of the storm water fee for that property or within 90 days after any billing showing a recalculation of the storm water fee for that property. If an appeal occurs within 90 days after the initial billing of a property, any adjustment of the storm water fee resulting from such appeal shall be retroactive to the date of the initial billing. If an appeal occurs within 90 days after a billing showing a recalculation of the storm water fee, any adjustment of the storm water fee resulting from such appeal shall be retroactive to the date the recalculated bill went into effect.

(f) Appeals by the owners, occupants, or occupant organizations of multifamily residential properties or nonresidential properties shall include a statement of the total property area, and/or total impervious area, as appropriate for the particular grounds for appeal. Appeals by the owners of single-family residential properties shall include a statement or data showing the actual square footage of the lot or parcel. Such information may be shown on storm water enterprise reporting forms or on appeal forms and may be accompanied by plats, County Assessor's records, or survey data. The director may request additional information from the appealing party. Based upon the information provided by the enterprise fund and appealing party, the director shall make a final calculation of the storm water fee. The director shall notify the parties, in writing, of his or her decision within 90 days after receipt of the appeal.

Sec. 33-271. Rate determinations; compliance with bond covenants.

(a) In calculating the SFU rate as provided in section 33-264 of this article, the director shall include in the budgeted expense and revenue amounts sufficient funds as will ensure compliance with any and all rate covenants applicable to any outstanding bonds, notes or other obligations issued in connection with the construction and operation of the Storm Water Enterprise Fund system.

Sec. 33-272. Billing procedures; delinquent accounts and collection procedures.

(a) The procedures for billing of the storm water fees provided in sections 33-265 through 33-268 of this article and for the collection of delinquent storm water service fees shall be as provided in section 33-276.

(b) Contributors who are not subject to billing by Memphis Light, Gas, and Water division shall be directly billed for storm water services by the City. In such instances, the billing and collection of storm water fees shall be subject to the same rules and procedures as to delinquency in payment, certification of delinquency, and property lien as provided in section 33-276.

Sec. 33-273. Review of SFU rate.

Under this article, the director shall review the SFU rate as conditions require and revise the rate as necessary to ensure that the system generates adequate revenues to pay total annual revenue requirements.

Sec. 33-274. Reserved

Sec. 33-275. Reserved

Sec. 33-276. Expenses of collection of storm water fees.

The approving authority shall institute an accounting system reflecting an equal distribution of total funds produced under the division based upon the respective needs of each segment of the storm water operations and maintenance functions; including but not limited to, storm water drainage system maintenance; design, and construction; flood control and protection; storm water capital improvements bond indebtedness loan repayments; direct and incidental costs to the City, including, but not limited to, administrative, technical and legal expenses; and other expenditures necessary for an effective storm water program. Revenue generated under this division shall be used exclusively for the storm water program.

Sec. 33-277. Reserved.

Section 2. This Ordinance shall take effect upon publication.

Passed, approved and adopted this ____ day of _____, 2005.

Chairman, Memphis City Council

THE FOREGOING ORDINANCE
5135 PASSED
1st Reading 9-20-2005
2nd Reading 10-11-2005
3rd Reading 11-15-2005
Approved
Chairman of Council

Date Signed:

Approved:
Mayor, City of Memphis

Date Signed: 12-20-2005

I hereby certify that the foregoing is a true copy, and said document was adopted by the Council of the City of Memphis as above indicated and approved by the Mayor.

Comptroller

14 Nov 2005