

## CHAPTER 2

### STORMWATER UTILITY

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#### **21-201. General Provisions.**

##### **(1) Introduction.**

##### **(a) This Title is to:**

- i. Be known as the “Stormwater User Fee” for the City of Portland, Tennessee;
- ii. Enable the City to comply with the National Pollution Discharge Elimination System Permit (NPDES) and applicable regulations, 40 CFR 122.26 for Stormwater Discharges;

##### **(b) The City of Portland finds, determines, and declares that the stormwater system, which provides for the collection, treatment, storage and disposal of stormwater, provides benefits and services to all property within the incorporated City of Portland limits. Such benefits include, but are not limited to: the provision of adequate systems of collection, conveyance, detention, retention, treatment and release of storm water, the reductions of hazards to property and life resulting from storm water runoff, improvements in general health and welfare through reduction of undesirable storm water conditions, and improvements to water quality in the stormwater and surface water system and its receiving waters of the state all of which are managed by the Stormwater Administrator as part of the Municipal Separate Storm Sewer System (MS4) Program.**

##### **(c) The objective of this ordinance is to promote the public health, safety and general welfare of the City of Portland, Tennessee (“City”) and its citizens in compliance with the Federal Clean Water Act, 33 U.S.C. 1251 et seq., and Tennessee Code Annotated, § 68-221-1101 et seq. which require municipalities to implement stormwater management programs, within prescribed time frames, to regulate stormwater discharges to protect water quality; establish adequate systems of collection, conveyance, detention, treatment and release of stormwater; reduce**

hazards of property and life resulting from stormwater runoff; and enable municipalities to fix and require payment of fees for the privilege of discharging stormwater. The City finds that a stormwater management system which provides for the treatment of stormwater is of benefit and provides services to all property within the city.

- (d) It is further determined and declared that charges shall be established for each developed parcel of developed property located within the municipal limits of the City as provided hereinafter to provide for dedicated funding sources for the administration of stormwater management programs and/or stormwater systems of the city. The proceeds of charges so derived shall be used for the purposes of planning, operation, maintenance, repair, replacement and debt service of the city's stormwater management programs and system necessary to protect the health, safety, and welfare of the public.

(2) Purpose. The Stormwater Utility's purpose is to:

- a. Administer and enforce the City of Portland's Stormwater Management Ordinance;
- b. Administer, plan, and implement stormwater projects to protect, maintain, and enhance the environment of the City of Portland;
- c. Implement activities necessary to maintain compliance with the City's MS4 National Pollutant Discharge Elimination System (NPDES) Permit and applicable regulations, 40 CFR Section 122.26 for storm water discharges;
- d. Annually analyze the cost of services and benefits provided, and the system and structure of fees, charges, civil penalties, and other revenues of the utility; and,
- e. Advise the Board of Mayor and Alderman and other City of Portland departments on matters relating to the utility.

(3) Administering entity. The Storm Water Utility shall be a part of the City of Portland Public Works Department. The Stormwater Utility, under the immediate direction and supervision of the City Mayor, or their designee, shall administer the provisions of this Stormwater Utility Ordinance.

(4) Jurisdiction. The Stormwater Utility Ordinance shall govern all properties within the incorporated limits of the City of Portland, Tennessee.

## **21-202. Definitions.**

For the purpose of this Title, the following definitions shall apply: Words used in the singular shall include the plural, and the plural shall include the singular; words used in the present tense shall include the future tense. The word "shall" is mandatory and not discretionary. The word "may" is permissive. Words not defined in this section shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary.

- (1) "Agricultural property" means property which is zoned agricultural and/or property which yields an annual minimum, or in which the annual minimum has been met in two of the last five years, of \$1,000.00 of agricultural products produced and/or sold from the operation of the property. Agricultural production shall include agricultural, forest, and/or livestock production as defined by the United States Department of Agriculture, Natural Resources Conservation Service, and Environmental Quality Incentive Program. Proof of agricultural producer status may include IRS from 1040 Schedule F or other accounting records certified by a tax preparer.

- (2) “Appeal” means a request for a review of the Stormwater Administrator’s interpretation of any provision of these regulations.
- (3) “Base rate” means the storm water user fee for a detached single family residential property in the City of Portland.
- (4) “Best Management Practices” or “BMPs” means the physical, structural, and/or managerial practices that, when used singly or in combination, prevent or reduce pollution of water, that have been approved by the City of Portland, and that have been incorporated by reference into the Storm Water Management Ordinance as if fully set out therein.
- (5) “Board of Mayor and Alderman” means the Governing Body for the City of Portland.
- (6) “CII” refers to developed commercial, industrial, and institutional properties within the incorporated limits of the City of Portland, TN.
- (7) “City” means the City of Portland, Tennessee.
- (8) “Construction” Means the erection, building, acquisition, alteration, reconstruction, improvement, or extension of storm water facilities; preliminary planning to determine the economic and engineering feasibility of storm water facilities; the engineering, architectural, legal, fiscal, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary in the construction of storm water facilities; and the inspection and supervision of the construction of storm water facilities.
- (9) “Deficient property” means developed property that does not have adequate stormwater facilities as required in the latest edition of the City of Portland minimum drainage requirements for development.
- (10) “Developed Property” means developed property which has been altered from its natural state by the creation or addition of buildings, structures, pavement or other impervious surfaces, or by the alteration of the property that results in a meaningful change in the hydrology of the property.
- (11) “Equivalent Residential Unit (ERU)” shall be used as the basis for determining stormwater service charges to all properties within the City. An ERU is the standard value for which non-residential properties are compared to the average residential property. One ERU is based upon the average residential property area.
- (12) “Exempt property” means all public rights-of-way, public streets and public roads, public alleys, public sidewalks and public greenways, public drainage facilities, privately owned residential streets, property that does not discharge stormwater runoff to the stormwater or flood control facilities and railroad right-of-way properties within the City of Portland. For purposes of this definition, “public” shall mean that which is maintained by or is or is to be dedicated to the City of Portland and/or the State of Tennessee or the government of the United States.
- (13) “Fee or Stormwater User Fee” means the charge established by ordinance and levied on owners or users of parcels or pieces of developed property to fund the cost of Stormwater Management and of operating, maintaining, and improving the Stormwater system in the City.
- (14) “Fiscal year”. July 1 of a calendar year to June 30 of the next calendar year, both inclusive.
- (15) “Impervious surface” means a surface which is compacted or covered with material that is resistant to infiltration by water, including, but not limited to, most conventionally surfaced streets, roofs, sidewalks, patios, driveways, parking lots, and any other oiled,

graveled, graded, compacted, or any other surface which impedes the natural infiltration of surface water.

- (16) "Impervious surface area" means the number of square feet of horizontal surface covered by buildings, and other impervious surfaces. All building measurements shall be made between exterior limits of the structure, foundations, columns or other means of support or enclosure.
- (17) "Multi-family Residential Property" means a building containing three (3) or more dwelling units. The term includes cooperative apartments, condominiums, and the like.
- (18) "Other Developed Property" means all Developed Property located within the municipal limits of the city other than (i) Residential Property; (ii) Exempt Property; (iii) Vacant Property and (iv) Park Lands/Cemetery. Other Developed Property shall include commercial properties, industrial properties, apartments, parking lots, hospitals, schools, recreational and cultural facilities, industrial properties, hotels, offices, churches, federal, state and local government properties and multi-use properties. Such property shall also include single family dwellings which are attached to or otherwise a part of a building housing a commercial enterprise. Any single-family residential structure which contains more than two attached dwelling units is specifically included in this definition.
- (19) "Park Land"/ "Cemetery" means all developed property owned by federal, state and/or local governments that has been designated by such governmental entity for use as a public park or cemetery.
- (20) "Person" means any and all persons, natural or artificial, including any individual, firm or association, and any municipal or private corporation organized or existing under the laws of this or any other state or country.
- (21) "Property owner" means the property owner of record as listed in the City's and/or county's tax assessment roll. A property owner includes any individual, corporation, firm, partnership, or group of individuals acting as a unit, and any trustee, receiver, or personal representative.
- (22) "Runoff Coefficient" is a term used to describe the percentage of precipitation that leaves a particular site as runoff. Runoff is precipitation that does not soak or absorb into the soil surface and is greatly impacted by the amount of impervious surface that exists on a particular site. The Runoff Coefficient relates the amount of impervious surface to the intensity of development.
- (23) "Single family residential property" refers to a building containing only one dwelling unit located upon one zone lot, the term is general, including such specialized forms as one-family detached, one-family semi-detached, and one-family attached. For regulatory purposes, the term is not to be construed to include travel trailers, self-propelled motor homes, tents, or other forms of portable or temporary housing.
- (24) "Stormwater" or "Storm Water" refers to Stormwater runoff, snow melt runoff, surface runoff, infiltration, and drainage.
- (25) "Stormwater Administrator" refers to the person(s) designated by the City Mayor to enforce the stormwater management ordinance.
- (26) "Stormwater Appeal Board" means the City of Portland' Board of Mayor and Aldermen.
- (27) "Stormwater management" means the planning, design, construction, regulation, improvement, repair, maintenance, and operation of facilities and programs relating to water, flood plains, flood control, grading, erosion, tree conservation, and sediment control.

- (28) “Stormwater Management Fund” or “Fund” means the fund created by this ordinance to operate, maintain, and improve the City’s stormwater management system.
- (29) “Stormwater system” or “System” means all stormwater facilities, stormwater drainage systems and flood protection systems of the city and all improvements thereto which operate to, among other things, control discharges and flows necessitated by rainfall events; and incorporate methods to collect, convey, store, absorb, inhibit, treat, prevent or reduce flooding, over drainage, environmental degradation and water pollution or otherwise affect the quality and quantity of discharge from such system.
- (30) “Stormwater user fee” or “Fee” refers to the utility service fee established under this ordinance and levied on owners or users of parcels or pieces of developed property to fund the costs of storm water management and of operating, maintaining, and improving the storm water system in the City of Portland. The storm water user fee is in addition to other fees that the City of Portland has the right to charge under any other rule or regulation of the City of Portland.
- (31) “Stormwater Utility” means a management structure that is responsible solely and specifically for the stormwater management program and system.
- (32) “Surface water” means water upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other watercourses, lakes, ponds, wetlands, marshes and sinkholes.
- (33) “Undeveloped Property” shall mean property that is in its natural state and has not been developed; does not have impervious surfaces on it.
- (34) “User” refers to the owner or customer of record of property subject to the storm water user fee imposed by this ordinance.
- (35) “Vacant/undeveloped property” means property on which there is no structure for which a certificate of occupancy has been issued.

**21-203. Funding of Stormwater Utility.**

- (1) Funding for the stormwater utility’s activities may include, but not be limited to, the following:
  - (a) Stormwater user’s fees.
  - (b) Civil penalties and damage assessments imposed for or arising from the violation of the city’s stormwater management ordinance.
  - (c) Stormwater permit and inspection fees.
  - (d) Other funds or income obtained from federal, state, local, and private grants, or revolving funds, and from the Local Government Public Obligations Act of 1986 (Tennessee Code Annotated, title 9, chapter 21).
- (2) To the extent that the stormwater drainage fees collected are insufficient to construct needed stormwater drainage facilities, the cost of the same may be paid from such city funds as may be determined by the Board of Mayor and Alderman.

**21-204. Stormwater Utility Management Fund.**

- (1) All revenues generated by or on behalf of the Stormwater Utility shall be deposited in a Stormwater Utility Management Fund and used exclusively to fulfill the purposes of the Stormwater Utility.

**21-205. Operating Budget.**

- (1) The Board of Mayor and Alderman shall adopt, based on a recommendation from the Stormwater Administrator, Public Works Director and Finance Director, an operating budget for the Stormwater Utility Management Fund each fiscal year. The operating budget shall set forth for such fiscal year the estimated revenues and the estimated costs for operations and maintenance, extension and replacement and debt service.

**21-206. Stormwater User Fee**

- (1) There shall be imposed on each developed property in the City of Portland, a stormwater user fee which will be charged monthly, which shall be set from time to time by ordinance in the fee schedule as adopted by the City of Portland, except exempt properties, and in the manner and amount prescribed by the ordinance.

**21-207. Equivalent Residential Unit (ERU).**

- (1) Establishment. The ERU was established for the purpose of calculating the stormwater user fee.
- (2) Setting the ERU. The ERU shall be set by the Board of Mayor and Alderman via ordinance.
- (3) Source of ERU. The Board of Mayor and Alderman shall have the discretion to determine the source of the data from which the ERU is established, taking into consideration the general acceptance and use of such source on the part of other stormwater systems, and the reliability and general accuracy of the source including but not limited to property tax assessor's rolls, site examination, mapping information, aerial photographs, and other reliable information.
- (4) Evaluation of ERU. The ERU shall be evaluated by the Stormwater Utility as necessary.

**21-208. Property Classification for Stormwater User Fees.**

- (1) Property classifications. For purposes of determining the storm water user fee, all properties in the City of Portland are classified into one of the following categories:
  - a) Single Family Dwelling Residential property;
  - b) Developed/Commercial/Industrial/Institutional (CII) properties; or
  - c) Exempt property.

**1.) Single Family Dwelling Residential Fee.** The Board of Mayor and Alderman finds that the intensity of development of most parcels of developed property in the City of Portland classified as single family residential is similar and that it would be excessively and unnecessarily expensive to precisely determine the square footage of the impervious surface on each such parcel. Therefore, all single-family residential properties in the City of Portland shall be charged the same residential rate regardless of the size of the parcel or the impervious surface area of the improvements, except as provided herein.

**2.) Developed property, Commercial, Industrial, Institutional fee.** These properties in the City of Portland shall be charged the rate outlined by the stormwater rate ordinance.

**3.) Exempt property.** There shall be no stormwater user fee for exempt property or as otherwise provided by State law.

- a) Property outside of the incorporated City Limits.
- b) Undeveloped Property that is not altered from its natural state.
- c) Agricultural property upon which the owner or operator conducts activities that satisfy the requirements of a qualified farmer or nurseryman under Tennessee Code Annotated §67-6-207(e). The owner or operator shall bear the burden of establishing such exempt status.
- d) Cemeteries.
- e) Railroad Right of Ways.

**21-209. Base Rate.**

- (1) The Board of Mayor and Alderman shall, by ordinance in the fee schedule as adopted by the Board of Mayor and Alderman, establish the base rate for the ERU. The base rate shall be calculated to ensure adequate revenues to fund the costs of stormwater management and to provide for the operation, maintenance, and capital improvements of the storm water system in the City of Portland.

**21-210. Property Owners to Pay Charges.**

- 1.) The owner of each property/tax lot shall be obligated to pay the stormwater user fee as provided in this ordinance, provided however, that if no water or sewer service is being provided by the City of Portland or local water utility district at the property to the owner as a customer of record and such service is being provided to a customer of record other than the owner, it shall be presumed that the owner and such customer of record have agreed that the customer of record shall be obligated to pay such stormwater user fee.
- 2.) If the customer of record other than the owner refuses to pay the stormwater user fee, the owner of each property shall be obligated to pay the stormwater user fee as defined in this ordinance.
- 3.) Non-residential multi-tenant properties shall be billed according to the placement of utility meters, i.e., if the property contains individual unit meters, then billing for the stormwater user fee shall be billed to individual units based on the unit's pro rata percentage of impervious surface. If the multi-tenant property contains a master meter, then the storm water user fee for the entire impervious surface area shall be billed to the customer of record for such master meter.
- 4.) Each unit of a multi-tenant residential building shall be billed a minimum charge, the same being the single-family residential fee, to the customer of record for the unit. If an individual unit is not individually billed for any water or sewer service, i.e., water and sewer utilities are billed to a master meter, then the customer of record for the master meter shall be billed as commercial property based on the total impervious surface area.

**21-211. Billing Procedures and Penalties for Late Payment.**

- (1) Rate and collection schedule. A stormwater user fee shall be set at a rate as set forth in the Stormwater User Fee Schedule as adopted by the Board of Mayor and Alderman by ordinance, collected at a location, and collected on a schedule, established in accordance with this ordinance. The storm water user fee shall be billed and collected monthly with the monthly utility services bill for those properties within the incorporated limits. The stormwater user fee for those properties utilizing city utilities is part of a consolidated statement for utility customers, which is generally paid by a single payment to the property owner's water utility or to the City of Portland Stormwater Department, unless other means of billing is established at any time by the City.
- (2) The stormwater user fee for those properties utilizing utilities not provided by the City of Portland shall be billed and collected by the City of Portland directly to the utility provider or as directed by the Finance Director. All bills for the stormwater user fee shall become due and payable in accordance with the rules and regulations of the applicable utilities department pertaining to the collection of the storm water user fees.
- (3) Delinquent bills. The stormwater user fee shall be considered delinquent if not received by the City of Portland or applicable billing water utility by the due date stated within the utility statement, and subsequent late fees shall be imposed as set forth in the fee schedule as adopted by the Board of Mayor and Alderman as established by an ordinance.
- (3) Penalties for late payment; failure to pay. Stormwater user fees shall be subject to a late fee established by ordinance as indicated in the Stormwater User Fee Schedule. The City of Portland shall be entitled to recover attorney's fees incurred in collecting delinquent stormwater user fees. The City or other collecting utility provider may discontinue utility service to any stormwater user who fails or refuses to pay the stormwater user fees and may refuse to accept payment of the utility bill from any user without receiving at the same time, payment of the stormwater user fee charges owned by such user and further may refuse to re-establish service until all such fees have been paid in full.
- (4) Mandatory statement. Pursuant to Tennessee Code Annotated § 68-221-1112, each bill that shall contain stormwater user fees shall contain the following statement in bold: **"THE STORMWATER FEE HAS BEEN MANDATED BY CONGRESS PURSUANT TO TENNESSEE CODE ANNOTATED § 68-221-1112"**. The City of Portland Board of Mayor and Alderman hereby finds and declares that the stormwater user fee is a utility service fee and not a tax.

**21-212. Appeal of Fees.**

- (1) Any person who disagrees with the calculation of the storm water user fee, as provided in this ordinance, may appeal such fee determination to the City of Portland's Stormwater Appeal board within ten (10) days after the date the payment is due. Any appeal not filed within the time permitted by this section shall be deemed waived.
- (2) All appeals shall be filed in writing addressed to the Stormwater Administrator for the City of Portland and shall state the grounds for the appeal and the amount of the stormwater user fee the appellant asserts is appropriate. The appeal shall provide such information and



documentation supporting the basis of the appeal. The appeal shall be accompanied by a nonrefundable appeal review fee of \$100.

- (3) Any matter, decision, conclusion, pronouncement, or evaluation made by the City cannot be considered for The Portland Stormwater Appeal Board review until the matter has first been submitted to the City of Portland Stormwater Department for evaluation. Only after the Public Works Director and Stormwater Administrator has had an opportunity to fully consider the matter, and denied the appeal, or a timely review has not taken place, can Appellate Review be considered with the Portland Stormwater Appeal Board.
- (4) The Portland Stormwater Appeal board shall then review the appeal and determine whether the challenged determination is consistent with the provisions of this chapter. Appeals related to the stormwater user fee shall be decided based on substantiated evidence with a sound engineering and factual basis. All appeal determinations shall be applied utilizing a strict interpretation of the Stormwater Utility Ordinance. At any hearing related to an appeal or credit determination, the City shall be allowed to present evidence, findings, and recommendations; appealing parties and applicants shall be given an opportunity to present evidence, findings, and recommendations.
- (5) The Portland Stormwater Appeal board may request additional information from the appealing party; the committee may defer the determination of an appeal one time to the next regularly scheduled meeting of the Portland Stormwater Appeal board. Each appeal shall be placed on the Portland Stormwater Appeal board agenda for the next scheduled meeting, which meeting is at least twenty (20) days after the Stormwater Administrator receives the written appeal.
- (6) The Stormwater Administrator shall notify the appellant customer of the date of the appeal review hearing in writing; such written notice shall be given at least ten (10) days prior to the hearing by regular mail at the address provided in the written appeal document. The decision of the Portland Stormwater Appeal board shall be final and conclusive with no further administrative review.
- (7) If a refund is due, the Finance Director shall authorize the refund which will be provided as the Stormwater Administrator deems necessary.

**21-213. Storm Water User Fee Credit and Adjustment Policy.**

- (1) All applications for Stormwater User Fee Credits and Adjustments shall be submitted as outlined in the City of Portland's Utility Credit Manual. Stormwater User Fee Credits and Adjustments may be available for developed properties that provide an up-to-date certified engineered plan, stamped by a current State-approved engineer licensed to practice in Tennessee, documenting reduced stormwater runoff and shows the stormwater on the property is not encountering the City's stormwater system. A detailed hydrologic report is required.