

# Decision Paper

Meeting Date: April 23<sup>rd</sup>, 2019

Written By: John Adair

## **1. SUBJECT: Adoption of Stormwater Utility Fee Ordinance**

## **2. PURPOSE: To Provide a Dedicated Funding Mechanism for Stormwater-Related Expenses**

### **3. FACTS:**

(a) A discussion took place during budget presentations on 11/12/2015, after the severe flooding event, proposing the idea of instituting a Stormwater Utility Fee for the town. This dedicated funding source, equitably collected, is commonly used in cities and counties to pay for capital and operational costs associated with Stormwater Management. At that time, staff requested, and was authorized, to hire a consultant to conduct preliminary fact-finding and bring forward an interim program.

(b) After a model was developed, the interim concept program was presented to the Stormwater Advisory Committee. The committee, on 1/17/2017, unanimously voted to recommend the implementation of the Stormwater Utility Fee to Town Council.

(c) A Town Council Workshop was held on 2/13/2017, and a presentation was given to council and the public. Council decided not to proceed with the Stormwater Utility at that time.

(d) Subsequent to the record rainfall in 2018, Council directed staff to proceed with the project, and engage our consultant to bring forth a permanent Stormwater Utility Fee program. This program has now been delivered, and the staff is prepared to forward the appropriate fee schedule to Horry County, for inclusion on the next tax bills. Digitized impervious layers and data have been analyzed, for residential and commercial properties. Based on a 5-year capital needs program, the recommended single-family Equivalent Residential Unit (ERU) is \$82.00 per year, and the associated commercial rate would be a multiplier of that ERU (representing a residential average of 2531 square feet of impervious coverage). Multi-family units will be billed their percentage of the overall impervious footprint of a complex.

### **4. ACTION:**

Staff recommends the implementation of this fair, equitable and defensible Stormwater Utility. Through this dedicated funding, costly improvement projects can be completed with regularity, rather than deferring needed work.

**Motion to approve first reading of Ordinance #19-0893 as presented or with amendments deemed appropriate by Town Council.**

*Note: Pursuant to SC Code Section 6-1-330, a hearing is scheduled on May 14th at 6:30 p.m. to hear comments from the public.*

State of South Carolina )  
County of Horry )  
Town of Surfside Beach )

*Resolution of the  
Stormwater Committee  
To Support Funding and ERU*

**Whereas**, the Surfside Beach Stormwater Committee met on January 17, 2017;  
and

**Whereas**, the Town of Surfside Beach has six upcoming or on-going stormwater projects, the estimated costs for which is \$3,450,000, and will always have stormwater projects and/or repairs to be made. The projects are Phase II North Side Drainage Project \$900,000; Myrtle Swash Northern Bulkhead (underway now) \$200,000; Floral Swash Bulkheads \$350,000; Dogwood Swash Bridge Replacement \$450,000; Myrtle Swash, Bridge Replacement and west-side swash permitting and re-engineering, \$550,000; Elimination of discharge into Garden City in the Melody Basin, \$1,000,000;  
and

**Whereas**, Town Council authorized a study to determine a Equivalent Residential Unit (ERU) as a means to fund stormwater projects and repairs; and

**Whereas**, The Committee supports an ERU to fund stormwater projects and repairs.

**NOW, THEREFORE, BE IT RESOLVED** that the Surfside Beach Stormwater Committee hereby recommends to the Surfside Beach Town Council to adopt an Equivalent Residential Unit (ERU) at such amount that is fair and equitable to the town's citizens and businesses.

**BE IT SO RESOLVED** this 17<sup>th</sup> day of January 2017.

\_\_\_\_\_  
Sandra Elliott, Chairman

\_\_\_\_\_  
P. L. Mabry, Vice Chairman

\_\_\_\_\_  
Alan Beck, Committee Member

\_\_\_\_\_  
Ron Crouch, Committee Member

\_\_\_\_\_  
Tabitha Mull, Committee Member

Attest:

\_\_\_\_\_  
Debra E. Herrmann, CMC, Town Clerk



**WHEREAS**, pursuant to SC Code Ann. §5-7-30, municipal governments are authorized to enact regulations and ordinances for government services deemed necessary and proper;

**WHEREAS**, the Town of Surfside Beach Council desires to develop and implement a stormwater user fee program to fund its responsibilities to implement the Town Stormwater Management Program (SWMP); and

**WHEREAS**, the Town of Surfside Beach Council believes the implementation of the Stormwater Management Program, including the adoption of this Ordinance, is in the best interests of the Citizens of Surfside Beach and the economy, environment, and water quality/quantity concerns in the Town.

**NOW, THEREFORE, BE IT ENACTED:**

**Section 1. Findings of Fact.** The Town of Surfside Beach Council makes the following findings:

A. The Town of Surfside Beach 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 Town of Surfside Beach 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 Town.

C. The Town of Surfside Beach maintains, or must ensure maintenance of, a system of stormwater management facilities, including but not limited to, inlets, conduits, manholes, channels, ditches, swashes, drainage easements, retention and detention basins, infiltration facilities, and other components, as well as natural waterways.

D. The stormwater management facilities of the Town 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 in order to satisfy the NPDES MS4 permit requirements.

E. There needs to be a comprehensive mapping system, monitoring system, with base line data to assist the Town in the analysis, design, development, and implementation

of the Stormwater Management Program (SWMP). The need also exists to develop a long-term comprehensive stormwater infrastructure and facility maintenance program/plan in the Town of Surfside Beach.

F. There is a lack of resources (equipment, manpower, funds) in the Town of Surfside Beach to adequately implement the Stormwater Management Program comprehensively and within the time frame required by the NPDES MS4 permit without additional resources.

G. Current and anticipated growth within The Town of Surfside Beach will contribute to the need for improvements in and maintenance of the stormwater management system.

H. The Town of Surfside Beach needs to enhance the ability to maintain existing and future stormwater management facilities and measures.

I. Every built upon parcel of real property in the Town of Surfside Beach 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 the Town of Surfside Beach the extent of use of the stormwater management system by each classification of real property is dependent on a variety of factors that influence stormwater runoff, such as land use, topography, intensity of development, amount of impervious surface, and location in a particular watershed or basin.

K. In the Town of Surfside Beach property owners and users, except as exempted by Section N below, will assist in financing 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 among property owners and users.

L. It is in the best interests of the citizens of this Town, and most specifically, the owners of real property, that a Stormwater Management Utility with fees and classifications be established by ordinance and implemented as part of the Town'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. By utilizing impervious surface layers obtained from the Horry County GIS Department, the Town is able to establish the most reasonable and equitable system for developing and implementing a stormwater utility program. By analyzing impervious surface coverages for residential single-family homes, an average Equivalent Residential

Unit (ERU) of 2,531 square feet was established. This is very comparable to other previously developed ERUs in close proximity to the Town and other coastal communities.

N. The 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 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) South Carolina Code Annotated, Regulations 72-301, (Supp. 1992).

**Section 4. Establishment of a Stormwater Management Utility; Administration; Duties and Powers.** Town 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 Town Council. The Town Administrator or his designee shall administer the Utility. 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 Town 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 Town 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, collecting and accounting for Stormwater Management Utility Fees pursuant to this Ordinance. Stormwater fees shall be deposited into the Stormwater Management Fund which shall account for all fees collected and all expenditures made pursuant 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 Town.

**Section 5. Boundaries and Jurisdiction.** The boundaries and jurisdiction of the Stormwater Management Utility shall encompass all those portions of the incorporated Town, as they may exist from time to time and such additional areas lying inside the corporate limits of those jurisdictions within the Town as shall be approved by The Town of Surfside Beach Council.

**Section 6. Stormwater Management Utility Fees.** Town Council shall establish amounts and classifications for stormwater management utility fees to be implemented to help fund the Stormwater Utility and its' programs, projects, administration, and enforcement. Town 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. Town 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 Town 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 Town 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.** Town Council is establishing this Stormwater Management Utility Fees and Classifications program as a result of the completion of a Stormwater Management Utility Rate Study and GIS analysis of impervious surfaces, zoning, land-use, parcel data, building footprints, etc. Thereafter, the Stormwater Management Utility Fees and Classifications program will be reviewed and may be amended as necessary by Town Council through Ordinance amendment.

The stormwater utility fees shall be based on the amount of impervious surfaces on each parcel compared to the established Equivalent Residential Unit (ERU) of 2,531 square feet. The utility fee breakdown will be as follows:

A. For all parcels containing a single-family residence an annual fee of \$82.00 per parcel shall be assigned.

B. For parcels containing multiple residences or multiple commercial tenants on the parcel, the annual fee of \$82 will be split up between the individual units/tenants based on the square footage of impervious surfaces on the parcel. If common parking areas, or other impervious surfaces (i.e. pool decks, etc.), are under the ownership of an HOA or other separate entity, then the fee for those parcels will be based on \$82/year/ERU.

C. For all developed parcels containing nonresidential land use (commercial, industrial, government facilities, etc.), an annual fee of \$82/ERU shall be assigned based on the amount of impervious surfaces on the parcel.

Note: The stormwater utility fee will not be imposed on agricultural lands, forestlands, or undeveloped lands pursuant to the amendment of Section 6-3-330 of the 1976 Code (A75, R70, S453.)

**Section 8. 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; 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 Town for investment and reinvestment of funds. Town 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 9. Stormwater Management Utility Fee Billing, Delinquencies and Collection.**

A. The Stormwater Management Utility fee bill shall be levied, collected and paid in the same manner as user fees applied to the Horry County annual tax bills. If a property owner is under-billed or if no bill is sent for developed land, the Town may back-bill for a period of up to one year.

B. In addition to any other penalties or remedies provided in this Ordinance, the Town, upon the recommendation of the Town Attorney and approval of the Town Administrator, 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 10. Town 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 Town, 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 Town Administrator 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 Town Administrator.

B. The Town Administrator 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 Town Administrator, 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 Town Administrator 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 Town Administrator 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 Town Administrator may appeal, pursuant to the foregoing procedures, to Town 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.

**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.

**EFFECT OF SECTION HEADINGS.** The headings or titles of the several sections hereof shall be solely for convenience or reference and shall not affect the meaning, construction, or interpretation or effect of this ordinance.

**REPEAL AND EFFECTIVE DATE.** All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed. This ordinance shall take effect immediately upon approval at second reading by the Town Council of the Town of Surfside Beach.

**BE IT ORDERED AND ORDAINED** by the Mayor and town Council of the Town of Surfside Beach, South Carolina, in assembly and by the authority there of this \_\_\_\_ day of \_\_\_\_\_ 2019.

**SURFSIDE BEACH TOWN COUNCIL**

\_\_\_\_\_  
Robert F. Childs, III, Mayor

\_\_\_\_\_  
David L. Pellegrino, Mayor Pro Tempore

\_\_\_\_\_  
Bruce Dietrich, Town Council

\_\_\_\_\_  
Mark L. Johnson, Town Council

\_\_\_\_\_  
Ron Ott, Town Council

\_\_\_\_\_  
Debbie Scoles, Town Council

\_\_\_\_\_  
Randle M. Stevens, Town Council

Attest: \_\_\_\_\_  
Debra E. Herrmann, CMC, Town Clerk