

ORDINANCE NO. _____

WHEREAS, the Urban County Government is authorized by statutory authority including, without limitation, KRS 67A.060, KRS 67.080, KRS 67.083 and KRS 82.082 to operate a stormwater drainage system to collect and convey stormwater; and

WHEREAS, the mission of the stormwater management program of the Urban County Government is to safely and efficiently manage stormwater runoff, enhance public health and safety, enhance public education of stormwater management issues, protect lives and property, facilitate mobility and enable access, complement and support other programs/objectives, minimize the discharge of pollutants in stormwater in compliance with applicable federal and state laws, and enhance the natural resources of the community; and

WHEREAS, the Urban County Government, the United States Environmental Protection Agency, and the Commonwealth of Kentucky have entered into a Consent Decree in a case styled *United States, et al. v. Lexington-Fayette Urban County Government*, United States District Court for the Eastern District of Kentucky, Case No. 5:06-CV-00386, wherein the Urban County Government is required to impose a stormwater management fee to fund the stormwater management program described therein; and

WHEREAS, KRS 91A.510 *et seq.* authorizes local governments to impose a fee or charge on users of a public service not also available from a non-governmental provider; and

WHEREAS, it is the desire of the Urban County Council to adopt and implement a schedule of service charges sufficient to fund the stormwater management program.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That Article XIV of Chapter 16 of the Code of Ordinances of the Lexington-Fayette Urban County Government be, and hereby is, created and enacted to read as follows:

ARTICLE XIV. STORMWATER SERVICE CHARGES AND FEES

Sec. 16-401. Establishment.

A system and structure of stormwater service charges to be applied to all developed parcels of land within Fayette County is hereby established in accordance with the provisions of this chapter.

Sec. 16-402. Definitions.

(1) *Developed* means the condition of real property altered from its natural state by the addition to or construction on such property of impervious ground cover or other manmade physical improvements so that the hydrology of the property or a portion thereof is affected.

(2) *Stormwater Management Program* means the plan for managing storm drainage and surface water runoff facilities and features within the stormwater service area and the drainage basins therein.

(3) *Stormwater Service Area* includes all developed parcels within Fayette County.

(4) *Stormwater Service Charge* means the fee levied by the urban county government upon all developed parcels within the boundaries of the stormwater service area as authorized by this chapter.

(5) *Equivalent Residential Unit (ERU)* means the measure of impervious ground cover for a typical single-family residential property used in assessing the stormwater service charges for each parcel of property and which has been determined to be 2,500 square feet.

(6) *Impervious Surface* means those hard surface areas either which prevent or retard the entry of water into the soil in the manner that such water entered the soil under natural conditions pre-existent to development, or which cause water to run off the surface in greater quantities or at an increased rate of flow than that

present under natural conditions pre-existent to development, including, without limitation, such surfaces as roof tops, asphalt, concrete, pavers, aggregate, paving, driveways and parking lots, private streets, walkways, patio areas, storage areas or other surfaces which similarly affect the natural infiltration or runoff patterns existing prior to development.

(7) *Non-Single Family Residential Properties or Parcels* means properties or parcels which contain more than one residential structure or one residential structure with more than two residential dwelling units and institutional, commercial or industrial properties.

(8) *Residence* means a building or structure or portion thereof, designed for and used to provide a place of abode for human beings. The term *Residence* includes the term *Residential* and *Residential Unit* as referring to the type of or intended use of building or structure.

(9) *Single Family Residential Property or Parcel* means any property or parcel which contains one residential structure with one or two residential dwelling units.

(10) *Storm Drainage System* means a conveyance or system of conveyances, including, but not limited to, roads with drainage systems, urban county streets, inlets, curbs, gutters, ditches, basins, man-made channels or storm drains which are: (i) owned or operated by the urban county government; and (ii) designed or used for collecting or conveying stormwater.

(11) *Stormwater* means stormwater runoff, snow melt runoff, and surface runoff and drainage.

(12) *Undeveloped* means the condition of real property unaltered by construction or addition to such property by man of impervious ground cover or physical manmade improvements of any kind which change the hydrology of the property from its natural state.

(13) *Farm property* means any parcel occupied for "agricultural use" as defined in Article 1-11 of the Zoning Ordinance.

Sec. 16-403. Stormwater Service Charge.

(1) A stormwater service charge is imposed on every parcel of land within the stormwater service area except the following:

(a) undeveloped parcels;

(b) railroad tracks;

(c) state and federal roads;

(d) urban county government streets and roads.

(2) The following charges are hereby established and imposed for all parcels within the stormwater service area, excluding exempted properties:

(a) Class A properties: single family residential or farm properties. The single family residential rate shall be \$4.16 per month for each parcel having one or two residential dwelling units and the farm property rate shall be \$4.16 per month for each farm parcel. This flat rate fee is based on each single-family residential parcel or farm property being equal to one ERU. The urban county government shall determine the number of single family residential parcels and farm properties in the stormwater service area.

(b) Class B: all other parcels.

(1) The charge for all other parcels within the stormwater service area shall be based upon the number of square feet of measured impervious surface, as determined by the urban county government through aerial photography and surface feature evaluation processes, expressed in whole ERUs by rounding to the nearest ERU (determined to be 2,500 square feet of impervious surface). The charge for Class B properties shall be computed by multiplying the number of ERUs for a given parcel by the unit rate established by the urban county government of \$4.16 per ERU per month but in no event shall any such parcel pay less than \$4.16 per month.

(2) Any owner of Class B property may request a stormwater charge credit adjustment for approved on-site stormwater retention or detention facilities provided that:

(a) The property owner remains responsible for all costs of operation and maintenance of the facility;

(b) The facility has been constructed in accordance with all approved plans;

(c) The owner has obtained the required permits for the facility;

(d) The urban county government has access to the facility for purposes of inspecting for compliance with design, maintenance and operating standards; and,

(e) The facility reduces flow of stormwater from the property or improves water quality in an amount in excess of that required by applicable urban county government standards.

(3) If the urban county government approves a stormwater charge credit for on-site stormwater retention or detention facilities, the credit will be applied by reducing the number of billable ERUs by the percent of additional reduction in stormwater runoff and/or additional improvement to water quality due to

such on-site facilities, as determined by the urban county government. The net billable ERUs after such credit is applied shall be rounded to the nearest ERU and the adjusted stormwater service charge shall not be less than 80% of the stormwater service charge before the credit adjustment.

Sec. 16-404. Billing and Collection.

(1) Stormwater service charges shall be billed and made payable monthly. Stormwater service charges may be pro-rated based on the number of actual days in a billing cycle.

(2) The owner(s), tenant(s), or person(s) responsible for the payment of water service charges and/or sewer service charges shall also be responsible for the payment of stormwater service charges for the same parcel(s) except for multiple occupancy such as shopping centers, apartments, condominiums, etc., in which cases the urban county government may either allocate the stormwater service charges among the occupants of the parcel or may deem that a single billing to the parcel's owner(s), agent, or association is appropriate. In either case, the billed party shall be responsible for payment of stormwater service charges. In all situations, the owners of properties subject to stormwater service charges shall be fully responsible for payment of said charges regardless of any other parties herein above identified as also being responsible for payment of stormwater service charges.

(3) Bills for stormwater service shall be due when rendered; and the face amount, without penalty or interest, shall be paid on the due date.

(4) All unpaid stormwater service bills are subject to a penalty and interest charge to be computed in the following manner:

(a) Any stormwater service bill or a portion of any unpaid stormwater service bill remaining unpaid for more than thirty (30) days from the date of billing shall be assessed a penalty of ten percent (10%) of the unpaid balance.

(b) In addition to the penalty provided in subsection (4)(a) of this section, any stormwater service bill or a portion of any stormwater service bill remaining unpaid for more than thirty (30) days from the date of billing shall be assessed an interest charge of one (1) percent per calendar month or portion of a calendar month against the unpaid balance of such bill.

(5) The department of law is authorized and directed to institute legal proceedings in the name of the urban county government in any court having jurisdiction over such matter for the collection of delinquent stormwater service charges, and to take any

actions necessary in such proceedings to protect the interests of the urban county government.

Sec. 16-405. Adjustment of charges.

Any user subject to the stormwater service charge who is the legal title/leaseholder/renter of the benefited property who is age 65 or older, or who is receiving social security disability benefits, and whose annual household income (as defined in section 16-405.1(a)(2) below) is \$25,000 or less, said amount of income to be adjusted annually in accordance with the Social Security Administration's cost of living adjustment, can apply for a discount. Upon acceptance for the discount, said user's bill shall be decreased by thirty (30) percent of the billing amount.

Sec. 16-405.1 Grant Program.

(a) As used in this section only, the following terms shall have the meanings given:

(1) *Assets test* means that any person having assets in excess of either:

(i) Five thousand dollars (\$5,000.00) in liquid assets such as bank accounts, savings, certificates of deposits, stocks, bonds, etc.; or

(ii) Five thousand dollars (\$5,000.00) in equity in assessed value of nonhomestead property;

shall be ineligible to participate in the program, notwithstanding that he meets the income level qualifications set forth in this section. However, motor vehicles for personal use, household furnishings and the benefited property itself, as well as buildings located thereon which are occupied by the person seeking to qualify as a home for himself and his family, shall not be included in computing assets.

(2) *Income* means total cash receipts to the residential stormwater service charge customer and any co-habitant after taxes from all sources. These sources include money, wages and salaries after any deductions required by law, but not including food or rent in lieu of wages. They include receipts from self-employment or from one's own farm or business after deductions for business or farm expenses. They include regular payments from public assistance, social security, unemployment and worker's compensation, strike benefits from union funds, veteran's benefits,

training stipends, alimony and military family allotments or other regular support from an absent family member or someone not living in the household; government employee pensions, private pensions and regular insurance or annuity payments; and income from dividends, interest, rents, royalties or income from estates and trusts. For eligibility purposes, income does not refer to the following money receipts: any assets drawn down as withdrawals from a bank, sale of property, house or car, tax refunds, gifts, one-time insurance payments or compensation for injury; also to be disregarded is noncash income, such as the bonus value of food and fuel produced and consumed on farms and the imputed value of rent from owner-occupied farm or nonfarm housing.

(3) *Program* means the grant program established in this section.

(4) *Qualified customer* means a residential stormwater service charge customer who meets the assets test and has an annual income equal to or less than one hundred twenty-five (125) percent of the poverty income levels set forth in the poverty guidelines chart established by the Community Services Administration, annually published in the Federal Register, in effect at the time of application. However, income itself shall be measured by the definition contained in subsection (a)(2) of this section.

(b) Qualified customers may receive up to a fifty (50) percent grant for the cost of their stormwater service charges, decreasing their obligation to fifty (50) percent of the total charges on the bill. All payments of stormwater service charge grants by the urban county government are subject to an annual appropriation by the urban county council of the funds to make such payments, and neither the establishment of this program nor participation in the program shall constitute a contract between the urban county government and any qualified property owner for other than the fiscal year for which funds are appropriated to make payments. In the event funds are not appropriated for any given fiscal year, customers will be required to pay the full cost for that year.

(c) Qualified customers who participate in this program shall not be eligible to receive the discount allowed in Section 16-405.

(d) The administration of this program shall be under the direct supervision of the mayor of the

urban county government. The mayor may prescribe such regulations and procedures, consistent with the provisions of this section, as he deems necessary or appropriate to carry out the intentions stated herein. The commissioners of the departments of finance, environmental quality and social services shall be responsible for administration of aspects of the program at the direction of the mayor.

Sec. 16-406. Stormwater Revenues; Expenses.

All monies collected through stormwater service charges authorized herein shall be separately identified and accounted for in the urban county government's financial records, and all expenses related to the urban county government's stormwater program overseeing drainage, flood control, and water quality, including any administrative costs related thereto shall be separately identified and administered according to generally accepted principles of governmental accounting.

Sec. 16-407. Adjustment of Charges; Appeals.

(1) Any owner who considers that stormwater service charges applied to the owner's parcel are inaccurate or otherwise disagrees with the determination may apply to the director of the division of water quality for a rate review, stating in writing the grounds for the adjustment. The director or his designee will review the case and report findings to the commissioner of environmental quality. The commissioner shall consider the complaint and staff recommendations and determine whether an adjustment is necessary to provide for reasonable and equitable application of the stormwater service charge.

(2) Appeals of decisions made by the commissioner may be brought before the mayor in writing with notice and substance of the appeal sent to the mayor within fifteen (15) days after the owner receives the commissioner's decision. Upon reviewing the documentation, the mayor, or his designee, shall render a final decision.

Sec. 16-408. Stormwater Service Charges; Review

The stormwater service charges established in this chapter are subject to review which is expected to occur at least every three (3) years following the date of implementation of the charges.

Section 2 - That this Ordinance shall become effective on
April 1, 2009.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL

PUBLISHED:

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