

ORDINANCE #0-21-08

AN ORDINANCE TO ESTABLISH A STORMWATER MANAGEMENT ENTERPRISE FUND

WHEREAS, Article XIV, Section 5 of the Constitution of North Carolina provides, “it shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivisions ... to control and limit the pollution of our air and water”; and

WHEREAS, The Town of Black Mountain values protecting and preserving the natural resources that are a benefit to its citizens and an important aspect of the Town’s heritage and identity; and

WHEREAS, Section 402(p) of the Federal Clean Water Act requires that local governments obtain and comply with the terms of National Pollutant Discharge Elimination System (“NPDES”) permits for stormwater discharges from municipal storm sewer systems; and

WHEREAS, the North Carolina Department of Environmental Quality issued to the Town of Black Mountain a Notice of Violation on February 28, 2020, for noncompliance with the requirements of the Town of Black Mountain’s NPDES Municipal Separate Storm Sewer System Permit (“MS4 Permit”); and

WHEREAS, the Town of Black Mountain is required to cure the existing violations of tis MS4 Permit by developing a stormwater management plan addressing all known compliance deficiencies, including those detailed in the audit report; and

WHEREAS, the audit report found that the Town of Black Mountain was deficient in maintaining “adequate funding and staffing to implement and manage the provisions of the Stormwater Plan and meet all requirements of the National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System Permit”; and

WHEREAS, the Town of Black Mountain Town Council adopted a resolution on May 11, 2020 acknowledging “the requirement to provide adequate funding and staffing to implement a Stormwater Management Program that complies with its NPDES MS4 Permit and approved Stormwater Management Plan”; and

WHEREAS, the Town of Black Mountain’s stormwater management program funding is insufficient to provide the construction, maintenance and administration of appropriate infrastructure including conveyance systems, stormwater management controls and programming efforts required to comply with the requirements of the MS4 Permit; and

WHEREAS, Chapter 160A, Article 16, of the North Carolina General Statutes authorizes the Town of Black Mountain to establish a public enterprise to furnish the town and its citizens with stormwater management programs designed to protect water quality by controlling the level of pollutants in, and the quantity and flow of, stormwater and structural and natural stormwater

and drainage systems of all types and to finance the costs of such public enterprise by levying taxes, borrowing money, and appropriating any other revenue therefor, as well as to establish and revise, from time to time, a schedule of rates, fees, charges and penalties for the services to be provided by such public enterprise; and

WHEREAS, establishing a Stormwater Management Enterprise Fund will facilitate the establishment of an effective Stormwater Management Program as required by the MS4 Permit and would be reasonable and in the best interest of the public.

NOW, THEREFORE, BE IT ORDAINED that there is hereby established a Stormwater Management Enterprise Fund for the Town of Black Mountain; and

BE IT FURTHER ORDAINED that the Stormwater Management Enterprise Fund shall be managed and administered in accordance with the policies and procedures hereinafter set forth; and

BE IT FURTHER ORDAINED that the Code of Ordinances, Town of Black Mountain, North Carolina, is hereby amended by adding an Article in Chapter 48, to be numbered Article V, which is to read as follows:

Article V. – STORMWATER

Division 1. – Generally

Sec. 48-250. Authority

Pursuant to N.C.G.S. Article 16 of Chapter 160A, the Town of Black Mountain is authorized to establish an enterprise fund to furnish the town and its citizens with stormwater management programs.

Sec. 48-251. Purpose

It is the purpose of this section to establish a stormwater management utility and an associated stormwater management enterprise fund as an identified fiscal and accounting fund to finance the cost of comprehensively addressing the stormwater management needs of the town and its citizens. This Article provides a schedule of rates, fees, charges, and penalties necessary to assure that all aspects of the stormwater management program are managed in accordance with all federal, state, and local laws, rules, and regulations.

Sec. 48-252. Establishment

(b) There is hereby established a stormwater management enterprise fund. The enterprise fund is established for the purpose of dedicating and protecting all funding applicable to the purposes and responsibilities of the stormwater management utility including but not limited to, rents, rates, fees, charges and penalties as may be established, after notice and a public hearing by the town council and other funds that may be transferred

or allocated to the stormwater management utility. All revenues and receipts of the stormwater management utility shall be placed in the stormwater management enterprise fund and all expenses of the utility shall be paid from the stormwater management enterprise fund, except that other revenues, receipts, and resources not accounted for in the stormwater management enterprise fund may be applied to stormwater management programs, and stormwater and drainage systems as deemed appropriate by town council.

Division 2 – Stormwater Service Charges

Sec. 48-260. Fees Charged

(a) A stormwater utility fee shall be assessed each calendar year to the owner of record as of January 1 of each parcel of land located wholly or partially within the corporate limits of the Town of Black Mountain, except those parcels owned by the United States of America, the State of North Carolina, Buncombe County, or the Town of Black Mountain. The owner of each parcel of land annexed into the Town shall be assessed a stormwater utility fee for the then-current calendar year, which fee shall assessed on the date the annexation petition is approved by the Town Council and shall not be subject to proration.

Sec. 48-261. Schedule of rates, fees, charges, and penalties.

(a) The annual stormwater utility fee shall be assessed according to a schedule of rates, fees, charges, and penalties adopted annually by the Town Council.

(b) Fees shall be assessed using a flat tiered system based on the intensity of the principal use of each parcel. Any parcel classified as mixed-use shall be assessed the stormwater utility fee associated with the most intensive use occurring on the property. The principal use shall be determined by the Planning Director who shall base such determination on:

- (1) any zoning certificate issued for the parcel;
- (2) classification of parcels made by the Buncombe County Tax Assessor;
- (3) use categories assigned in the Permitted Uses Table of Chapter 4 of the Black Mountain Land Use Code;
- (4) images and personal observations of the use occurring on the property; and
- (5) any other resource tending to show the principal use actually occurring on the parcel.

(c) The principal use of each parcel shall be categorized as residential, commercial, institutional, industrial, or undeveloped.

(d) The following tier classifications shall be used to determine the annual stormwater utility fee assessed to each parcel.

- (1) Tier 1 – Residential, Minimal Impact. Each parcel upon which the primary use is single-family residential dwellings, including duplexes, condominiums, and townhomes, shall be assessed at the Tier 1 rate.
- (2) Tier 2 – Commercial and Institutional, Moderate Impact. Each parcel upon which the principal use is neither residential nor industrial, including, but not limited by way of limitation, retail establishments; medical offices; restaurants; professional services; automotive services; fitness centers, spas and salons;

- religious services; apartment complexes; and residential care facilities, shall be assessed at the Tier 2 rate.
- (3) Tier 3 – Undeveloped. Each parcel upon which there is no residential, industrial, commercial, institutional, or other non-residential use and which remains in its natural, vegetative state, shall be assessed at the Tier 3 rate.
 - (4) Tier 4 – Exempt Impacts. Each parcel owned by the Town of Black Mountain, Buncombe County, the State of North Carolina, or the United States of America.
 - (5) Tier 5 – Industrial, Heavy Impact. Each parcel upon which the principal use is light or heavy industrial, including, but not limited by way of limitation, asphalt; mining; warehousing; and processing facilities shall be assessed at the Tier 3 rate.

Sec. 48-262. Exemptions and Credits.

(a) There shall be no exception, credit, offset, or other reduction in stormwater service charges granted based upon age, race, tax status, economic status, or religion of the customer, or any other condition unrelated to the stormwater utility's cost of providing stormwater management services and facilities.

(b) The owner of any parcel shall be eligible to receive an annual credit against the assessed stormwater utility fee in recognition of on-site or off-site systems, facilities, measures, and actions taken by customers that exceed minimum requirements for stormwater management, provided that such credit shall be conditioned upon the continuing performance of the systems, facilities, measures, or actions upon which the credits are granted for the remainder of the calendar year, and the maximum credit shall not exceed fifty percent (50%) of the original assessed fee.

(c) The Planning Director shall prepare a Stormwater Credit and Incentive Manual setting forth the appropriate credit application process, eligibility criteria, and standards upon which such credits are given.

(d) Credits shall be in the amounts set forth in the schedule of rates, fees, charges, and penalties adopted annually by the Town Council.

(e) This subsection shall be effective January 1, 2024.

Sec. 48-263. Billing and Collection.

(a) The owner of record as of January 1 of each calendar year of every parcel of land subject to this ordinance shall be liable for payment of the annual stormwater utility fees, along with any associated charges and penalties.

(b) Bills for stormwater utility fees shall be sent at regular, periodic intervals no less frequently than annually.

(c) Billing and collection of stormwater utility fees shall be administered by the Planning Director who is hereby authorized to develop such policies and procedures as are necessary to effectuate the purpose and intent of this section.

(d) Failure to receive a stormwater utility fee bill is not a basis for nonpayment.

(e) Stormwater utility fees not paid by the date when due shall be declared delinquent and shall be subject to additional fees and charges as provided in the schedule of rates, fees, charges, and penalties adopted annually by the Town Council.

(f) A violation of this section subjects the offender to a civil penalty pursuant to the authority granted by N.C.G.S. § 160A-175 and does not subject the offender to criminal penalties.

Sec. 48-264. Reserved.

Sec. 48-265. Appeals.

(a) In the event a property owner disputes the stormwater utility charges assessed to that owner's property, including determination of the applicable tier rate or determination of applicable credits, the owner may apply for a redetermination. The Planning Director shall make a decision to approve or deny the application within thirty (30) days of receipt of the completed application. The Planning Director's decision shall be in writing, and if a denial, shall state the reasons for the denial.

(b) In the event the application for a redetermination is denied, the applicant may appeal the denial to the Town Manager by filing a written notice of appeal with the Office of the Town Manager within ten (10) calendar days of the date of denial. The Town Manager shall review the application for redetermination, including supporting evidence provided with the application, and make a decision to allow or deny the appeal within thirty (30) days of receipt of the completed notice of appeal. The decision shall be in writing, and if denied, shall state the reasons for the denial.

(c) The decision of the Town Manager may be appealed to Superior Court in the nature of certiorari.

(d) If an application for redetermination is approved, the stormwater fee shall be adjusted accordingly for the specific parcel and the adjusted rate shall apply to the next regularly generated bill for the entirety of the billing period.

Sec. 49-266. Use of Funds.

Revenues generated from stormwater management utility fees, charges, and penalties shall be held in the enterprise fund, which shall be and remain separate and apart from other city funds and shall be used only to fund stormwater management programs and infrastructure. Service charges and fees shall not be used for general or other governmental or proprietary purposes of the town except to pay for costs incurred by the town in rendering services to the stormwater management utility.

READ, APPROVED AND ADOPTED, by a vote of 5 to 0 on this the 14th day of June, 2021.

Larry B. Harris, Mayor

ATTEST:

Savannah Parrish, Town Clerk