

ORDINANCE 09-39

AN ORDINANCE ESTABLISHING A STORM WATER UTILITY FOR THE CITY OF SPRING HILL

WHEREAS, the City of Spring Hill is subject to the provisions of the National Pollutant Discharge Elimination System (NPDES) Permit and applicable regulations, 40 CFR Section 122.26 for Storm Water discharges; and

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF MAYOR AND
ALDERMEN OF THE CITY OF SPRING HILL, TN**

The Board of Mayor and Aldermen of the City of Spring Hill, pursuant to Tennessee Code Annotated Section 68-221-110 does hereby adopt the following Title 18, Chapter 4, Sections 18-401 through 18-415:

CHAPTER 4

STORM WATER UTILITY ORDINANCE

SECTION

- 18-401. Title and Purpose.
- 18-402. Jurisdiction.
- 18-403. Definitions.
- 18-404. Funding of Storm Water Utility.
- 18-405. Storm Water Utility Management Fund.
- 18-406. Operating Budget.
- 18-407. Storm Water User Fee Established.
- 18-408. Equivalent Residential Unit (ERU).
- 18-409. Property Classification for Storm Water User Fees.
- 18-410. Base Rate.
- 18-411. Property Owners to Pay Charges.
- 18-412. Billing Procedures and Penalties for Late Payment.
- 18-413. Appeals of Fees.
- 18-414. Storm Water User Fee Credit Policy.
- 18-415. Effective Date.

18-401. Title and Purpose. This ordinance shall be known as the “Storm Water Utility Ordinance” for the City of Spring Hill, Tennessee.

(1) **Introduction.** The City of Spring Hill finds, determines and declares that the storm water system, which provides for the collection, treatment, storage and disposal of storm water, provides benefits and services to all property within the incorporated City of Spring Hill 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 storm water and surface water system and its receiving waters of the state all of which are managed by the Storm Water Coordinator as part of the Municipal Separate Storm Sewer System (MS4) Program.

(2) Purpose. In accordance with Tennessee Code Annotated §68-221-1101 et seq., the City of Spring Hill desires to develop a Storm Water Utility in order to provide a funding mechanism to operate and maintain the City of Spring Hill's Storm Water Management program and finance the necessary storm water repairs, replacements, improvements, and extensions necessary to protect the health, safety and welfare of the public. The Storm Water Utility purpose is to:

(a) Administer and enforce the City of Spring Hill Storm Water Management Ordinance;

(b) Administer, plan, and implement storm water projects to protect, maintain, and enhance the environment of the City of Spring Hill;

(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 Aldermen and other City of Spring Hill departments on matters relating to the utility.

(3) Administering entity. The Storm Water Utility shall be part of the Spring Hill's Storm Water Department. The Storm Water Utility, under the direction and supervision of the Storm Water Coordinator or his designee, shall administer the provisions of this Storm Water Utility Ordinance as approved by the City Administrator.

18-402. Jurisdiction. The Storm Water Utility Ordinance shall govern all properties within the corporate limits of the City of Spring Hill.

18-403. Definitions. For the purpose of this chapter, the following definitions shall apply:

(1) "*Agricultural property*". 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, 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) *“Base rate”*. The storm water user fee for a detached single family residential property in the City of Spring Hill.

(3) *“Best Management Practices” or “BMPs”*. 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 Spring Hill, and that have been incorporated by reference into the Storm Water Management Ordinance as if fully set out therein.

(4) *“Construction”*. 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 action necessary in the construction of storm water facilities; and the inspection and supervision of the construction of storm water facilities.

(5) *“Deficient property”*. Real property that does not have adequate storm water facilities as required in the latest edition of the City of Spring Hill Subdivision Regulations and Storm Water Management Ordinance.

(6) *“Developed property”*. Real property which has been altered from its natural state by the creation or addition of impervious areas, by the addition of any buildings, structures, pavement, drives or other improvements.

(7) *“Equivalent residential unit” or “ERU”*. The average of the total square footage of the impervious surface areas of developed single family residential property within the City of Spring Hill as approved by the Board of Mayor and Alderman.

(8) *“Exempt property”*. All public rights-of-way, public streets and public roads, public alleys, public sidewalks and public greenways, public “park and ride” facilities and bus stops, and railroad right-of-way properties within the City of Spring Hill. For purposes of this definition, “public” shall mean that which is maintained by or is or is to be dedicated to the City of Spring Hill and/or the State of Tennessee or the government of the United States.

(9) *“Fiscal year”*. July 1 of a calendar year to June 30 of the next calendar year, both inclusive.

(10) *“Impervious surface”*. 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.

(11) *“Impervious surface area”*. 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.

(12) *“Other developed property”*. Developed property other than single-family residential property. Such property shall include, but not be limited to, commercial properties, industrial properties, parking lots, hospitals, schools,

recreational and cultural facilities, hotels, offices, and churches. 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.

(13) *"Person"*. 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.

(14) *"Property owner"*. The property owner of record as listed in the 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.

(15) *"Single family residential property"*. A developed property which serves the primary purpose of providing a permanent dwelling unit to a single family. A single family detached dwelling, a townhouse, an accessory apartment or second dwelling unit, a duplex, a condominium, a villa, or a garden home is included in this definition. A single family dwelling which is attached to, or otherwise a part of, a building housing a commercial enterprise is not included in this definition.

(16) *"Storm water"*. Storm water runoff, snow melt runoff, surface runoff, infiltration, and drainage.

(17) *"Storm water user fee" or "Fee"*. The utility service fee established under this ordinance and levied on owners or users of parcels or pieces of real property to fund the costs of storm water management and of operating, maintaining, and improving the storm water system in the City of Spring Hill. The storm water user fee is in addition to other fees that the City of Spring Hill has the right to charge under any other rule or regulation of the City of Spring Hill.

(18) *"Storm Water Utility"*. A management structure that is responsible solely and specifically for the storm water management program and system.

(19) *"Storm Water Utility Management Fund" or "fund"*. The fund created by this ordinance to operate, maintain, and improve the City of Spring Hill's storm water system.

(20) *"Storm water management"*. The programs to manage quality and quantity of storm water runoff.

(21) *"Storm water system"*. The natural or manmade system that collects, conveys, stores or otherwise treats or affects storm water or surface water.

(22) *"Surface water"*. Waters 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.

(23) *"User"*. The owner or customer of record of property subject to the storm water user fee imposed by this ordinance.

(24) *"Vacant/undeveloped property"*. Property on which there is no structure for which a certificate of occupancy has been issued.

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.

18-404. Funding of Storm Water Utility. Funding for the Storm Water Utility's activities may include, but not be limited to, the following:

- (i). Storm water user fees;
- (ii). Civil penalties and damage assessments imposed for or arising from the violation of the City of Spring Hill Storm Water Management Ordinance and City of Spring Hill Storm Water Utility Ordinance;
- (iii). Storm water permit and inspection fees; and
- (iv). 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).

To the extent that the storm water user fees collected are insufficient to construct needed storm water drainage facilities, the cost of the same may be paid from such City of Spring Hill funds as may be determined by the Board of Mayor and Alderman.

18-405. Storm Water Utility Management Fund. All revenues generated by or on behalf of the Storm Water Utility shall be deposited in a Storm Water Utility Management Fund and used to fulfill the purposes of the Storm Water Utility.

18-406. Operating Budget. The Board of Mayor and Aldermen shall adopt, based on a recommendation from the City Administrator and Storm Water Coordinator, an operating budget for the Storm Water 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.

18-407. Storm Water User Fee Established. There shall be imposed on each and every developed property in the City of Spring Hill, except exempt property, a storm water user fee, which shall be set from time to time by ordinance in the fee schedule as adopted by the City of Spring Hill, and in the manner and amount prescribed by this ordinance. Prior to establishing or amending the storm water user fee, the City of Spring Hill shall advertise its intent to do so by publishing notice in a newspaper of general circulation in the City of Spring Hill at least thirty (30) days in advance of the meeting of the Board meeting which shall consider the adoption of the fee or its amendment.

18-408. Equivalent Residential Unit (ERU).

(1) Establishment. There is established for purposes of calculating the storm water user fees the equivalent residential unit (ERU) as a method of measurement.

(2) Definition. The ERU is the average of the total square footage of the impervious surface areas of developed single family residential property within the City of Spring Hill as approved by the Board of Mayor and Alderman.

(3) Setting the ERU. The ERU shall be set by the Board of Mayor and Alderman in the Storm Water User Fee Schedule as adopted by the Board of Mayor and Alderman.

(4) 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 storm water 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.

(5) Evaluation of ERU. The ERU shall be evaluated by the Storm Water Utility as necessary, but the ERU shall be evaluated at least every five years.

18-409. Property Classification for Storm Water User Fees.

(1) Property classifications. For purposes of determining the storm water user fee, all properties in the City of Spring Hill are classified into one of the following categories:

- (a) Single family residential property;
- (b) Other developed property;
- (c) Vacant/undeveloped property;
- (d) Agricultural property; or
- (e) Exempt property.

(2) Single family residential fee. The Board finds that the intensity of development of most parcels of real property in the City of Spring Hill classified as single family residential is similar and that it would be excessively and unnecessarily expensive to determine precisely the square footage of the impervious surface on each such parcel. Therefore, all single family residential properties in the City of Spring Hill shall be charged a flat storm water user fee, equal to the ERU base rate, regardless of the size of the parcel or the impervious surface area of the improvements, except as provided herein. Single family residential property in which the impervious surface exceeds 10,000 square feet, including any detached accessory structures, shall be charged the same as the fee for other developed property.

(3) Other developed property fee. The fee for other developed property (i.e., non-single-family residential property) in the City of Spring Hill shall be the base rate multiplied by the numerical factor obtained by dividing the total impervious area (square feet) of the property by one ERU. The minimum storm water user fee for other developed property shall equal the base rate for a single

family residential property.

(4) Vacant/undeveloped property fee. The fee for vacant/undeveloped property in the City of Spring Hill shall be as follows:

(a) If the property contains less than 1800 square feet of impervious surface, then no storm water user fee shall be charged;

(b) If the property contains 1800 square feet or more of impervious surface, then property shall be charged based on the amount of impervious surface as other developed property, with the minimum charge being the single family residential fee.

(5) Agricultural property. The fee for agricultural property in the City of Spring Hill shall be as follows:

(a) If the property contains impervious surface in an amount equal to or less than the average ERU, then the minimum storm water user fee for such property shall equal the base rate for a single family residential property;

(b) If the property contains impervious surface in an amount greater than the average ERU, then the property shall be charged in the same manner as other developed property.

(6) Exempt property. There shall be no storm water user fee for exempt property or as otherwise provided by State law.

18-410. Base Rate. The Board shall, by ordinance in the fee schedule as adopted by the Board, establish the base rate for the ERU. The base rate shall be calculated to insure adequate revenues to fund the costs of storm water management and to provide for the operation, maintenance, and capital improvements of the storm water system in the City of Spring Hill.

18-411. Property Owners to Pay Charges. The owner of each property shall be obligated to pay the storm water user fee as provided in this ordinance, provided however, that if no water or sewer service is being provided 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 storm water user fee. If the customer of record other than the owner refuses to pay the storm water user fee, the owner of each developed property shall be obligated to pay the storm water user fee as defined in this ordinance.

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 storm water 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.

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 other developed property based on the total impervious surface area.

18-412. Billing Procedures and Penalties for Late Payment.

(1) Rate and collection schedule. A storm water user fee shall be set at a rate as set forth in the Storm Water User Fee Schedule as adopted by the Board of Mayor and Aldermen 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 corporate limits. The storm water 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 City of Spring Hill Utility Department. The storm water user fee for those properties utilizing utilities not provided by the City of Spring Hill shall be billed and collected by the City of Spring Hill annually or as directed by the City's Finance Department. All bills for the storm water 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.

(2) Delinquent bills. The storm water user fee shall be considered delinquent if not received by the City of Spring Hill by the due date stated in 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. Storm water user fees shall be subject to a late fee established by ordinance as indicated in the Storm Water User Fee Schedule. The City of Spring Hill shall be entitled to recover attorney's fees incurred in collecting delinquent storm water user fees. The City or other collecting utility provider may discontinue utility service to any storm water user who fails or refuses to pay the storm water user fees and may refuse to accept payment of the utility bill from any user without receiving at the same time, payment of the storm water 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 storm water user fees shall contain the following statement in bold: **“THIS TAX HAS BEEN MANDATED BY CONGRESS”**. Although the mandatory statement will be placed on each bill, the City of Spring Hill Board of Mayor and Alderman hereby finds and declares that the storm water user fee is a utility service fee and not a tax.

18-413. Appeals of Fees. 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 Storm Water Advisory Committee 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.

All appeals shall be filed in writing addressed to the Storm Water Coordinator and shall state the grounds for the appeal and the amount of the storm water 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 an appeal review fee as set forth in the Storm Water User Fee Schedule adopted by the Board of Mayor and Alderman. The appeal review fee shall be refunded to any party who prevails in an appeal of the calculation of the storm water user fee. As a condition to maintaining an appeal, the appellant shall pay all charges billed under protest prior to or at the time of the filing of the appeal.

The Storm Water Advisory Committee shall review the appeal and determine whether the challenged determination is consistent with the provisions of this chapter. Appeals related to the storm water 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 Storm Water 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. The Storm Water Advisory Committee 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 Storm Water Advisory Committee. Each appeal shall be placed on the Storm Water Advisory Committee agenda for the next regularly scheduled meeting, which meeting is at least twenty days after the Storm Water Coordinator receives the written appeal. The Storm Water Coordinator shall notify the appellant customer of the date of the appeal review hearing in writing; such written notice shall be given at least ten days prior to the hearing by regular mail at the address provided in the written appeal document. The decision of the Storm Water Advisory Committee shall be final and conclusive with no further administrative review.

If a refund is due, the Storm Water Coordinator shall authorize the refund which will be provided as a credit against the customer's storm water user fee billings until such credit is exhausted.

18-414. Storm Water User Fee Credit and Adjustment Policy. Storm Water User Fee Credits and Adjustments are available to other developed property (i.e. non-single family residential property) with exception to a small homes credit, which is available exclusively for single family residential property as outlined in the Storm Water Utility Credit and Adjustment Policy Manual.

18-415. Effective Date. This ordinance shall become effective as of the date of its passage on second reading by the Board of Mayor and Aldermen. Storm water user fees shall be charged as a utility billing for all customers within the corporate city limits no earlier than January 1, 2010.

Passed and adopted this 21st day of December, 2009.

Michael Dinwiddie, Mayor

ATTEST:

April Goad, City Recorder

LEGAL FORM APPROVED:

Timothy P. Underwood, City Attorney

Passed on 1st Reading (December 4, 2009)

Passed on 2nd Reading (December 21, 2009)