



Board of Mayor and Aldermen

6400 Stage Road
Bartlett, TN 38134

ADOPTED

ORDINANCE (ID # 3560)

Meeting: 06/11/24 06:00 PM

Department: Finance

Category: Presentation

Prepared By: Dick Phebus

Initiator: Dick Phebus

Sponsors:

DOC ID: 3560 A

Ordinance 24-03, an ordinance to create a Stormwater Utility and provide for Funding of Operation.

WHEREAS, The Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., requires certain political entities, such as the City of Bartlett (City), to implement stormwater management programs within prescribed time frames, and the Environmental Protection Agency, pursuant to the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., has published rules for stormwater discharge permits; and

WHEREAS, Tennessee Code Annotated § 68-221-1101, provides that the purpose of the stormwater management statute is to facilitate municipal compliance with the Water Quality Act of 1977, and applicable EPA regulations, particularly those arising from § 405 of the Water Quality Act of 1987, and § 402(p) of the Clean Water Act of 1977, and to enable municipalities to regulate stormwater discharges, establish a system of drainage facilities, construct and operate a system of stormwater management and flood control facilities, and to fix and require payment of fees for the privilege of discharging stormwater; and

WHEREAS, Tennessee Code Annotated § 68-221-1105 provides that among other powers municipalities have with respect to stormwater facilities, is the power by ordinance or resolution to:

- (1) Exercise general regulation over the planning, location, construction, and operation and maintenance of stormwater facilities in the municipality, whether or not owned and operated by the municipality;
- (2) Adopt any rules and regulations deemed necessary to accomplish the purposes of this statute, including the adoption of a system of fees for services and permits;
- (3) Establish standards to regulate the quantity of stormwater discharged and to regulate stormwater contaminants as may be necessary to protect water quality;
- (4) Review and approve plans and plats for stormwater management in proposed subdivisions or commercial developments;
- (5) Issue permits for stormwater discharges, and for the construction, alteration, extension, or repair of stormwater facilities;
- (6) Suspend or revoke permits when it is determined that the permittee has violated any applicable ordinance, resolution, or condition of the permit;
- (7) Regulate and prohibit discharges into stormwater facilities of sanitary, industrial, or commercial sewage or waters that have otherwise been contaminated;
- (8) Expend funds to remediate or mitigate the detrimental effects of contaminated land or other sources of stormwater contamination, whether public or private; and

WHEREAS, The City desires to develop a stormwater utility to be responsible for the operation, construction and maintenance of stormwater facilities; for stormwater system planning, for review of stormwater development plans for compliance with stormwater management codes, and for funding the requirements of the Tennessee National Pollutant Discharge Elimination System (NPDES) from Small Municipal Separate Storm Sewer Systems (MS4) Permit;

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF BARTLETT, TENNESSEE, THAT:

Section 1. Legislative findings and policy. The Mayor and Board of Aldermen of the City of Bartlett, Tennessee 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 limits. Such benefits include, but are not limited to: the provision of adequate systems of collection, conveyance, detention, treatment and release of stormwater; the reduction of hazards to property and life resulting from stormwater runoff; improvements in general health and welfare through reduction of undesirable stormwater conditions; and improvements to the water quality in the stormwater and surface water system and its receiving waters.

Section 2. Creation of stormwater utility. For those purposes of the Federal Clean Water Act and of Tennessee Code Annotated, § 68-221-1101 et seq., there is created a stormwater utility which shall consist of a manager or director and such staff as the City's governing body shall authorize.

The stormwater utility, under the legislative policy, supervision and control of the governing body of the City, shall:

- (1) Administer the acquisition, design, construction, maintenance and operation of the stormwater utility system, including capital improvements designated in the capital improvement program;
- (2) Administer and enforce this ordinance and all regulations and procedures adopted relating to the design, construction, maintenance, operation and alteration of the utility stormwater system, including, but not limited to, the quantity, quality and/or velocity of the storm water conveyed thereby;
- (3) Advise the City's governing body and other City departments on matters relating to the utility;
- (4) Prepare and revise a comprehensive drainage plan for adoption by the City's governing body;
- (5) Review plans and approve or deny, inspect and accept extensions and connections to the system;
- (6) Enforce regulations to protect and maintain water quality and quantity within the system in compliance with water quality standards established by state, regional and/or federal agencies as now adopted or hereafter amended;
- (7) 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.

Section 3. Definitions. For the purpose of this ordinance, 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) "Base rate" means the stormwater user's fee for a detached single-family residential property in the City.
- (2) "Construction" means the erection, building, acquisition, alteration, reconstruction, improvement or extension of stormwater facilities; preliminary planning to determine the economic and engineering feasibility of stormwater 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 stormwater facilities; and the inspection and supervision of the construction of stormwater facilities;
- (3) "Developed property" means 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 or other improvements.
- (4) "Equivalent residential unit" or "ERU" means the average impervious square footage of a detached single-family residential property determined pursuant to this ordinance.
- (5) "Exempt property" means property from which stormwater runoff does not flow into or through or discharge stormwater runoff into the stormwater or flood control facilities of the City.
- (6) "Fee" or "Stormwater user's fee" means the charge established under this ordinance and levied on owners or users of parcels or pieces of real property to fund the costs of stormwater management and of operating, maintaining, and improving the stormwater system in the City. The stormwater user's fee is in addition to any other fee that the City has the right to charge under any other rule or regulation of the City.
- (7) "Fiscal year" means July 1 of a calendar year to June 30 of the next calendar year, both inclusive.
- (8) "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.
- (9) "Impervious surface area" means the number of square feet of horizontal surface covered by buildings, parking lots, drives and other impervious surfaces. All building measurements shall be made between exterior faces of walls, foundations, columns or other means of support or enclosure.

- (10) "Other developed property" means 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.
- (11) "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.
- (12) "Property owner" means the property owner of record as listed in the county's assessment roll. A property owner includes any tenant of leased property, individual, corporation, firm, partnership, or group of individuals acting as a unit, and any trustee, receiver, or personal representative.
- (13) "Single-family residential property" means a developed property which serves the primary purpose of providing a permanent dwelling unit to a single family. A single-family detached dwelling or a townhouse containing an accessory apartment or second dwelling unit is included in this definition.
- (14) "Stormwater" means stormwater runoff, snow melt runoff, surface runoff, street wash waters related to street cleaning or maintenance, infiltration, and drainage.
- (15) "Stormwater facility" means the drainage structures, conduits and all device appurtenances by means of which stormwater is collected, transported, pumped, treated or disposed of.
- (16) "Stormwater management fund" or "fund" means the fund created by this ordinance to operate, maintain, and improve the City's stormwater system and stormwater management program of the Tennessee National Pollutant Discharge Elimination System (NPDES) from Small Municipal Separate Storm Sewer Systems (MS4) permit.
- (17) "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. "Stormwater management" also includes the requirements of the MS4 permit.
- (18) "Surface water" includes waters upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other watercourses, lakes and reservoirs.
- (19) "User" shall mean the owner of record of property subject to the stormwater user's fee imposed by this ordinance.
- (20) "Agricultural property" means the land, buildings and machinery used in the commercial production of farm products and nursery stock; further described in Tennessee Code Annotated §68-221-1107 as agricultural land upon which the owner and/or operator conducts activities that enable the owner and/or operator to satisfy the requirements of a qualified farmer or nurseryman.

Section 4. Funding of stormwater utility. Funding for the stormwater utility's activities may include, but not be limited to, the following:

- (1) Stormwater user's fees.
- (2) Civil penalties and damage assessments imposed for or arising from the violation of the City's stormwater management ordinance.
- (3) Stormwater permit and inspection fees.
- (4) 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 stormwater user's 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 City's governing body.

Section 5. Stormwater fund. All revenues generated by or on behalf of the stormwater utility shall be deposited in the City's Drainage Fund and used exclusively for the stormwater operations.

Section 6. Operating budget. The City's governing body shall adopt an operating budget for the Drainage 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.

Section 7. Stormwater user's fees established. There shall be imposed on each developed property in the City, except exempt property, a stormwater user's fee, which shall be set from time to time by ordinance or resolution, and in the manner and amount prescribed by this ordinance.

Prior to establishing or amending user's fees, the City shall advertise its intent to do so by publishing notice in a newspaper of general circulation in the City at least fifteen (15) days in advance of the meeting of the City's governing body which shall consider the adoption of the fee or its amendment.

Section 8. Equivalent residential unit (ERU).

- (1) Establishment. There is established for purposes of calculating the stormwater user's fee the equivalent residential unit (ERU).
- (2) Definition. The ERU is the average impervious square footage of a detached single-family residential property.
- (3) Setting the ERU. The ERU shall be set by the City's governing body from time to time by ordinance or resolution.
- (4) Source of ERU. The City's governing body 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. The City's governing body shall have the discretion to determine the impervious surface area of other developed property through property tax assessor's rolls or site examination, mapping information, aerial photographs, and other reliable information.

- (5) **Within the City of Bartlett, the average impervious area of a single-family residence (i.e., the ERU) is established as 5,000 square feet.**

Section 9. Property classification for stormwater user's fee.

- (1) **Property classifications.** For purposes of determining the stormwater user's fee, all properties in the City are classified into one of the following classes:
- (a) Single-family residential property;
 - (b) Other developed property;
 - (c) Exempt property.
- (2) **Single-family residential fee.** The City's governing body finds that the intensity of development of most parcels of real property in the City classified as single family residential is similar and that it would be excessively and unnecessarily expensive to determine precisely the square footage of the improvements (such as buildings, structures, and other impervious areas) on each such parcel. Therefore, all single-family residential properties in the City shall be charged a flat stormwater management fee, equal the base rate, regardless of the size of the parcel or the improvements.
- (3) **Other developed property fee.** The fee for other developed property (i.e., non single-family residential property) in the City 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 impervious surface area for other developed property is the square footage for the buildings and other improvements on the property. The minimum stormwater management fee for other developed property shall equal the base rate for single-family residential property.
- (4) **Exempt property.** There shall be no stormwater user's fee for exempt property. The following categories of property are exempt from the stormwater user's fee:
- a. Undeveloped (i.e., vacant) property
 - b. Agricultural Property
 - c. Property located within the 100-year flood plain which has not been filled above the Base Flood Elevation as defined by FEMA
 - d. Property that does not discharge stormwater runoff into the stormwater or flood control facilities of the City.

Section 10. Base Rate. The City's governing body shall, by ordinance or resolution, establish the base rate for the stormwater user's fee. The base rate shall be calculated to insure adequate revenues to fund the costs of stormwater management and to provide for the operation, maintenance, and capital improvements of the stormwater system in the City.

The Base Rate for single-family residential property is established at \$4.00 per month. For commercial and industrial property, the Base Rate is established at \$6.00 per ERU per month with a minimum stormwater fee of \$6 per month and a maximum of \$300.00 per month per property.

Section 11. Adjustments to stormwater user's fees. The Bartlett Board of Mayor and Aldermen (the Board) shall have the right on its own initiative to adjust upward or downward the stormwater user's fees with respect to any property, based on the approximate percentage on any significant variation in the volume or rate of stormwater, or any significant variation in the quality of stormwater, emanating from the property, compared to other similar properties. In making determinations of the similarity of property, the Board shall take into consideration the location, geography, size, use, impervious area, stormwater facilities on the property, and any other factors that have a bearing on the variation.

Section 12. Property owners and /or tenants of apartment or condominium units to pay charges. The owner/tenant of each non-exempt lot or parcel shall pay the stormwater user's fees and charges as provided in this ordinance.

Section 13. Billing procedures and penalties for late payment.

- (1) **Rate and collection schedule.** The stormwater user's fee must be set at a rate, and collected on a schedule, established by ordinance or resolution. The stormwater user's fee shall be billed and collected monthly with the utility services bill for the property. This rate may be revised annually as necessary to cover costs of operations of the Stormwater/Drainage Fund as determined by the Board of Mayor and Aldermen.
- (2) **Delinquent bills.** The stormwater user's fee shall be billed through the City of Bartlett utility billing system. The stormwater user's fee shall become delinquent as of the subsequent billing cycle of the utility billing system. Any unpaid stormwater user's fee shall bear interest and penalty at the same rate as other user fees and charges applied to the monthly utility bill.
- (3) **Penalties for late payment.** Stormwater user's fees shall be subject to a late fee established by ordinance or resolution. The City shall be entitled to recover attorney's fees incurred in collecting delinquent stormwater user's fees. Any charge due under this ordinance which shall not be paid may be recovered at law by the City.

- (4) Mandatory statement. Pursuant to Tennessee Code Annotated § 68-221-1112, each bill that shall contain stormwater user's fees shall contain the following statement in bold:

THIS FEE HAS BEEN MANDATED BY CONGRESS.

Section 14. Appeals of fees.

- (1) Generally. Any person who disagrees with the calculation of the storm water user's fee, as provided in this ordinance, or who seeks a stormwater user's fee adjustment based upon stormwater management practices, may appeal such fee determination to the stormwater utility manager or his designee within thirty (30) days from the date of the last bill containing stormwater user's fees charges. The City Engineer shall designate the stormwater utility manager or other designee to hear any appeals of stormwater user fees. Any appeal shall be filed in writing and shall state the grounds for the appeal. The stormwater utility manager/designee may request additional information from the appealing party.
- (2) Adjustments. Stormwater user's fee adjustments for stormwater management practices may be considered for reductions in runoff volume including discharge to a non-City drainage system; and properly designed constructed and maintained existing retention facilities, i.e. evaporation and recharge. Based upon the information provided by the utility and the appealing party, the stormwater utility shall make a final calculation of the stormwater drainage fee. The stormwater utility shall notify the parties, in writing, of its decision.

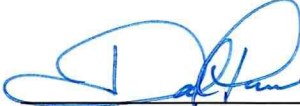
Section 15. Effective Date: BE IT FURTHER ORDAINED that this ordinance shall take effect upon its passage on the third and final reading, the public welfare requiring it.

FIRST READING: May 14, 2024

SECOND READING: May 28, 2024

THIRD READING: June 11, 2024


Harold Brad King, Register to the
Board of Mayor and Aldermen


David Parsons, Mayor

Attest: 
Penny Medlock, City Clerk

RESULT:	APPROVED ON THIRD AND FINAL RE [UNANIMOUS]
MOVER:	David Reaves, Alderman
SECONDER:	Jack Young, Vice Mayor
AYES:	King, Reaves, Williams, Young, Quinn