

ORDINANCE NO. 2021-1109-36

AN ORDINANCE TO AMEND ARTICLE III OF CHAPTER 12 OF APEX TOWN CODE

THEREFORE, BE IT ORDAINED by the Town Council of the Town of Apex as follows:

Section 1. That Article III of Chapter 12 of the Town of Apex Code of Ordinances is hereby amended as shown immediately below with additions shown by underlined text:

DIVISION 7. - STORMWATER UTILITY

Sec. 12-110. - Findings.

- (a) Stormwater poses a threat to the public health, safety, and welfare because it floods properties, erodes watercourses and channels, and pollutes streams and rivers.
- (b) By mapping, planning, constructing, operating, cleaning, regulating and maintaining stormwater management facilities, the Town of Apex (Town) reduces the adverse effects of stormwater and improves the quality of groundwater, streams, rivers, and lakes in and around the Town.
- (c) Providing a stable source of funding for stormwater services, as hereafter defined, can best be accomplished through the creation of a stormwater utility fund. Such a utility will benefit owners and occupants of developed land in the Town.
- (d) The amount of impervious surface on a property is the single most important factor affecting the peak rate of runoff, the total volume discharged, and pollutant loadings of stormwater that flows from property. It is equitable to fund a stormwater utility through a system in which service charges are based on the amount of impervious surface on developed land.

Sec. 12-111. - Definitions applicable to this Division.

All definitions as used in this division, unless the context clearly indicates otherwise, shall have the meaning given herein.

Customer or consumer means the person or entity to which a bill for stormwater service charges is sent. This may include the owner, occupant, or tenant of property, a homeowners' association with responsibility for property or for common areas associated with property, or a person or entity who has requested in writing to be billed for stormwater service charges for a property.

Developed land means property that contains impervious surfaces, and includes improved land without structures and land on which improvements are under construction, with the exception of public Right-of-Way (ROW).

Equivalent Residential Unit (ERU) is 2,700 square feet of impervious surface, which is the average amount of impervious surface on a single-family detached property in the Town (based on GIS analysis).

Impervious surface means any surface which, because of its composition or compacted nature, impedes or prevents natural infiltration of water into the soil, including, but not limited to, sidewalks, driveways, rooftops, parking lots, patios, and compacted gravel surfaces not meeting the definition of pervious per North Carolina G.S. 143-214.7(b2). Wooden slatted decks and water surfaces of ponds, streams and swimming pools are not considered to be impervious surfaces.

Other residential and nonresidential land means any developed land not fitting the definition of a residential unit. It includes, but is not limited to, land upon which there are residential structures that contain more than two units, such as townhouses, condominiums, apartments, churches; institutional buildings, whether public or private; commercial, office, and industrial buildings; parking lots, and land containing improvements under construction or impervious surfaces that are not structures, with the exception of public ROW.

Property owner or owner means the owner of a parcel of land as shown on the county tax records.

Residential unit means a detached single-family house or a manufactured home or mobile home located on an individual lot or parcel of land rather than in a manufactured home park.

Stormwater means the runoff from precipitation that travels over natural or developed surfaces to the nearest stream, other conduit, or impoundment and appears in lakes, rivers, ponds, or other bodies of water.

Stormwater management system means the system of natural and constructed conveyances for collecting and transporting or treating stormwater. It includes, but is not limited to, structural drainage systems such as open swales and ditches, catch basins, pipes, inlets, storm sewers, drains, culverts, junction boxes, and other stormwater management facilities that affect the quality and quantity of stormwater located within public ROW and permanent storm drainage easements conveyed to and accepted by the Town, and all natural stormwater drainage systems.

Stormwater services means Town stormwater management programs designed to protect water quality by controlling the level of pollutants in, and the quantity and flow of, stormwater and Town service of structural and natural stormwater and drainage systems of all types. Stormwater services include any cost necessary to assure that all aspects of stormwater quality and quantity are managed in accordance with federal and State laws, regulations and rules, and costs related to the construction, operation, maintenance, inspection, management and regulation of the stormwater management system.

Stormwater utility funds mean the stormwater management service charges and the interest generated by those charges.

Sec. 12-112. - Creation of stormwater account; activities of the Water Resources department.

Stormwater service charges and interest generated by such charges shall be placed in a separate Town account and shall be used by the Town solely for the operational costs, maintenance costs, indirect costs, capital improvements, debt principal and debt service, and establishment of a reserve fund for stormwater services. The Town may use funds that are not stormwater utility funds to provide stormwater services.

Sec. 12-113. - Stormwater service charges.

- (a) All developed land in the Town, whether public or private, shall be subject to a stormwater service charge set by the Town council. Exemptions shall not be allowed based on age, tax exemption, or other status of an individual or organization.
- (b) For property owners and/or customers that receive a water, sewer, or other service fee bill from the Town, the stormwater service fees, charges, and penalties will be added to that bill. Stormwater service charges that are shown on this combined utility bill may be for a different service period than that used for electric, water and/or sewer service, and garbage and recycling service.
- (c) Property owners and/or customers that own or occupy improved residential properties such as apartments and condominium developments and other similar properties containing impervious surface in common ownership shall be charged as a non-residential customer. The total impervious surface of all commonly owned property within the development shall also be charged under the non-residential rate and shall be billed to the property owner.
- (d) Stormwater service fees, charges, and penalties for properties that do not receive a bill for Town services other than stormwater service fees shall be sent to the record property owner according to the county tax records.
- (e) Computation of stormwater management service charges.
 - a. For non-residential property owners, the monthly stormwater service charge is calculated by dividing the total impervious surface area of the property by one ERU. The result is then multiplied by the established monthly single-family rate as fixed by Town Council resolution.
- (f) The following exemptions from stormwater management service fees are allowed:
 - a. Undeveloped land.

- b. Improved public ROW and greenways.
- c. Developed land with less than 400 square feet of impervious surface.
- d. Railroad ROW currently in use. However, railroad stations, maintenance buildings or other developed land shall not be exempted from stormwater services fees, charges, or penalties.
- e. Properties and facilities owned and operated by the Town.
- f. Airport runways and taxiways, provided that the savings realized from this exemption are used for attracting business to the airport.

Sec. 12-114. - Payment provisions, utility termination.

- (a) Where stormwater service charges appear on a combined utility bill, and a customer does not pay the service charges for all the utilities on the bill, the partial payment will be applied to the respective service charges in the following order: delinquent stormwater charges; delinquent water and/or sewer charges; capital facilities fees; current stormwater charges; current water and/or sewer charges.
- (b) Stormwater service charges are due within the time period stated on the bill. Bills not paid within this time shall be charged a late fee as set forth in the Town Council adopted schedule of charges.
- (c) Where a property receives electric, water and/or sewer service, if stormwater service charges for that property are not paid, electric, water and/or sewer service to that property may be terminated, whether or not the stormwater charges were included on a combined utility bill. Termination will be handled in accordance with standard operation provisions of the Town.
- (d) No property for which stormwater service charges are outstanding is entitled to receive electric, water and/or sewer service until the outstanding stormwater service charge on that property is paid. No customer with a delinquent stormwater service account is entitled to open a utility account at the same or different location until the delinquency has been satisfied.
- (e) If property is incorrectly billed, or not billed, or a bill is sent to the wrong party, the Town may backbill a property for up to a three-year period.
- (f) Customers with complaints about the accuracy of stormwater service charges are entitled to a review as provided in section 12-115. No charge will be adjusted unless the complaining customer has filed a written complaint with the Town within one year of the date the Town first sent the customer notice of the charge.

Sec. 12-115. - Appeal.

Any customer who believes the provisions of this chapter have been applied in error may appeal in the following manner:

- (a) An appeal must be filed in writing with the Water Resources director. At the discretion of the director, the appeal may be required to include a survey prepared by a registered land surveyor and such other information that show the total property area, the impervious surface area, and any other features or conditions which influence the hydrologic response of the property to the stormwater events.
- (b) Using the information provided, the Water Resources director shall conduct a technical review pursuant to good engineering practices. The director may adjust the stormwater service management charge so long as the adjustment is in conformance with the general purpose and intent of this chapter. At the conclusion of the review, the director shall issue a written determination stating whether an adjustment to the stormwater service management charge is appropriate, and if so, the percentage of such adjustment. Any approved adjustments must be communicated in writing to the appropriate utility billing staff.
- (c) An appeal may be taken from any decision of the Water Resources director which is adverse to the customer by giving notice of appeal to the Town Manager within thirty (30) days after service of the Water Resources director written decision on the customer. Notice of appeal shall be given by the customer by delivery of a written statement to the Town Manager stating the grounds for the appeal and providing the Town Manager with a copy of the written decision of the Water Resources director. The Water Resources director shall transmit to the Town Manager and the customer all documents constituting the record upon which the Water Resources director's decision was made.
- (d) All decisions of the Water Resources director and Town Manager shall be served on the customer personally or by registered or certified mail. Mailing shall be based upon the billing address of the customer.
- (e) Following the decision of the Town Manager, the customer may make an appeal to the Board of Adjustment (BOA). The BOA shall fix a reasonable time for the hearing of an appeal, shall give due notice of such hearing to the customer and the manager, and shall render its decision within a reasonable time.
- (f) When an appeal is from a decision authorizing an adjustment to the customer's bill, the Water Resources director's decision shall remain in effect until and unless reversed or otherwise modified.

No adjustment to a customer's bill shall be made which is for more than the three-year period immediately preceding the date that the customer's request is first received by the Town.

Sec. 12-116. - Limitations of Responsibility.

- (a) The Town shall be responsible only for portions of the drainage system which are in Town maintained ROW and permanent storm drainage easements conveyed to and accepted by the Town. Repairs and improvements to the drainage system shall be in accordance with established standards, policies, and schedules.
- (b) The Town's acquisition of permanent storm drainage easements and/or the construction or repair by the Town of stormwater control measures and drainage facilities does not constitute a warranty against stormwater hazards including but not limited to flooding, erosion, or standing water.

Sec. 12-117. - Severability.

If any section, subsection, paragraph, or clause of this article is held to be invalid or unenforceable, all other sections, subsections, paragraphs, and clauses shall nevertheless continue in full force and remain in effect. In addition, if the Town's use of funds for any portion of its stormwater program is held invalid, all other funded portions of the program shall continue in full force and remain in effect.

Section 2. That Article IV of Chapter 12 of the Town of Apex Code of Ordinances is hereby amended as shown immediately below with deletions shown by strikethrough text and additions shown by underlined text:

ARTICLE IV. – SOLID WASTE DISPOSAL

Sec. 12-~~118~~110. Definition of garbage.

Sec. 12-~~119~~111. Prompt removal of garbage.

Sec. 12-~~120~~112. Garbage container specifications.

Sec. 12-~~121~~113. Wet garbage.

Sec. 12-~~122~~114. Deposit of garbage in public places and on private property.

Sec. 12-~~123~~115. Transportation of garbage by private persons.

Sec. 12-~~124~~116. Collection—Schedule.

Sec. 12-~~125~~117. Same—Regulations.

Sec. 12-~~126~~118. Building materials; tree and lawn trimmings.

Sec. 12-~~127~~119. Burning of leaves and related items.

Sec. 12-~~128~~120. Removal of dead animals.

Sec. 12-~~129~~121. Provision for the aged, handicapped, and disabled.

Sec. 12-~~130~~122. Dumpsters—Use generally.

Sec. 12-~~131~~123. Same—Unauthorized use.

Sec. 12-~~132~~124. Garbage fee.

Section 3. That Article V of Chapter 12 of the Town of Apex Code of Ordinances is hereby amended as shown immediately below with deletions shown by strikethrough text and additions shown by underlined text:

ARTICLE V. – YARD WASTE COLLECTION

Sec. 12-~~133~~125. Purpose.

Sec. 12-~~134~~126. Definitions.

Sec. 12-~~135~~127. Administration and enforcement.

Sec. 12-~~136~~128. Pre-collection practices.

Sec. 12-~~137~~~~129~~. Limitations on service.

Sec. 12-~~138~~~~130~~. Disposal of yard waste.

Sec. 12-~~139~~~~131~~. Right of entry.

Sec. 12-~~140~~~~132~~. Conflicts with other ordinances.

Sec. 12-~~141~~~~133~~. Severability.

Secs. 12-~~142~~~~134~~—12-155. Reserved.

Section 4. The Town Clerk and/or Town Manager are hereby authorized to renumber, revise formatting, correct typographic errors, to verify and correct cross references, indexes and diagrams as necessary to codify, publish, and/or accomplish the provisions of this Ordinance or future amendments as long as doing so does not alter the terms of this Ordinance.

Section 5. **Severability, Conflict of Laws.** If this Ordinance or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given separate effect and to the end the provisions of this ordinance are declared to be severable. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

Section 6. **Effective Date.** This Ordinance shall be effective January 1, 2022.

Introduced by Council Member _____

Seconded by Council Member _____

Attest:

TOWN OF APEX, NORTH CAROLINA

Donna B. Hosch, MMC, NCCMC
Town Clerk

Jacques K. Gilbert
Mayor

Approved As To Form:

Laurie L. Hohe
Town Attorney