



Takoma Park City Council Meeting – March 24, 2021 Agenda Item 2

Voting Session

Second Reading Ordinance Amending the Stormwater Code Regarding the Fee System

Recommended Council Action

Approve City Code Amendment at Second Reading

Context with Key Issues

On January 9, 2019, City Council received an overview of the Impervious Area Review Study completed by Black & Veatch. Work Session discussions were held on September 11, 2019, and February 5 and February 19, 2020 and April 22, 2020 to discuss possible changes to the stormwater utility fee structure. Additional Council Work Sessions were held Feb 10 and Feb 24, 2021, as well as a Public Hearing on February 24, 2021. On March 10, staff presented a detailed Frequently Asked Questions document, a draft Resolution on Stormwater Policies and Goals, as well as draft City Code changes. The draft Code changes were incorporated into a Draft Ordinance for consideration. The Resolution on Stormwater Policies and Goals was adopted on March 17. On the same date, the ordinance was reviewed and voted on at first reading.

If the Stormwater Fee structure is to be changed, a decision is needed promptly as the detailed information on charges is needed to be received by the County in April. The FY22 budget schedule will require any fee amount changes to be made prior to the adoption of the budget ordinances that will occur on May 13 and May 20.

Background: The results of the Black & Veatch study illustrated that many single-family residential properties had greater square footage of impervious surface than had been previously assumed when the fee was implemented in 1996. As a result, it became clear that the fee could be levied more equitably based on the amount of impervious area. The staff recommendation is to move to a tiered charge of \$25 per 500 square feet of impervious surface rather than the flat fee for single family properties. The City already charges all multi-family, commercial, and institutional property based on the amount of impervious area on the property. The current system for those property types applies an average unit (the Equivalent Residential Unit – ERU) as the basis for the fee. This average unit (ERU) was increased, based on the Black & Veatch study, for FY21 stormwater billing on all non-single-family properties.

Prior to the Public Hearing, the City mailed a notice to all single-family properties informing them of the proposed change to the Stormwater Fee structure. An article was also included in the February Newsletter and the Stormwater Management page on the City's website was updated with an interactive map to show the proposed fee on each single-family property. If these changes move forward, property owners will receive a mailing of information regarding their property, the charge that would apply to their property, and the process to appeal a charge that is believe to be incorrect.

The Stormwater Utility Fee generates \$700,000 annually to be used for system inspection, monitoring and water quality testing, repairs and maintenance of the existing system, design and construction of new facilities, and engineering oversight.

Council Priority

Environmentally Sustainable Community; Fiscally Responsible Government

Environmental Impact of Action

All stormwater management programs are funded through revenue generated by the Stormwater Utility Fee. These programs include maintenance of existing systems as well as construction of new infiltration and treatment facilities for stormwater management. These programs are mandated by State and Federal law.

Racial Equity Considerations

As the Council considers various stormwater fee options, racial equity impacts should be considered. For example, if there is an association between race and properties with less square footage of impervious surfaces, choosing an option that charges by amount of impervious surface could be more equitable than one that charges based on an average of all residential properties.

Fiscal Impact of Action

The Stormwater Utility Fee funds all activities the City undertakes for the management and treatment of stormwater. Ensuring that the fee structure is equitably assessed is essential to ensure the ongoing revenue necessary to provide that service.

Attachments and Links

- Draft Stormwater Ordinance for Second Reading
- [Resolution 2021-9 on Stormwater Management Policies and Goals \(Adopted on March 17, 2021\)](#)
- [Stormwater Fees – Frequently Asked Questions](#)

1 Introduced by: Councilmember Dyballa

First Reading: March 17, 2021

2 Second Reading:

3 Effective Date:

4
5 **CITY OF TAKOMA PARK, MARYLAND**
6 **ORDINANCE 2021-12**

7
8 **AMENDING THE TAKOMA PARK CODE, TITLE 16,**
9 **STORMWATER MANAGEMENT, CHAPTER 16.08 STORMWATER**
10 **MANAGEMENT FEE SYSTEM**

11
12 **WHEREAS,** the Maryland Code, Local Government Article, Section 5–202, as amended,
13 authorizes the legislative body of each municipal corporation in the State of
14 Maryland to pass ordinances that such legislative body deems necessary to assure
15 the good government of the municipality, to protect and preserve the
16 municipality’s rights, property and privileges, to preserve peace and good order,
17 to secure persons and property from danger and destruction, and to protect the
18 health, comfort, and convenience of the citizens of the municipality;

19
20 **WHEREAS,** Section 401(a) of the City Charter authorizes the Council to pass all such
21 ordinances not contrary to the Constitution and laws of the State of Maryland or
22 this Charter as it may deem necessary for the good government of the City; for
23 the protection and preservation of the City’s property, rights, and privileges; for
24 the preservation of peace and good order; for securing persons and property from
25 violence, danger, or destruction; and for the protection and promotion of the
26 health, safety, comfort, convenience, welfare, and happiness of the residents of
27 and visitors in the City;

28
29 **WHEREAS,** Section 401(b)(18) of the City Charter authorizes the Council to provide for the
30 protection, promotion and preservation of the natural environment including
31 rivers, streams and watersheds;

32
33 **WHEREAS,** Section 401(b)(19) of the City Charter authorizes the Council, subject to the
34 limitations imposed by the Constitution and laws of the State of Maryland to
35 establish and collect reasonable fees associated with the exercise of any
36 governmental or proprietary function authorized by law to be exercised by a
37 municipal corporation;

38
39 **WHEREAS,** Section 401(b)(20) of the City Charter authorizes the Council to levy, assess and
40 collect fees, assessments, and charges against property;

41
42 **WHEREAS,** the Council conducted a review of Chapter 16.08 of the Takoma Park Code
43 concerning stormwater management fees and discussed the same during the
44 following work sessions: February 10, 2021, February 24, 2021, and March 10,
45 2021; and
46

1 **WHEREAS,** the Council adopted Resolution 2021-9 establishing stormwater management
2 policies and goals on March 17, 2021; and
3

4 **WHEREAS,** the Council, after having reviewed the proposed revisions and upon making
5 further modifications, desires to amend Chapter 16.08 of the Takoma Park Code.
6

7 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**
8 **TAKOMA PARK, MARYLAND, THAT** Chapter 16.08, Stormwater Management Fee System,
9 of the Takoma Park Code is hereby amended as follows:
10

11 **Chapter 16.08**
12 **STORMWATER MANAGEMENT FEE SYSTEM**

13 Sections:

- 14 16.08.010 Findings.
15 16.08.020 Statutory authority.
16 16.08.030 Definitions.
17 16.08.040 Establishment of Stormwater Management Fund.
18 16.08.050 Purposes of Fund.
19 16.08.060 Imposition of stormwater management fee.
20 16.08.070 Classification of property—Establishment of fee.
21 16.08.080 Base rate.
22 16.08.090 Charges for tax-exempt properties—Exemptions for undeveloped property and for
23 government property used for public purposes.
24 16.08.100 Assessment notices.
25 16.08.110 When fee is payable—Interest and penalties—Lien on real property—Abatement of
26 small amounts due.
27 16.08.120 Requests for correction.
28

29 **16.08.010 Findings.**

- 30
31 A. The City maintains a system of storm and surface water management facilities, including but
32 not limited to inlets, conduits, manholes, channels, ditches, drainage easements, retention and
33 detention basins, infiltration facilities and other components as well as natural waterways.
34
35 B. The stormwater system in the City needs regular maintenance and improvements.
36
37 C. Water quality is degrading due to erosion and the discharge of nutrients, metals, oil, grease,
38 toxic materials and other substances into and through the stormwater system.
39
40 D. The public health, safety and welfare is adversely affected by poor ambient water quality and
41 flooding that results from inadequate management of both the quality and quantity of stormwater.
42
43 E. All real property in the City either uses or benefits from the maintenance of the stormwater
44 system.
45
46 F. The extent of use of the stormwater system by each property is dependent on factors that
47 influence runoff, including land use and the amount of impervious surface on the property.

1 G. The costs of improving, maintaining, operating and monitoring the stormwater system should
2 be allocated, to the extent practicable, to all property owners based on the impact of runoff from
3 the impervious areas of their property on the stormwater management system.

4 H. Management of the stormwater system to protect the public health, safety and welfare requires
5 adequate revenues and it is in the interest of the public to finance stormwater management
6 adequately with a user charge system that is reasonable and equitable so that each user of the
7 system pays to the extent to which he or she contributes to the need for it. (Ord. 2001-29 § 2 (part),
8 2001: prior code § 10D-1)

9

10 **16.08.020 Statutory authority.**

11

12 Authority for the adoption of a system of charges to fund the implementation of stormwater
13 management programs is conferred on the City by Section 21-625 of the Local Government Article
14 Article 29, Section 3-205, and by Section 4-204(d) of the Environment Article of the Annotated
15 Code of Maryland, as amended. (Ord. 2001-29 § 2 (part), 2001: prior code § 10D-2)

16

17 **16.08.030 Definitions.**

18

19 For purposes of this chapter, the following words and phrases shall have the meanings indicated:

20 “Base rate” means the stormwater management fee charged on a base unit. ~~The annual (fiscal year)~~
21 ~~stormwater management fee for single family residential property in the City equals the base rate.~~

22 ~~“Base unit” means the median impervious surface area associated with a single family residential~~
23 ~~property in the City. is equal to five hundred (500) square feet of impervious surface for property~~
24 ~~types.~~

25 “Board” means the Stormwater Management Board for Takoma Park established under the
26 Municipal Charter. In accordance with the Municipal Charter, the Council of the City has been
27 designated the Stormwater Management Board.

28 “Developed property” means real property which has been altered from its natural state by the
29 addition of any improvements, such as buildings, structures or other impervious area.

30 “Fee” or “stormwater management fee” means the charge established under this chapter and levied
31 on owners of parcels or pieces of real property to fund the costs of stormwater management and
32 of operating, maintaining and improving the stormwater system in the City.

33 “Fiscal year” means July 1st of a calendar year to June 30th of the next calendar year, both
34 inclusive.

35 “Impervious surface” means a surface that is compacted or covered with material that is resistant
36 to infiltration by water, including, but not limited to, most conventionally surfaced streets, roofs,
37 sidewalks, patios, driveways, parking lots and any other oiled, graveled, graded, compacted or
38 other surface that impedes the natural infiltration of surface water.

1 “Impervious surface area” means the number of square feet of horizontal surface covered by
2 buildings and other impervious surfaces. All building measurements shall be made between
3 exterior faces of walls, foundations, columns or other means of support or enclosure.

4 “Multifamily dwelling” means a building with more than two dwelling units.

5 “Other developed property” means developed property other than single-family residential
6 property. Such property shall include, but not be limited to, multifamily dwellings, commercial
7 properties, industrial properties, parking lots, hospitals, private schools, private recreational and
8 cultural facilities, hotels, offices and churches.

9 “Property owner” means the property owner of record as listed in the State assessment roll. A
10 property owner includes any individual, corporation, firm, partnership or group of individuals
11 acting as a unit and any trustee, receiver or personal representative.

12 “Single-family residential property” means a developed property the primary purpose of which is
13 providing a permanent dwelling unit and that is classified as residential in the State assessment
14 roll. A single-family detached dwelling, or a townhouse, containing an accessory apartment or
15 second dwelling unit is included in this definition.

16 “State assessment roll” means the official listing of assessments of real property maintained by the
17 State Department of Assessments and Taxation of Maryland.

18 “Stormwater management” means the planning, design, construction, regulation, improvement,
19 repair, maintenance and operation of facilities and programs relating to water, floodplains, flood
20 control, grading, erosion, tree conservation and sediment control.

21 “Stormwater Management Fund” or “Fund” means the fund created by this chapter to operate,
22 maintain and improve the City’s stormwater system.

23 “Stormwater system” means the system or network of storm and surface water management
24 facilities, including but not limited to inlets, conduits, manholes, channels, ditches, drainage
25 easements, retention and detention basins, infiltration facilities and other components as well as
26 all-natural waterways.

27 “Undeveloped property” means any ~~non-single-family residential~~ property which has three-quarter
28 ~~one-third~~ or less of the base unit of impervious surface area.

29 “Water” means any stormwater, surface water, snow melt or groundwater. (Ord. 2016-9 § 1,
30 2016/Ord. 2001-29 § 2 (part), 2001: prior code § 10D-3)

31

32 **16.08.040 Establishment of Stormwater Management Fund.**

33

34 A. The stormwater management program is established and the stormwater system is provided
35 to protect the waterways and land in the City by controlling flooding and to protect the natural
36 environment. The costs of designing, developing, improving, operating, maintaining and
37 monitoring the stormwater system required in the City should, therefore, be allocated, to the extent
38 practicable, to all property owners based on their impact on the stormwater system. In order to

1 provide revenue to fund those costs and to fairly allocate those costs, a Stormwater Management
2 Fund (the Fund) is established.

3 B. All revenues collected from the Stormwater Management Fee and from grants, permit fees
4 and other charges collected under this chapter, shall be deposited to the Fund. The Council, acting
5 as the Board, may make additional appropriations to the fund. All disbursements from the fund
6 shall be for the purposes of the fund as set forth in this chapter. (Ord. 2001-29 § 2 (part), 2001:
7 prior code § 10D-4)

8

9 **16.08.050 Purposes of fund.**

10

11 The fund shall be used for the following purposes:

12 A. The acquisition by gift, purchase or condemnation of real and personal property, and interests
13 therein, necessary to construct, operate and maintain stormwater control facilities;

14 B. All costs of administration and implementation of the stormwater management program,
15 including the establishment of reasonable operating and capital reserves to meet unanticipated or
16 emergency stormwater management requirements;

17 C. Engineering and design, debt service and related financing expenses, construction costs for
18 new facilities, and enlargement or improvement of existing facilities;

19 D. Operation and maintenance of the stormwater system;

20 E. Monitoring, surveillance and inspection of stormwater control devices;

21 F. Stormwater quality monitoring programs;

22 G. Retrofitting developed areas for pollution control;

23 H. Inspection and enforcement activities;

24 I. Billing and administrative costs;

25 J. Evaluate the impact of stormwater run-off on private property, or within groups of private
26 properties; and

27 ~~K.~~ Other activities which are reasonably required. (Ord. 2001-29 § 2 (part), 2001: prior code §
28 10D-5)

29

30 **16.08.060 Imposition of stormwater management fee.**

31

32 A. An annual service charge is imposed upon all real property in the City, as of July 1st of each
33 fiscal year, beginning July 1, 1996, to fund stormwater management programs. This service charge
34 shall be known as the “stormwater management fee” (fee). Any real property completed or added
35 to the State Assessment Roll after July 1st or annexed into the City after July 1st may be subject
36 to a partial year charge. The fee is based on:

1 1.A The extent to which each property creates a need for the stormwater management
2 program;

3 2.B: The amount of impervious area on each property; and

4 3.C: The cost of implementing a stormwater management program. (Ord. 2001-29 § 2 (part),
5 2001: prior code § 10D-6)

6 B. The fee charged to the owners of single-family residential properties between July 1, 2021,
7 and June 30, 2022, shall not exceed \$275.00. Beginning July 1, 2022, the fees charged to the
8 owners of single-family residential properties shall not be so limited.

9 C. The City Manager shall establish an application and review process by which lower income
10 property owners may apply for reduction of the fee.

11 **16.08.070 Classification of property—Establishment of fee.**

12
13 A. For purposes of determining the stormwater management fee, all properties in the City are
14 classified into one of the following classes:

15 1. Single-family residential property; or

16 2. Other developed property.

17 B. Single-Family Residential Fee. ~~The Council finds that the intensity of development of most~~
18 ~~parcels of real property in the City classified as single family residential is similar and that it would~~
19 ~~be excessively and unnecessarily expensive to determine precisely the square footage of the~~
20 ~~improvements (such as buildings, structures and other impervious area) on each such parcel.~~
21 ~~Therefore, a~~ All single-family residential properties in the City shall be charged a flat stormwater
22 management fee, equal to the base rate, regardless of the size of the parcel or the improvements. a
23 rate based on dividing the total impervious surface area (square feet) of the property by one base
24 unit and multiplying that result by the base rate.

25 C. Other Developed Property Fee.

26 1. The fee for other developed property (i.e., non single family residential property) in the
27 City shall be the base rate multiplied by the numerical factor obtained by dividing the total
28 impervious surface area (square feet) of the property by one base unit. a rate based on dividing
29 the total impervious surface area (square feet) of the property by one base unit and multiplying
30 that result by the base rate. The impervious surface area for other developed property is the
31 square footage for the buildings and other improvements on the property as listed in the State
32 assessment roll. Alternatively, at the sole discretion of the City Manager, when evidence
33 suggests that the impervious surface on the property listed in the State assessment roll is
34 inaccurate, the impervious surface area of other developed property may be determined
35 through site examination, mapping information, aerial photographs, and other available
36 information. The minimum stormwater management fee for other developed property shall
37 equal the base rate for single-family residential property.

1 2. If the other developed property is a condominium, the fee for each condominium unit will
2 be calculated by dividing the total fee for the condominium property by the number of
3 condominium units in the development and will be billed to each condominium unit owner.
4 (Ord. 2016-9 § 1, 2016/Ord. 2001-29 § 2 (part), 2001: prior code § 10D-7)

5 D. Stormwater Management Fee Credit Program.

6 1. There shall be a stormwater management fee credit program that is designed to recognize
7 specific actions or installations a property owner has taken or made to reduce the quantity or
8 improve the quality of stormwater discharged from a particular property.

9 2. Approved credits shall not exceed 50% of the total fee assessed to a property owner and
10 shall be applied to the next annual billing cycle provided the reasons for granting the approval
11 remain for the duration of the billing cycle.

12 3. The City Manager shall adopt regulations by October 1, 2021 implementing the stormwater
13 management fee credit program.

14 4. At a minimum, the stormwater management fee credit program regulations shall:

15 a. Define potential credits related to stormwater remediation efforts undertaken on private
16 property;

17 b. Consistent with best management practices, define the structural and non-structural
18 qualifications for the credit;

19 c. Establish approval criteria for credits;

20 d. Establish approval periods for each type of credit in order to promote maintenance of
21 the stormwater management practice and ensure that the practice provides intended water
22 quality improvement;

23 e. Permit property owners who were previously awarded a credit to reapply for a credit
24 for the next approval period;

25 f. Establish all necessary forms;

26 g. Establish a review process for applications that, when feasible, will be complete within
27 thirty (30) days upon receipt of a completed application, except in the first year of the fee
28 credit program when the review process may allow for up to six (6) months for completion;

29 h. Require the City, in the event a fee credit application is rejected, to notify the applicant
30 in writing of any additional measures necessary for approval of the credit and, when
31 reasonably feasible, explain why such measures are necessary after which the applicant
32 may submit a revised application; and

33 i. Provide a methodology for rescinding the approval of a credit if the reasons for granting
34 the credit no longer exist and changing the amount credited on a pro rata basis.

1 **16.08.080 Base rate.**

2
3 The Council, acting as the Board, shall, by ordinance, establish the annual (fiscal year) base rate
4 for the stormwater management fee. The base rate shall be calculated to ensure adequate revenues
5 to fund the costs of stormwater management and to provide for the operation, maintenance and
6 capital improvements of the stormwater system in the City. (Ord. 2016-9 § 1, 2016/Ord. 2001-29
7 § 2 (part), 2001: prior code § 10D-8)

8
9 **16.08.090 Charges for tax-exempt properties—Exemptions for undeveloped property and**
10 **for government property used for public purposes.**

11
12 A. The Council finds that all real property in the City contributes to runoff and either uses or
13 benefits from the maintenance of the stormwater system. Therefore, except as otherwise provided
14 in this section, all real property in the City, including property that is exempt from property tax by
15 Title 7 of the Tax-Property Article, Annotated Code of Maryland, as amended, shall be charged
16 the fee.

17 B. Undeveloped property shall be exempt from the fee. (Ord. 2015-49 § 1, 2015/Ord. 2001-29
18 § 2 (part), 2001: prior code § 10D-9)

19
20 **16.08.100 Assessment notices.**

21
22 A. Beginning on July 1, 20XX and every five years thereafter, ~~The City Manager~~ shall assess
23 every property and may, but is not required to, send assessment notices for the fee to property
24 owners prior to the billing for the fee.

25 B. If a Assessment notices are sent, the notice shall include the following information:

26 1. The classification of the property for purposes of determining the fee;

27 2. ~~For property classified as other developed property:~~

28 a. ~~The impervious surface area of the property; and~~

29 b. ~~The method by which the impervious surface area of the property was determined;~~
30 ~~that is, whether the computation of the impervious surface area of the property is based on~~
31 ~~information in the State Assessment Roll, site examination, mapping information, aerial~~
32 ~~photographs, or other available information;~~

33 2. The impervious surface area of the property;

34 3. The method by which the impervious surface area of the property was determined; that is,
35 whether the computation of the impervious surface area of the property is based on information
36 in the State Assessment Roll, site examination, mapping information, aerial photographs, or
37 other available information; and

38 34. The amount of the base rate (~~i.e., the single family residential fee~~) ~~and, for other developed~~
39 ~~property, and~~ the number of base units on the property. (Ord. 2016-9 § 1 (part), 2016/Ord.
40 2001-29 § 2 (part), 2001: prior code § 10D-10)

1
2 **16.08.110 When fee is payable—Interest and penalties—Lien on real property—**
3 **Abatement of small amounts due.**

4
5 A. The fee that is due for a fiscal year must be paid within 30 days after the bill is mailed or
6 issued to the property owner and is overdue after that date. An overdue fee bears interest and
7 penalties at the rate of 1.67% for each month or fraction of a month that the fee is overdue.

8 B. The fee, including interest and penalties, when overdue is a lien on real property and may be
9 collected in the same manner as delinquent real property taxes or by a suit against the property
10 owner.

11 C. The City Manager may abate the fee, including interest and penalties, if the cost of collection
12 is reasonably estimated to exceed the amount of the fee, including any interest and penalties, due
13 and payable. (Ord. 2016-9 § 1, 2016/Ord. 2001-29 § 2 (part), 2001: prior code § 10D-11)

14
15 D. Unless the County declines to enforce collection of any fee imposed by this Chapter, the
16 provisions of this Section do not apply to fees collected pursuant to real property tax bills issued
17 by Montgomery County.

18 **16.08.120 Requests for correction.**

19
20 A. A property owner may request correction of the fee by submitting the request in writing to
21 the City Manager within 30 days after the date the assessment notice or the bill is mailed or issued
22 to the property owner. Grounds for correction of the fee include:

- 23 1. Incorrect classification of the property for purposes of determining the fee;
24 2. Errors in the square footage of the impervious surface area of the property;
25 3. Mathematical errors in calculating the fee to be applied to the property; and
26 4. Errors in the identification of the property owner of a property subject to the fee.

27 ~~B. The City Manager shall make a determination within 30 days after receipt of the property~~
28 ~~owner's completed written request for correction of the fee. The City Manager's decision on a~~
29 ~~request for correction of the fee shall be final.~~

30 ~~BC.~~ A property owner must comply with all rules and procedures adopted by the City when
31 submitting a request for correction of the fee and must provide all information necessary for the
32 City Manager to make a determination on a request for correction of the fee. If a property owner
33 alleges an error in the square footage of the impervious surface area of the property, then the
34 request for correction must may include a certification by a registered engineer or professional
35 land surveyor of the impervious surface area of the property. Failure to comply with the provisions
36 of this subsection shall be grounds for denial of the request. (Ord. 2016-9 § 1, 2016/Ord. 2001-29
37 § 2 (part), 2001: prior code § 10D-12)

38 C. The City Manager shall make a determination within 30 days after receipt of the property
39 owner's completed written request for correction of the fee. At the City Manager's discretion, the

1 fee may be modified if the property owner is able to establish, through a reasonably reliable
2 method, that the City's calculation of square footage of impervious surface area on the property is
3 erroneous. The City Manager's decision on a request for correction of the fee shall be final.

4 THIS ORDINANCE IS ADOPTED BY THE COUNCIL OF THE CITY OF TAKOMA PARK,
5 MARYLAND, THIS ____ DAY OF _____, 2021, AND SHALL BE EFFECTIVE
6 BEGINNING ON JULY 1, 2021, BY ROLL-CALL VOTE AS FOLLOWS:

7
8 AYE:

9 NAY:

10 ABSTAIN:

11 ABSENT:

12

13 **Explanatory Note:**

14

15 1. Underlining indicates language being added to the Code.

16 2. ~~Strikethrough~~ indicates language being deleted from the Code.

17