1ST READING 3-16-10
2ND READING 4-20-10
INDEX NO.

ORDINANCE NO. 12377

AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 31, ARTICLE VIII, DIVISION 1, GENERALLY, SECTION 31-302 AND DIVISION 7, FEES, SECTIONS 31-354 AND 31-356, AND 31-359.

WHEREAS, the immediate imposition of the $115.20 ERU rate is causing undue economic burden on non-residential users; and

WHEREAS, the City's goal is for non-residential users to reduce the burden on the City's storm water system and increase the quality of storm water discharge through installation of water quality devices that retain and control the quantity and quality of storm water discharge; and

WHEREAS, the City understands that it will take some time for non-residential users to design and construct water quality devices; and

WHEREAS, a temporary reduction in the ERU rates for non-residential users is intended to encourage non-residential users to reduce their rates through credits in the future; and

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE:

SECTION 1. That Chattanooga City Code, Part II, Chapter 31, Article VIII, Division 1, Generally, Section 31-302 be and the same is hereby amended to include the following definitions:

" Facilities" means any man-made or natural conveyance for storm water including but not limited to streets, curbs, gutters, catch basins, inlets, pipes, culverts, ditches, gulleys, canals, flumes, siphons, and storm water detention facilities that are owned by or maintained in whole or in part by the City of Chattanooga and used for purposes of collecting, transporting, detaining,

pumping, treating or disposing of storm water. Facilities" shall also mean dams, flood walls, levies, pumping stations and other structures owned by or maintained in whole or in part by the city for flood control. Facilities shall not include road or highway bridges designed for spanning a navigable river or creek.

"Leadership in Energy and Environmental Design" (LEED). A Green Building Rating System, developed by the U.S. Green Building Council for residential and commercial buildings. LEED provides benchmarks for the design, construction and operation of property and covers site makeup, building materials, water and energy efficiency, as well as indoor environmental quality.

"Low Impact Development" (LID) is a term used to describe a land planning and engineering design approach to managing storm water runoff.

"Storm water system" means all facilities owned or maintained by the City for collecting, detaining, conveying, or treating storm water from any parcel or place **upstream or up gradient of any point of discharge to a river or creek not** maintained by the City for conveyance of storm water or flood control. Storm water system shall also mean all facilities owned by or maintained by the City for purposes of flood control.

SECTION 2. That Chattanooga City Code, Part II, Chapter 31, Article VIII, Division 7, Fees, Section 31-354, Schedule of Fees, be and the same is hereby deleted in its entirety and replaced with the following:

Sec. 31-354. Schedule of Fees.

(a) Residential Properties. The annual water quality fee per ERU as of the adoption of this ordinance shall be set at a flat rate of $115.20.

(b) Nonresidential Properties. The annual water quality fee per ERU as of the adoption of this ordinance shall be set at $115.20 per ERU; provided however:

(i) for bills issued on October 1, 2009 for calendar year 2009, the water quality fee per ERU shall be temporarily reduced to $73.80.

(ii) for bills issued on October 1, 2010 for calendar year 2010, the water quality fee per ERU shall be temporarily reduced to $87.00.

(iii) for bills issued on October 1, 2011 for calendar year 2011, the water quality fee per ERU shall be temporarily reduced to $96.00.

(iv) for bills issued on October 1, 2012 for calendar year 2012, the water quality fee per ERU shall be temporarily reduced to $105.00.

(c) Refunds or Credits for Overpayments of 2009 Water Quality Fees. Based upon the temporary reduction of water quality fees set forth in subsection (b) above, any non-residential property owner that overpaid the water quality fee imposed for calendar year 2009 may be entitled to a refund if an application for a refund is timely made. All property owners requesting a refund shall make application on forms to be made available by the Water Quality Manager no later than July 30, 2010, unless there is a change in ownership of the property after October 1, 2009. If no application for refund has been received on or before July 30, 2010, the difference between the amount paid and the revised fee shall be applied as a credit on the bill issued on or about October 1, 2010, for calendar year 2010 provided the property owner remains the same. Refunds and credits shall be paid or applied without interest.

(d) Fees; contracts. Persons, including, but not limited to, owners and operators of agricultural land, whose storm water runoff is not discharged into or through the storm water or flood control facilities, or both, of the municipality shall be exempted from payment of the graduated storm water user fee authorized by this section.

SECTION 3. That Chattanooga City Code, Part II, Chapter 31, Article VIII, Division 7, Fees, Section 31-356, Adjustment to Water Quality Fee, be and the same is hereby deleted in its entirety and replaced with the following:

Sec. 31-356. Adjustment to Water Quality Fee.

(a) Increase adjustments (debit) can be made to non-residential service charges by property owners adding additional impervious area such as rooftops, parking lots, driveways and walkways. Decrease (credit) adjustments can be made to non-residential service charges by property owners performing activities that reduce the impact of storm water runoff to the water quality system.

(b) Upon application by any user adequately supported by documentation, the user shall be entitled to an adjustment of their water quality fee as provided in this section. The water quality credits (applied in 5% increments) are offered to non-residential property owners billed three (3) or more Equivalent Residential Units (ERU) that perform an activity or activities (Stormwater Best Management Practice; BMP) that reduce the burden on the City storm water system and provide water quality benefit. The Water Quality Manager shall promulgate a Water Quality Fee Credits Outline to provide guidance on combining multiple credits and showing examples of credit and credit calculation methods.

(c) A Credit Fee cap is placed at sixty-five percent (65%) for all BMPs, unless a Low Impact Development (LID) practice, LEED Certified Development, or Retrofit/Mitigation Plan is approved and installed, whereby the credit cap will be raised to eighty-five percent (85%).

(d) Proper maintenance of BMPs is required in order to annually receive the credits provided in this section. Maintenance shall be performed according to the BMP manual adopted by the City. The owner must document that the BMPs have been properly maintained and serviced as required annually. BMPs are subject to inspection and verification of proper maintenance by the Water Quality manager or his designee. Failure to provide this documentation will result in the denial of these credits.

1) <u>Retrofit/Mitigation Plan (25% 1st year, maximum of 85% 2nd and 3rd year)</u> A water quality fee credit of 25% for the 1st year will be offered to those sites submitting a proposal that results in the installation of structural measures (BMP) that reduce the City's stormwater burden.

(i) After Completion and inspection of proposed stormwater BMP a maximum of 85% credit will be offered for year 2 and 3. After the 3rd year the allotted credit will follow the appropriate BMP category found in the Credits Outline promulgated by the Water Quality Manager upon submission of as-built drawings following completion of the work.

(ii) Maximum credit offered for years 2 and 3:

- 85% for LID practices (see City BMP guide for examples) or Detention Retention Facilities controlling the 1, 2, 5, 10, 25, 50, 100 year storm flow design to a pre-construction runoff rate approved by the Water Quality Manager
- 75% for Detention/Retention Facilities controlling the 1, 2, 5, 10, 25 year storm flow design to a pre-construction runoff rate approved by the Water Quality Manager
- 50% for Water Quality Devices

(iii) As-Built Drawings must be submitted upon completion of the improvements to obtain credit in years 2 & 3.

(iv) Fee credits will be offered only for those impervious areas impacted by the proposed improvements.

(v) Proposed improvements must be approved by the City Water Quality Manager to qualify for the first year of credits.

(vi) Improvements shall be constructed as approved. Those sites not constructing an approved BMP within 12 months of the design approval will forfeit those credits and will be liable for repayment of any credits received.

2) Tree Planting (20% max) A maximum of 20% credit will be offered for planting of new trees and/or maintenance of existing trees. Maximum credit will be given upon implementation of a tree planting plan that will provide mature tree canopy over 25% of the impervious area. Credit will be prorated (in 5% increments) for plans that do not achieve 25% coverage.

(i) New trees must be planted in accordance with a tree planting plan (per City Tree Planting Guide) and follow the City of Chattanooga Landscape Ordinance.

(ii) Tree planting plans must be submitted to and approved by the City Water Quality Manager.

(iii) Trees that do not survive must be replanted as required.

3) Water Quality Education (up to 35% for calendar year 2009, up to 30% for calendar year 2010, up to 25% thereafter) A maximum of 25% credit will be offered to Public and Private Schools, K through 12, which integrate a curriculum in each grade level, approved by the City, for the purpose of providing water quality and watershed management education programs. A similar credit may be offered to non-traditional watershed based institutions (i.e. museums, arboretums, and community gardens) that provide appropriate water quality and watershed management education programs.

4) Water Quality Devices (up to 30%)

Skimmers: A maximum of 15% credit will be offered for floatable skimmers that are used to control oil, floatable materials, and sediments from entering the City storm water system.

(i) Proprietary Devices: A maximum of 30% credit will be offered for water quality

propriety devices that have verifiable independent testing to reduce the average annual total suspended solid (TSS) loadings by 80 percent or effectively remove other pollutants of concern as determined by the Water Quality Manager.

5) Detention/Retention Facilities (up to 40%). Detention/Retention Facilities designed to control the 24-hour storm event in the categories set forth below shall receive the corresponding credit.

Storm Flow Design		Credit Offered
(i)	No hydrology report	10%
(ii)	2, 5, 10 year storm flow design:	10%
(iii)	1, 2, 5, 10 year storm flow design:	15%
(iv)	2, 5, 10, 25 year storm flow design:	20%
(v)	1, 2, 5, 10, 25 year storm flow design:	25%
(vi)	2, 5, 10, 25, 50 year storm flow design:	25%
(vii)	1, 2, 5, 10, 25, 50 year storm flow design:	30%
(viii)	2, 5, 10, 25, 50, 100 year storm flow design:	35%
(ix)	1, 2, 5, 10, 25, 50, 100 year storm flow design:	40%

As-built drawings must be submitted with the credit application. One-time additional credit (up to 10%, not to exceed cap) will be given for submitting as-built drawings.

6) Low Impact Development (LID) (up to 75%) A maximum of 75% credit will be offered for the installation and proper maintenance of green storm water controls such as green roofs, cisterns/rain barrels, bio-retention areas (rain gardens), bio-swales, wetlands, porous pavement, grass strips, or other proven LID's approved by the Water Quality Manager.

(i) Cisterns/rain barrels must be capable of capturing the runoff from at least one (1) inch rainfall over the entire impervious area. Captured runoff shall be connected to an irrigation system or similar re-use system.

(ii) Bio-retention areas, when used in conjunction with other LID or green storm water controls, shall be eligible for:

- Up to 65% credit when controlling the 1, 2, 5, 10, 25 year storm flow event

- Up to 75% credit when controlling the 1, 2, 5, 10, 25, 50, 100 year storm flow event

(iii) Filter strips and swales designed in compliance with the BMP Manual adopted by the City shall be eligible for up to 15% credit.

As-built drawings must be submitted with the credit application. One-time additional credit (up to 10%, not to exceed cap) will be given for submitting as-built drawings.

7) LEED Certified Development (up to 60%) A maximum of 60% credit will be offered for a property that has received LEED certification and has obtained 5 credits for "Sustainable Sites" which includes Credits 6.1 *(Storm Water Design Quantity Control)* and 6.2 *(Storm Water Design Quality Control).*

8) Stream Buffers or Conservation Easements (up to 40%) A credit will be offered for constructing and/or maintaining a natural buffer on either side of the stream or jurisdiction wetland:

(i) Stream buffer credit (up to 25%) for buffers up to three (3) times the average stream width (measured from top of the bank) with a maximum of 100 feet.

(ii) Conservation easement credit (up to 15%) adjacent to streams or jurisdictional wetlands.

(iii) All credits and buffers designs are subject to the review and approval by the City Water Quality Manager.

9) Property Line Buffers. A maximum of 10% credit for property line buffers required by

zoning and maintained per an approved landscape plan.

10) NPDES Permitted Facilities (up to 20%) A maximum of 20% credit will be offered to properties that have an NPDES stormwater permit in good standing for at least 12 months prior to the application date.

11) State or Federal Law or Regulations. All credits shall be subject to any changes in federal or state law and regulation, or changes to the City's NPDES Permit that increase restrictions on storm water discharges.

(e) The user shall make application to the Manager of the Storm Water Management Section requesting reductions in the water quality fee pursuant this section. Each application shall be accompanied by proper documentation to demonstrate the accuracy of the claim. To the extent that the Manager is satisfied that the reductions applied for are warranted by the circumstances, he or she shall reduce the bill as provided herein. If the fees shall have been paid, a refund or credit on future billing shall be authorized to the extent warranted by the reduction.

(f) The Manager shall ask upon any application for a reduction in fees within ninety (90) days of the receipt thereof. In the event that he or she shall not have acted upon same within this time, then the application shall be deemed to have been denied.

(g) The user may appeal the denial by the Manager of any claimed water quality fee reduction to the Storm Water Regulations Board by filing a written notice of appeal in care of the Administrator of Public Works within thirty (30) days following the action of the Manager. No particular form for a notice of appeal shall be required and any written notice setting forth with reasonable particularity the grounds for the appeal shall be acceptable, but the Manager shall develop and maintain a form for such purposes. A copy of the notice of appeal shall be filed with the Manager. Unless the Storm Water Regulations Board shall consent to an enlargement of the administrative record, the appeal shall be decided upon the plans and data submitted by the applicant in support of the claimed reduction and any information relating thereto generated by the Administrator in review of the application. The Storm Water

Regulations Board shall schedule a meeting to consider the appeal and both the applicant and the Manager shall be allowed to make a written and oral argument before the Board in support of their respective positions.

SECTION 4. BE IT FURTHER ORDAINED, That Chattanooga City Code, Part II, Chapter 31, Article VIII, Division 7, Fees, Section 31-359, formally reserved, be and the same is hereby amended by the addition of the following:

Sec. 31-359. Reports to Chattanooga City Council.

The Administrator of the Department of Public Works or such Administrator's designated representative, shall report semi-annually to the Chattanooga City Council on the City's Storm Water Management Program. Such report shall include, at a minimum, the following:

(1) The status of the Storm Water Management Program;

(2) The adequacy of the fee structure imposed to fund the Storm Water Management Program;

(3) Any plans for capital improvements necessary for the Storm Water Management Program;

(4) The status of any projects to control Storm Water run-off; and

(5) The status concerning compliance with the provisions of the NPDES permit.

SECTION 5. BE IT FURTHER ORDAINED, That this Ordinance shall become effective immediately from and after its passage.

PASSED on Second and Final Reading

April 20, 2010.

CHAIRPERSON

APPROVED: X DISAPPROVED: _____

DATE: 4-26, 2010

MAYOR

VLM/add/mms