

CITY OF NEWPORT
ORDINANCE
OF THE
COUNCIL
NO.

AN ORDINANCE IN THE AMENDMENT OF TITLE 13 OF THE CODIFIED ORDINANCES OF THE CITY OF NEWPORT, RHODE ISLAND, REVISION OF 1994, AS AMENDED, ENTITLED, "PUBLIC SERVICES."

BE IT ORDAINED by the City of Newport:

SECTION 1. Title 13 of the Codified Ordinances of the City of Newport, Revision of 1994, as amended, entitled, "Public Services," is hereby further amended by adding a new Chapter 13.13 as follows:

ADD NEW CHAPTER

Chapter 13.13. STORMWATER MANAGEMENT DISTRICT, UTILITY, AND SERVICE FEE

13.13.010. Purpose and intent.

The purpose of this chapter is to establish a citywide stormwater management district, a stormwater utility, and a dedicated stormwater service fee to fund operation, maintenance, regulatory compliance, administration, debt service, and capital improvement of the City stormwater system on a cost-of-service basis and to allocate that cost among properties in proportion to impervious area and runoff contribution. The stormwater service fee is a charge for stormwater management services rendered and is not a tax.

13.13.020. Authority.

This chapter is enacted pursuant to the home rule and general police powers of the City of Newport and R.I. Gen. Laws Chapter 45-61, and in furtherance of the City's obligations under the Federal Clean Water Act, the RIPDES Phase II Small MS4 General Permit, and the federal consent decree governing combined-sewer-overflow control.

13.13.030. Stormwater management district established.

There is established a citywide stormwater management district whose boundaries are coterminous with the corporate limits of the City and a stormwater utility administered by the Department

of Utilities. The district includes every developed parcel from which stormwater runoff enters or affects the City stormwater system, combined sewer system, public right-of-way, another drainage conveyance, or receiving waters, whether by direct connection, indirect conveyance, overland flow, or direct discharge. A physical connection to a City-owned storm drain is not required.

13.13.040. Definitions.

Terms defined in Section 13.09.030 apply to this chapter. In addition:

"Director" means the Director of Utilities or a person authorized by the Director through a written delegation.

"Assessment statement" means the written notice stating parcel classification, measured impervious area, ERU or tier assignment, applicable rate, resulting stormwater service fee, and the procedure and deadline for requesting review.

"Impervious surface" means a surface that prevents or materially reduces infiltration of stormwater, including roofs, buildings, asphalt, concrete, brick, paving, compacted gravel or stone, and areas used for vehicle travel, parking, loading, outdoor storage, or similar developed use. Permeable pavement is included in gross regulated area and may qualify for treatment credit when approved. Impervious surface does not include landscape gravel or a gravel walkway that is not used for vehicle travel or parking, or an elevated deck with spaced boards over a pervious surface.

"Equivalent residential unit" or "ERU" means two thousand four hundred (2,400) square feet of impervious area, representing the typical impervious area of a single-family residential property in Newport. The ERU area may be changed only by ordinance.

"Developed parcel" means a parcel containing at least four hundred (400) square feet of impervious surface. A parcel containing less than four hundred (400) square feet is not subject to the stormwater service fee.

"One to Five Unit Residential Parcel" means a developed parcel containing a residential structure used as a one-family through five-family dwelling, regardless of form of ownership, and having a primarily residential use.

"Other Developed Parcel" means any developed parcel that is not a One to Five Unit Residential Parcel, including a parcel containing six or more dwelling units, a condominium or other common-interest development containing six or more dwelling

units, or a commercial, industrial, institutional, governmental, tax-exempt, or other nonresidential use.

"Owner" means the record owner shown in the City assessment records. An authorized agent may act for the owner upon providing evidence of authority satisfactory to the Director.

"Stormwater service fee" means the periodic charge imposed under this chapter, calculated from a parcel's ERU or tier assignment and the rate adopted by the City Council.

"Stormwater utility account" means the dedicated and segregated account, fund segment, or cost center established within the Water Pollution Control enterprise fund for stormwater utility revenue and expenses.

"City stormwater system" or "stormwater system" means public drainage infrastructure, catch basins, pipes, outfalls, tide gates, pump stations, public rights-of-way that convey or manage stormwater, flood-control functions, stormwater management services, and receiving waters affected by stormwater originating within the City. For cost allocation, it includes the documented stormwater share of a joint-use or combined facility or activity.

"Credit" means a reduction of the stormwater service fee granted under Section 13.13.070.

13.13.050. Administration.

The Director shall administer, interpret, implement, and enforce this chapter. All determinations concerning applicability, parcel classification, impervious area, ERU or tier assignment, fee calculation, billing, exemptions, credits, corrections, inspections, and enforcement shall be made by the Director or an authorized designee.

The Water Pollution Control Division is the operating division for the stormwater utility and acts only under the authority and direction of the Director. Other City departments may provide information and assistance but shall not issue an independent stormwater determination.

The Director may adopt written procedures, forms, technical guidance, inspection protocols, certification formats, and administrative standards necessary to implement this chapter. These materials shall not create a new fee, penalty, prohibition, exemption, or material change to the adopted rate methodology and shall be identified by version and effective date and maintained as an official public record.

13.13.060. Imposition of fee; applicability.

A stormwater service fee is imposed on each developed parcel within the district that contributes stormwater runoff, directly or indirectly, to the City stormwater system, combined sewer system, public right-of-way, another drainage conveyance, or receiving waters affected by the City's stormwater management program, regardless of whether the parcel is connected to a City stormwater conveyance or receives water or sewer service.

- A. One to Five Unit Residential Parcels shall be billed by the residential tiers in Section 13.13.063. A One to Five Unit Residential Parcel exceeding the highest tier threshold shall be billed in measured whole ERUs. The tier assignments of 0.5, 1.0, and 2.2 ERUs are not rounded.
- B. Other Developed Parcels shall be billed in measured whole ERUs under Section 13.13.063.
- C. Stormwater-only accounts, including parcels with private wells or no sewer connection, are billed on the same basis.
- D. Tax-exempt property, except property exempted by state or federal law, is subject to the fee on the same basis as other developed property and has access to the same credit program.
- E. Property owned by the State of Rhode Island is exempt from the fee to the extent required by R.I. Gen. Laws Section 45-61-4 and other applicable law.
- F. Federal property shall be billed on the same cost-of-service basis to the extent permitted by federal law. The charge shall be reasonable, nondiscriminatory, based on a fair approximation of runoff or pollution contribution, used solely for stormwater program costs, and subject to applicable federal appropriations limitations. Payment may be implemented by direct billing, intergovernmental agreement, or another lawful mechanism.
- G. City-owned property, including schools, parks, public-safety facilities, administrative buildings, parking areas, utility facilities, and other municipal property, shall be measured, classified, charged, and considered for credits under the same methodology applicable to comparable property. Payment shall be made through the City budget or an internal transfer to the stormwater utility account. Delinquency and lien procedures do not apply to City-owned property.
- H. For condominium and other common-interest property, the Director shall first determine the ERU or tier assignment once for the entire property under Section 13.13.063, applying any rounding and minimum to the property as a whole. The Director

shall then assign that total under a documented procedure by one of the following methods: (1) to the association or master account; or (2) in equal shares among the verified units, without rounding the shares and without applying the minimum to each share. The same impervious area shall not be counted or billed more than once. When the total is assigned to the association or master account, the fee is the obligation of the association or other entity responsible for common expenses that holds the account. When the total is divided among units, each share is the obligation of the record owner of the unit.

13.13.063. ERU and tier methodology; rate adoption and review.

- A. Impervious area shall be determined using parcel records, current aerial imagery, surveys, approved plans, permit and closeout records, field measurements, and other reliable information. The Director shall update a determination when reliable information or a material property change shows it is inaccurate and shall issue written notice before a revised fee takes effect.
- B. Residential tiers. Each One to Five Unit Residential Parcel shall be assigned as follows:
 - 1. At least 400 and not more than 1,500 square feet of impervious surface: 0.5 ERU.
 - 2. More than 1,500 and not more than 4,200 square feet: 1.0 ERU.
 - 3. More than 4,200 and not more than 7,555 square feet: 2.2 ERUs.
 - 4. More than 7,555 square feet: measured whole ERUs under subsection C.
- C. Measured whole ERUs. Each Other Developed Parcel and each One to Five Unit Residential Parcel above 7,555 square feet shall be billed by dividing total measured impervious area by 2,400 square feet and rounding to the nearest whole ERU. An exact one-half ERU shall be rounded upward. The minimum is one (1) ERU and no fractional ERU shall be billed. Section 13.13.060(H) governs the allocation of a condominium or common-interest property's total among its units.
- D. Rate adoption. The monthly fee equals the parcel's ERU or tier assignment multiplied by the Council-adopted monthly rate per ERU. The rate shall be adopted only by the City Council through the annual budget fee schedule or another Council action required by law after public notice and two (2) public hearings. No administrative rate change is authorized.

E. Five-year review. At least once every five (5) years, and sooner when directed by the City Council or when material cost or impervious-area data change, the Director shall complete or commission a cost-of-service and rate-methodology review addressing revenue sufficiency, equity, ERU area, tier boundaries and factors, rounding, credits, exemptions, shared-cost allocation, capital needs, and collection performance. A methodology change requires ordinance amendment.

13.13.065. Initial coordination with sewer rate restructuring; no duplicate recovery.

At initial implementation, stormwater costs previously embedded in the sewer revenue requirement shall be reallocated to the stormwater utility on the date stormwater billing begins. The annual budget shall identify the transfer and prevent recovery of the same cost through both the sewer rate and the stormwater service fee. This transition does not require continuing revenue neutrality after implementation, but double recovery remains prohibited. A cost recovered through this chapter shall not also be recovered through a charge under Chapter 13.12.

13.13.066. Commencement of billing and readiness.

The stormwater utility is established upon passage of this chapter. Stormwater service fees shall first accrue on July 1, 2027, only if the annual budget effective on that date appropriates funding for the stormwater program and includes or is accompanied by a Council-approved stormwater fee schedule. If those actions are not complete, fees shall first accrue on the later effective date of the annual budget and fee schedule. No fee shall accrue before the applicable budget effective date.

Before the Council acts on the budget and fee schedule that commence billing, the Director shall submit a written readiness certification to the City Manager and City Council confirming that the credit manual has been published; parcel, ownership, and account data are linked; assessment statements are ready; the Administrative Hearing Officer required by Section 13.09.140 has been appointed; and billing, correction, appeal, staff-routing, and record systems are operational and have been tested for duplicate accounts, condominium and common-interest allocation, ownership changes, exemptions, stormwater-only accounts, dispute holds, payment allocation, refunds, and reconciliation of billed totals. No fee shall accrue before the certification has been filed. The Department shall serve assessment statements at least thirty (30) days before the first bill, and no fee shall accrue for a parcel before its assessment statement has been served.

13.13.070. Stormwater credit program.

The Director shall administer a stormwater credit program permitting an owner to reduce, but not eliminate, the fee by implementing and maintaining a qualifying measure. A base contribution is preserved because every developed parcel contributes to fixed program costs and relies on public stormwater functions during major storms.

- A. Maximum credit. Total credits applied to a parcel shall not exceed fifty percent (50%) of the fee. All categories, individually or combined, are subject to this maximum.
- B. Required baseline. A control, practice, or activity required by Chapter 13.11, an approved plan, a permit, or other law does not qualify solely because it satisfies the minimum requirement.
- C. Credit categories. A credit may be approved for documented performance exceeding the required baseline or for another measurable reduction in runoff volume, peak discharge, pollutant loading, or City cost. Possession of a separate MS4 permit, by itself, does not establish eligibility.
- D. Credit manual. Before the fee takes effect, the Director shall publish a Newport Stormwater Credit Manual stating eligibility, calculation, application, renewal, recertification, documentation, and inspection requirements. The draft manual and each material revision shall be published for public comment. The manual may not alter the maximum credit or another substantive limit established by this chapter.
- E. Inspection and enforcement. A credit is conditioned on continued installation, function, maintenance, and timely certification. The Director may inspect a credited measure and require records. After notice, the Director may reduce, suspend, or revoke a credit when a measure fails, records are not provided, or eligibility changes.
- F. Maintenance agreements. The Director may require a maintenance agreement as a condition of credit. The agreement shall be recorded in the land evidence records when continuing obligations should bind successor owners.
- G. Eligibility controls. Credits are available to all property classes on the same terms except as limited by law. The applicant bears the burden of documenting eligibility. The same control or benefit shall not be counted more than once. A credit does not relieve an obligation under Chapter 13.11 or applicable law.

13.13.080. Administrative correction and appeal.

- A. Before billing begins and after a material change, the Department shall issue an assessment statement stating the parcel classification, measured impervious area, ERU or tier assignment, applicable rate, resulting fee, and the procedure and deadline for review.
- B. An owner or authorized agent may request correction of or appeal impervious area, classification, ERU or tier assignment, exemption, credit, account allocation, or application of this chapter. The validity of the Council-adopted rate or this chapter is not subject to administrative appeal.
- C. The owner may file a written correction request with the Director within thirty (30) days after service of the assessment statement. The request shall state the grounds and include supporting evidence. The Director may request a survey, site plan, reasonable documentation, and reasonable access, and shall issue a written decision within thirty (30) days after determining that the request is complete.
- D. An owner aggrieved by the Director's decision may file a written appeal within thirty (30) days after service. The appeal shall be heard by the independent Administrative Hearing Officer appointed under Section 13.09.140 and governed by that section. The thirty (30) day appeal period in this subsection and the protections in subsection E control over any inconsistent provision of Section 13.09.140. The Rhode Island Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35, does not apply.
- E. A timely request or appeal suspends collection, penalties, interest, and lien action on the disputed portion. The undisputed portion remains due. An amount upheld becomes due thirty (30) days after service of the final decision. Approved corrections shall be applied by credit, refund, or rebilling.
- F. A correction request filed after the period in subsection C receives prospective relief only, except that an error in City data, classification, account linkage, duplicate billing, exemption status, or calculation shall be corrected back to the first erroneous charge, limited to charges billed within three (3) years before the request. Further judicial review of the Hearing Officer's final administrative decision may be sought as provided by Rhode Island law.
- G. Service shall be made and documented as provided in Section 13.09.140 (H).

13.13.090. Stormwater utility account; budget; disposition of revenue.

All stormwater service fee revenue shall be deposited into a dedicated stormwater utility account within the Water Pollution Control enterprise fund and restricted to operation, maintenance, repair, replacement, regulatory compliance, administration, debt service, and capital improvement of the City stormwater system. Stormwater revenue shall not pay costs solely attributable to drinking water, sanitary sewer, the general fund, or unrelated municipal purposes.

The annual budget and financial report shall separately identify sewer costs, stormwater costs, shared costs, allocation methods, revenues, expenditures, capital costs, and fund balances. Shared costs, including joint-use or combined facilities and activities, shall be allocated under a documented and consistently applied method based on employee time, work orders, customer accounts, invoices, equipment use, direct project charges, or another measurable cost driver. Stormwater revenue may pay only the documented stormwater share. Unsupported transfers, sewer subsidy, and double recovery are prohibited.

Nothing in this chapter impairs an agreement between the City and Middletown or another governmental unit. Intergovernmental payments for joint or combined-system service shall be credited to the appropriate sewer, stormwater, or shared cost center and shall not result in duplicate recovery.

13.13.100. Billing and payment.

The fee shall be billed on the City utility bill or by separate statement for stormwater-only accounts, on a monthly or other periodic basis determined by the Director. Each parcel shall be separately assessed, but the Department may issue a consolidated statement for an owner with multiple parcels. The fee is the obligation of the recordowner or, for condominium and common-interest property, of the person responsible under Section 13.13.060(H). Delivery of a bill to a tenant, account holder, manager, mortgage company, or other person does not transfer the owner's responsibility. The Department shall apply uniform written rules to multiple accounts, condominiums, common areas, ownership transfers, proration, and stormwater-only parcels.

For a combined utility bill, a payment designated by the payer shall be applied as designated. An undesignated partial payment shall be applied first to drinking-water charges, second to sanitary-sewer and CSO charges, and third to stormwater charges. The Department shall not allocate a payment to stormwater in a manner that creates or preserves a drinking-water delinquency

that would support shutoff when the drinking-water amount due has been paid.

13.13.110. Delinquency, surcharge, lien, and no water shutoff.

- A. A penalty of one and one-half percent (1.5%) per month, calculated as simple interest on the unpaid fee balance, shall be charged beginning thirty (30) days after the billing date, consistent with the sewer charge penalty in Section 13.12.070. Payments shall be applied as provided in Section 13.13.100. No penalty or interest accrues on a disputed portion while a timely request or appeal is pending under Section 13.13.080. The Director may waive a penalty that results from City error.
- B. If a fee and accrued penalties remain unpaid, the City shall provide the record owner written notice stating the delinquent amount, billing periods, basis, intent to impose a lien, and procedure and deadline for challenging the debt. A lien shall not be recorded for a disputed amount while a timely request or appeal is pending. An amount upheld is due within thirty (30) days after service of the final decision.
- C. If unpaid after required notice and expiration of appeal rights, the amount may become a special assessment and lien as authorized by R.I. Gen. Laws Chapter 45-61. The lien shall be recorded, collected, and released as permitted by law. Delinquency and lien procedures do not apply to City-owned property.
- D. Drinking-water service shall not be suspended, limited, or terminated, and a water-service shutoff shall not be threatened, solely because of nonpayment of a stormwater service fee, surcharge, interest, lien, or other amount arising under this chapter.

13.13.120. Remedies not exclusive.

The remedies in this chapter are cumulative and do not exclude another remedy available under federal, state, or local law. A violation of this chapter is punishable by a fine not exceeding five hundred dollars (\$500) or imprisonment not exceeding thirty (30) days under R.I. Gen. Laws Section 45-6-2. The sewer and pretreatment penalty authority in R.I. Gen. Laws Section 45-6-2.3 does not apply to this chapter, and this chapter creates no other fine. Nonpayment of a stormwater service fee is not a violation under this section and is collected only under Section 13.13.110.

13.13.130. Annual stormwater utility report.

Within ninety (90) days after issuance of the City's audited financial statements for each fiscal year, the Department shall prepare an annual stormwater utility report, submit it to the City Manager and City Council, and make it publicly available. The report shall present revenue, expenditures, fund balance, billed ERUs and tiers, City-property charges and payments, credits, corrections and appeals, billing adjustments and write-offs, collections and delinquencies, shared-cost allocations, inspections, enforcement, capital projects, asset condition, regulatory compliance, service results, rate sufficiency, and federal property payments.

13.13.140. Transition, savings, and severability.

Pending corrections, appeals, collection actions, accrued charges, and liabilities are preserved. Technical and administrative procedures adopted under this chapter apply prospectively unless otherwise required by law or necessary to correct an assessment error.

If a provision or application of this chapter is held invalid, the remaining provisions and applications are severable and shall not be affected.

SECTION 2. This ordinance shall take effect upon its passage. Stormwater service fees shall accrue only as provided in Section 13.13.066, and adoption of this ordinance does not establish a rate or commence billing. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

**IN COUNCIL
READ AND PASSED**

LAURA C. SWISTAK, CMC
CITY CLERK