

EXHIBIT B

CHAPTER 7

STORM WATER UTILITY ORDINANCE

SECTION

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14-701. Title and Purpose. This ordinance shall be known as the “Storm Water Utility Ordinance” for the Town of Smyrna, Tennessee.

(1) **Introduction.** The Town of Smyrna finds, determines and declares that the storm water system, which provides for the collection, treatment, storage and disposal of storm water, provides benefits and services to all property within the incorporated Town of Smyrna limits. Such benefits include, but are not limited to: the provision of adequate systems of collection, conveyance, detention, retention, treatment and release of storm water, the reductions of hazards to property and life resulting from storm water runoff, improvements in general health and welfare through reduction of undesirable storm water conditions, and improvements to water quality in the storm water and surface water system and its receiving waters.

(2) **Purpose.** In accordance with Tennessee Code Annotated §68-221-1101 et seq., the Town of Smyrna desires to develop a Storm Water Utility in order to provide a funding mechanism to operate and maintain the Town of Smyrna’s Storm Water Management program and finance the necessary storm water repairs, replacements, improvements, and extensions necessary to protect the health, safety and welfare of the public. The Storm Water Utility purpose is to:

(a) Administer and enforce the Town of Smyrna Storm Water Management Ordinance;

(b) Administer, plan, and implement storm water projects to protect, maintain, and enhance the environment of the Town of Smyrna;

(c) Implement activities necessary to maintain compliance with the National Pollutant Discharge Elimination System (NPDES) Permit and applicable regulations, 40 CFR Section 122.26 for storm water discharges;

(d) 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; and,

(e) Advise the Town Council and other Town of Smyrna departments on matters relating to the utility.

(3) Administering entity. The Storm Water Utility shall be part of the Public Works Department. The Storm Water Utility, under the direction and supervision of the Director of Public Works or his designee, shall administer the provisions of this Storm Water Utility Ordinance as approved by the Town Manager.

14-702. Jurisdiction. The Storm Water Utility Ordinance shall govern all properties within the corporate limits of the Town of Smyrna.

14-703. Definitions. For the purpose of this chapter, the following definitions shall apply:

(1) *“Agricultural property”*. Property which is zoned agricultural and/or property which yields an annual minimum, or in which the annual minimum has been met in two of the last five years, of \$1,000.00 of agricultural products produced and/or sold from the operation of the property. Agricultural production shall include agricultural, forest, and/or livestock production as defined by the United States Department of Agriculture, Natural Resources Conservation Service, Environmental Quality Incentive Program. Proof of agricultural producer status may include IRS from 1040 Schedule F or other accounting records certified by a tax preparer.

(2) *“Base rate”*. The storm water user fee for a detached single family residential property in the Town of Smyrna.

(3) *“Best Management Practices” or “BMPs”*. The physical, structural, and/or managerial practices that, when used singly or in combination, prevent or reduce pollution of water, that have been approved by the Town of Smyrna, and that have been incorporated by reference into the Storm Water Management Ordinance as if fully set out therein.

(4) *“Construction”*. The erection, building, acquisition, alteration, reconstruction, improvement or extension of storm water facilities; preliminary planning to determine the economic and engineering feasibility of storm water 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 storm water facilities; and the inspection and supervision of the construction of storm water facilities.

(5) *“Deficient property”*. Real property that does not have adequate storm water facilities as required in the latest edition of the Town of Smyrna Subdivision Regulations.

(6) *“Developed property”*. 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.

(7) *“Equivalent residential unit” or “ERU”*. The average of the total square footage of the impervious surface areas of developed single family residential property within the Town of Smyrna as approved by the Town Council.

(8) *“Exempt property”*. All public rights-of-way, public streets and public roads, public alleys, public sidewalks and public greenways, public “park and ride” facilities and bus stops, and railroad right-of-way properties within the Town of Smyrna. For purposes of this definition, “public” shall mean that which is maintained by or is or is to be dedicated to the Town of Smyrna and/or the State of Tennessee or the government of the United States.

(9) *“Fiscal year”*. July 1 of a calendar year to June 30 of the next calendar year, both inclusive.

(10) *“Impervious surface”*. 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.

(11) *“Impervious surface area”*. The number of square feet of horizontal surface covered by buildings, and other impervious surfaces. All building measurements shall be made between exterior faces of walls, foundations, columns or other means of support or enclosure.

(12) *“Other developed property”*. 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. Such property shall also include single family dwellings which are attached to or otherwise a part of a building housing a commercial enterprise. Any single family residential structure which contains more than two attached dwelling units is specifically included in this definition.

(13) *“Person”*. 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.

(14) *“Property owner”*. The property owner of record as listed in the county’s tax assessment roll. A property owner includes any individual, corporation, firm, partnership, or group of individuals acting as a unit, and any trustee, receiver, or personal representative.

(15) *“Single family residential property”*. A developed property which serves the primary purpose of providing a permanent dwelling unit to a single family. A single family detached dwelling, a townhouse, an accessory apartment or second dwelling unit, a duplex, a condominium, a villa, or a garden home is included in this definition. A single family dwelling which is attached to, or otherwise a part of, a building housing a commercial enterprise is not included in this definition.

(16) *"Storm water"*. Storm water runoff, snow melt runoff, surface runoff, infiltration, and drainage.

(17) *"Storm water user fee" or "Fee"*. The utility service fee established under this ordinance and levied on owners or users of parcels or pieces of real property to fund the costs of storm water management and of operating, maintaining, and improving the storm water system in the Town of Smyrna. The storm water user fee is in addition to other fees that the Town of Smyrna has the right to charge under any other rule or regulation of the Town of Smyrna.

(18) *"Storm Water Utility"*. A management structure that is responsible solely and specifically for the storm water management program and system.

(19) *"Storm Water Utility Management Fund" or "fund"*. The fund created by this ordinance to operate, maintain, and improve the Town of Smyrna's storm water system.

(20) *"Storm water management"*. The programs to manage quality and quantity of storm water runoff.

(21) *"Storm water system"*. The natural or manmade system that collects, conveys, stores or otherwise treats or affects storm water or surface water.

(22) *"Surface water"*. Waters upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other watercourses, lakes, ponds, wetlands, marshes and sinkholes.

(23) *"User"*. The owner or customer of record of property subject to the storm water user fee imposed by this ordinance.

(24) *"Vacant/undeveloped property"*. Property on which there is no structure for which a certificate of occupancy has been issued.

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.

14-704. Funding of storm water utility. Funding for the Storm Water Utility's activities may include, but not be limited to, the following:

- (i). Storm water user fees;
- (ii). Civil penalties and damage assessments imposed for or arising from the violation of the Town of Smyrna Storm Water Management Ordinance and Town of Smyrna Storm Water Utility Ordinance;
- (iii). Storm water permit and inspection fees; and
- (iv). 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 storm water user fees collected are insufficient to construct needed storm water drainage facilities, the cost of the same may be paid

from such Town of Smyrna funds as may be determined by the Town Council.

14-705. Storm water utility management fund. All revenues generated by or on behalf of the Storm Water Utility shall be deposited in a Storm Water Utility Management Fund and used to fulfill the purposes of the Storm Water Utility.

14-706. Operating budget. The Town Council shall adopt, based on a recommendation from the Storm Water Utility, an operating budget for the Storm Water Utility Management 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.

14-707. Storm water user fee established. There shall be imposed on each and every developed property in the Town of Smyrna, except exempt property, a storm water user fee, which shall be set from time to time by ordinance in the fee schedule as adopted by the Town Council, and in the manner and amount prescribed by this ordinance. Prior to establishing or amending the storm water user fee, the Town of Smyrna shall advertise its intent to do so by publishing notice in a newspaper of general circulation in the Town of Smyrna at least thirty (30) days in advance of the meeting of the Town Council which shall consider the adoption of the fee or its amendment.

14-708. Equivalent residential unit (ERU).

(1) Establishment. There is established for purposes of calculating the storm water user fees the equivalent residential unit (ERU) as a method of measurement.

(2) Definition. The ERU is the average of the total square footage of the impervious surface areas of developed single family residential property within the Town of Smyrna as approved by the Town Council.

(3) Setting the ERU. The ERU shall be set by the Town Council in the fee schedule as adopted by the Town Council.

(4) Source of ERU. The Town Council 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 storm water systems, and the reliability and general accuracy of the source including but not limited to property tax assessor's rolls, site examination, mapping information, aerial photographs, and other reliable information.

(5) Evaluation of ERU. The ERU shall be evaluated by the Storm Water Utility as necessary, but the ERU shall be evaluated at least every five years.

14-709. Property classification for storm water user fees.

(1) Property classifications. For purposes of determining the storm water user fee, all properties in the Town of Smyrna are classified into one of the following categories:

- (a) Single family residential property;

- (b) Other developed property;
- (c) Vacant/undeveloped property;
- (d) Agricultural property; or
- (e) Exempt property.

(2) Single family residential fee. The Town Council finds that the intensity of development of most parcels of real property in the Town of Smyrna classified as single family residential is similar and that it would be excessively and unnecessarily expensive to determine precisely the square footage of the impervious surface on each such parcel. Therefore, all single family residential properties in the Town of Smyrna shall be charged a flat storm water user fee, equal to the ERU base rate, regardless of the size of the parcel or the impervious surface area of the improvements, except as provided herein. Single family residential property in which the impervious surface exceeds 10,000 square feet, including any detached accessory structures, shall be charged the same as the fee for other developed property.

(3) Other developed property fee. The fee for other developed property (i.e., non-single-family residential property) in the Town of Smyrna 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 minimum storm water user fee for other developed property shall equal the base rate for a single family residential property.

(4) Vacant/undeveloped property fee. The fee for vacant/undeveloped property in the Town of Smyrna shall be as follows:

(a) If the property contains less than 1800 square feet of impervious surface, then no storm water user fee shall be charged;

(b) If the property contains 1800 square feet or more of impervious surface, then property shall be charged based on the amount of impervious surface as other developed property, with the minimum charge being the single family residential fee.

(5) Agricultural property. The fee for agricultural property in the Town of Smyrna shall be as follows:

(a) If the property contains impervious surface in an amount equal to or less than the average ERU, then the minimum storm water user fee for such property shall equal the base rate for a single family residential property;

(b) If the property contains impervious surface in an amount greater than the average ERU, then the property shall be charged in the same manner as other developed property.

(6) Exempt property. There shall be no storm water user fee for exempt property or as otherwise provided by State law.

14-710. Base rate. The Town Council shall, by ordinance in the fee schedule as adopted by the Town Council, establish the base rate for the ERU. The base rate shall be calculated to insure adequate revenues to fund the costs of storm water management and to provide for the operation, maintenance, and capital improvements of the storm water system in the Town of Smyrna.

14-711. Property owners to pay charges. The owner of each property shall be obligated to pay the storm water user fee as provided in this ordinance, provided however, that if no water or sewer service is being provided at the property to the owner as a customer of record and such service is being provided to a customer of record other than the owner, it shall be presumed that the owner and such customer of record have agreed that the customer of record shall be obligated to pay such storm water user fee. If the customer of record other than the owner refuses to pay the storm water user fee, the owner of each developed property shall be obligated to pay the storm water user fee as defined in this ordinance.

Non-residential multi-tenant properties shall be billed according to the placement of utility meters, i.e. if the property contains individual unit meters, then billing for the storm water user fee shall be billed to individual units based on the unit's pro rata percentage of impervious surface. If the multi-tenant property contains a master meter, then the storm water user fee for the entire impervious surface area shall be billed to the customer of record for such master meter.

Each unit of a multi-tenant residential building shall be billed a minimum charge, the same being the single family residential fee, to the customer of record for the unit. If an individual unit is not individually billed for any water or sewer service, i.e. water and sewer utilities are billed to a master meter, then the customer of record for the master meter shall be billed as other developed property based on the total impervious surface area.

14-712. Billing procedures and penalties for late payment.

(1) Rate and collection schedule. A storm water user fee shall be set at a rate as set forth in the fee schedule as adopted by Town Council by ordinance, collected at a location and collected on a schedule, established in accordance with this ordinance. The storm water user fee shall be billed and collected monthly with the monthly utility services bill for those properties within the corporate limits. The storm water user fee for those properties utilizing town utilities is part of a consolidated statement for utility customers, which is generally paid by a single payment to the Town of Smyrna Utility Department. The storm water user fee for those properties utilizing utilities not provided by the Town of Smyrna shall be billed and collected monthly as part of a monthly consolidated statement through the applicable utility providing water or sewer service for the user. All bills for the storm water user fee shall become due and payable in accordance with the rules and regulations of the applicable utilities department pertaining to the collection of the storm water user fees.

(2) Delinquent bills. The storm water user fee shall be considered delinquent if not received by the Town of Smyrna by the due date stated in the utility statement and subsequent late fees shall be imposed as set forth in the fee schedule as adopted by the Town Council as established by an ordinance.

(3) Penalties for late payment; failure to pay. Storm water user fees shall be subject to a late fee established by ordinance. The Town of Smyrna shall be entitled to recover attorney's fees incurred in collecting delinquent storm water user fees. The Town or other collecting utility provider may discontinue utility service to

any storm water user who fails or refuses to pay the storm water user fees and may refuse to accept payment of the utility bill from any user without receiving at the same time, payment of the storm water user fee charges owned by such user and further may refuse to re-establish service until all such fees have been paid in full.

(4) Mandatory statement. Pursuant to Tennessee Code Annotated § 68-221-1112, each bill that shall contain storm water user fees shall contain the following statement in bold: **“THIS TAX HAS BEEN MANDATED BY CONGRESS”**. Although the mandatory statement will be placed on each bill, the Town of Smyrna Town Council hereby finds and declares that the storm water user fee is a utility service fee and not a tax.

14-713. Appeals of fees. Any person who disagrees with the calculation of the storm water user fee, as provided in this ordinance, may appeal such fee determination to the Storm Water Advisory Committee within ten (10) days after the date the payment is due. Any appeal not filed within the time permitted by this section shall be deemed waived.

All appeals shall be filed in writing addressed to the Director of Public Works and shall state the grounds for the appeal and the amount of the storm water user fee the appellant asserts is appropriate. The appeal shall provide such information and documentation supporting the basis of the appeal. The appeal shall be accompanied by an appeal review fee as set forth in the fee schedule adopted by the Town Council. The appeal review fee shall be refunded to any party who prevails in an appeal of the calculation of the storm water user fee. As a condition to maintaining an appeal, the appellant shall pay all charges billed under protest prior to or at the time of the filing of the appeal.

The Storm Water Advisory Committee shall review the appeal and determine whether the challenged determination is consistent with the provisions of this chapter. Appeals related to the storm water user fee shall be decided based on substantiated evidence with a sound engineering and factual basis. All appeal determinations shall be applied utilizing a strict interpretation of the Storm Water Utility Ordinance. At any hearing related to an appeal or credit determination, the town shall be allowed to present evidence, findings, and recommendations; appealing parties and applicants shall be given an opportunity to present evidence, findings, and recommendations. The Storm Water Advisory Committee may request additional information from the appealing party; the committee may defer the determination of an appeal one time to the next regularly scheduled meeting of the Storm Water Advisory Committee. Each appeal shall be placed on the Storm Water Advisory Committee agenda for the next regularly scheduled meeting, which meeting is at least twenty days after the Director of Public Works receives the written appeal. The Director of Public Works shall notify the appellant customer of the date of the appeal review hearing in writing; such written notice shall be given at least ten days prior to the hearing by regular mail at the address provided in the written appeal document. The decision of the Storm Water Advisory Committee shall be final and conclusive with no further administrative review.

If a refund is due, the Director of Public Works shall authorize the refund which will be provided as a credit against the customer’s storm water user fee billings until such credit is exhausted.

14-714. Storm water user fee credit and adjustment policy. Storm water user fee credits and adjustments are available to other developed property (i.e. non-single family residential property) with exception to a small homes credit, which is available exclusively for single family residential property as outlined in the Storm Water Utility Credit and Adjustment Policy Manual.

14-715. Effective date. This ordinance shall become effective as of the date of its passage on second reading by the Town Council. Storm water user fees shall be charged as a utility billing for all customers within the corporate town limits no earlier than August 1, 2008.