ORDINANCE #

AN ORDINANCE TO AMEND CHAPTER 48, ARTICLE VI, STORMWATER MANAGEMENT ENTERPRISE FUND, DIVISION 2, STORMWATER SERVICE CHARGES

WHEREAS, the Black Mountain Code of Ordinances was adopted by the Town Council on the 13th day of December 1993, and the Black Mountain Land Use Code was adopted by the Town Council on the 11th day of January 2010; and

NOW, THEREFORE, BE IT RESOLVED THAT Chapter 48, Article V, Division 2, Stormwater Service Charges, of the Town of Black Mountain Code of Ordinances, be amended to the following:

ARTICLE VI. – STORMWATER MANAGEMENT ENTERPRISE FUND

DIVISION 2. STORMWATER SERVICE CHARGES

Sec. 48-280. – Stormwater service charges.

(a) Jurisdiction: All developed land in the town, whether public or private, **will** ~~shall~~ be subject to a stormwater service charge set by the town council. Exemptions **will** ~~shall~~ not be allowed based on age, tax exemption, or other status of an individual or organization. Service charges may be subject to a credit system as further provided.

(b) Establishment of stormwater charges and fees: There is hereby established a stormwater utility fee to be imposed on all property within the boundaries and jurisdiction corporate limits of the town, including all areas hereafter annexed thereto, whether public or private, based on the fees, charges, and penalties adopted by the town council. Stormwater service charges on developed land **will** ~~shall~~ be based on a scheduled of rates, charges, tiers, and late fees fixed and established from time to time by the town council, adopted in the annual budget ordinance and maintained on file in the office~~s~~ of the town clerk. Stormwater utility service fees will be determined and modified so that the total revenues generated by said fess will be used to pay such expenses as are reasonably necessary or convenient in the management, administration, planning, regulatory compliance, public education, construction, operation, and maintenance of the stormwater system and to pay principal of and interest on the debt incurred for stormwater purposes.

(c) Fees **will** ~~shall~~ be assessed using a flat tiered system based on the intensity of the principal use of each parcel. Any parcel classified as mixed-use **will** ~~shall~~ be assessed the stormwater utility fee associated with the most intensive use occurring on the property.

(d) The principal use shall be determined by the planning director**, or their designee(s),** who shall base such determination on:

(1) Tier 1 – Minimal impact, residential. Each parcel upon which the principal use is single-family residential dwellings, including duplexes, condominiums, and townhomes, **will** ~~shall~~ be assessed at the Tier 1 rate.
(2) Tier 2 – Moderate impact, commercial and institutional. Each parcel upon which the principal use is neither residential nor industrial, including but not limited by way of limitation, retail establishments; medical offices, restaurants, professional services, automotive services; fitness centers, spas and salons, religious services; apartment complexes; and residential care facilities, **will** ~~shall~~ be assessed at the Tier 2 rate.
(3) Tier 3 – Undeveloped. Each parcel upon which there is no residential, industrial, commercial, institutional, or other non-residential use and which remains in its natural, vegetative state, **will** ~~shall~~ be assessed at the Tier 3 rate.
(4) Tier 4 – Exempt. Each parcel owned by the Town of Black Mountain, Buncombe County, the state of North Carolina, or the United States of America.
(5) Tier 5 – Significant impact, industrial. Each parcel upon which the principal use is light or heavy industrial, including, but not limited by way of limitation, asphalt; mining; warehousing; and processing facilities, **will** ~~shall~~ be assessed at the Tier 5 rate.

Sec. 48-281. – Exemptions and credits.

Except as provided in this section, no developed property **will** ~~shall~~ be exempt from stormwater utility service fees or receive credit against such fees.

(1) There **will** ~~shall~~ be no exception, credit, offset, or other reduction in stormwater service charges **granted** ~~grated~~ based upon age, race, tax status, economic status, or religion of the customer, or any other condition unrelated to the stormwater utility's cost of providing stormwater management services and facilities.
(2) The **property** owner ~~or current resident~~ of any parcel may be eligible to receive a monthly credit against the assessed stormwater utility fee in recognition of on-site or off-site systems, facilities, measures, and actions taken by customers that exceed minimum requirements for stormwater management, provided that such credit **will** ~~shall~~ be conditioned upon the continuing performance of the systems, facilities, measures, or actions upon which the credits are granted for the remainder of months, and the maximum credit **will** ~~shall~~ not exceed 50 percent of the original assessed fee.
(3) The planning director **will** ~~shall~~ prepare a stormwater credit and incentive manual setting forth the appropriate credit application process, eligibility criteria, and standards upon which such credits are given.
(4) Credits **will** ~~shall~~ be in the amounts set forth in the schedule of rates, fees, charges, and penalties adopted annually by the town council.
(5) This section 48-281 **will** ~~shall~~ be effective by January 1, 2024.

Section 48-282. – ~~[~~Billing and collection of stormwater service fees, rents, rates, charges, and penalties.~~]~~

Billing and collection of stormwater service fees, rents, rates, charges, and penalties **will** ~~shall~~ be administered by the finance director**, or their designee(s),** who is hereby authorized to develop policies and procedures to effectuate the purpose and intent of this section.

(1) Responsible party: As authorized by NCGS Section 160A-314, stormwater utility fees, charges, and penalties will remain the responsibility and obligation of the property owner.

(2) Stormwater service charges may be billed on a combined utility bill that also contains fees and charges for other utility services provided by the town such as, water and/or sewer service. The stormwater utility fee **will** ~~shall~~ be billed monthly upon the normal utility billing and **will** ~~shall~~ be shown as a separate item. ~~(Stormwater service bills for a property that receives other town provided utilities shall be sent to the customer receiving such service. However, where multiple water and sewer accounts exist for a single parcel, the stormwater service bill may be sent to the property owner.~~

(3) A stormwater bill will either be sent through the United States mail or delivered by an alternate method, notifying each **property owner** ~~customer~~ of the amount of the bill, the date the payment is due and the date when past due. Failure to receive a bill is not justification for nonpayment. ~~The owner of each parcel of developed land shall be ultimately obligated to pay such fee.~~

(4) Stormwater utility service fees **will** ~~shall~~ be due and payable as set forth in the town's adopted utility billing policy and procedures manual and will be subject to rates, fees, and penalties listed within the schedule of utility rates and fees. ~~The property owner is ultimately responsible for payment of the stormwater utility service fee for property for which the party bill has not paid the stormwater fee as authorized by N.C.G.S. § 160A-314.~~

(5) Combined utility billing: Where stormwater service charges appear on a combined utility bill, and a customer does not pay the service charges for all the utilities on the bill, the partial payment will be prorated and applied to the respective utilities in the following order:

a. Delinquent stormwater utility fees and service charges,
b. Delinquent combined sewer and water charges,
c. Current stormwater changes, and
d. Current combined sewer and water charges.

(6) Where a property receives water and/or sewer service, if stormwater service charges for that property are not paid, water and/or sewer service to that property may be terminated, whether or not the stormwater charges were included on a combined utility bill. Termination will be handled in accordance with the Adopted Utility Billing Policy and Procedures Manual.

(7) No property for which stormwater service charges are outstanding is entitled to receive water and/or sewer service until the outstanding stormwater service charge on that property is paid. No customer with a delinquent stormwater

service account is entitled to open a water and/or sewer account at the same or different location until the delinquency has been satisfied.

(8) Non-combined and/or separate stormwater utility billing: For properties not having otherwise active utility accounts, stormwater utility service fee will shall be billed to the **property owner** ~~owners or other persons listed on the real property tax records~~.

(9) No criminal penalty: A violation of this section subjects the offender to a civil penalty pursuant to the authority granted by N.C.G.S. § 160A-175 and does not subject the offender to the criminal penalty provisions of N.C.G.S. § 14-4.

(10) Back billing: If property is incorrectly billed, or not billed, or a bill is sent to the ~~wrong party~~ **property owner**, the **town** ~~city~~ may back bill a property for up to a three-year period.

(11) Collection on unpaid stormwater fees will shall be done in conformance with the Town of Black Mountain Adopted Utility Billing Policy and Procedures Manual.

Sec. 48-283. – Reserved.

Sec. 48-284. – Appeals.

This article **will** ~~shall~~ not be construed as to relieve any person from the payment of any fee or charge which is due and payable under the provisions of any prior ordinance, nor to bar the collection of same by any and all means in said prior ordinance or otherwise provided by law. No adjustment to a customer's bill may be made by the **planning** director or the **town** manager for more than three-year period immediately preceding the date that the customer's appeal is received by the **town** manager. Any customer who believes the provisions of this article have been applied in error may appeal in the following manner:

(1) In the event a ~~current resident or the~~ property owner disputes the stormwater utility charges assessed to that ~~current resident's or~~ property owner's property, including determination of the applicable tier rate or determination of applicable credits, the ~~current resident or~~ property owner may apply for a redetermination. The planning director **will** ~~shall~~ decide to approve or deny the application within 30 days of receipt of the completed application. The planning director's decision **will** ~~shall~~ be in writing and if a denial, **will** ~~shall~~ state the reasons for the denial.

(2) In the event the application for a redetermination is denied, the **property owner** ~~applicant~~ may appeal the denial to the town manager by filing a written notice of appeal with the office of the town manager within ten calendar days of the date of denial. The town manager **will** ~~shall~~ review the application for redetermination, including supporting evidence provided with the application, and make a decision to allow or deny the appeal within 30 days of receipt of the completed ~~notice of~~ appeal **application**. The decision **will** ~~shall~~ be in writing, and if denied, **will** ~~shall~~ state the reasons for the denial.

(3) The decision of the town manager may be appealed to Superior Court in the nature of certiorari.

(4) If an application for redetermination is approved, the planning director or the town manager may adjust the fee as long as the adjustment is in conformance with the intent of this article. The stormwater fee **will** ~~shall~~ be adjusted accordingly for the specific parcel and the adjusted rate **will** ~~shall~~ apply to the next regularly generated bill for the entirety of the building period.
(5) No provision of this article allowing for administrative appeal **will** ~~shall~~ be deemed to suspend the due date for payment in full of the stormwater utility service fee.

Sec. 48-285. – Use of revenue; investment of funds; borrowing.

Funds generated for the stormwater management utility from fees, bonds issued, other borrowing and other sources **will** ~~shall~~ be utilized only for those purposes for which the stormwater management utility has been established. Such funds **will** ~~shall~~ be invested and reinvested pursuant to the same procedures and practices established by the **town** ~~city~~ for investment and reinvestment of funds. The town council may use any form of borrowing authorized by law to fund capital acquisitions expenditures for the stormwater management utility.

READ, APPROVED AND ADOPTED, by a vote of _____ to _____ on this the 14th day of September 2026.

_____
C. Michael Sobol, Mayor

ATTEST:

_____
Wesley M. Barker, Town Clerk