

ORDINANCE NO. 73-2009

AN ORDINANCE CREATING ARTICLE XIV OF CHAPTER 16 OF THE CODE OF ORDINANCES TO ESTABLISH A SYSTEM OF WATER QUALITY MANAGEMENT FEES; DEFINING TERMS RELATING TO THE WATER QUALITY MANAGEMENT FEES; IMPOSING A WATER QUALITY MANAGEMENT FEE ON EVERY PARCEL OF LAND IN FAYETTE COUNTY EXCEPT UNDEVELOPED PARCELS, RAILROAD TRACKS, STATE AND FEDERAL ROADS, URBAN COUNTY GOVERNMENT STREETS AND ROADS, AND PRIVATE STREETS USED EXCLUSIVELY FOR ACCESS TO SINGLE-FAMILY RESIDENTIAL PROPERTIES; PROVIDING THAT "CLASS A PROPERTIES: SINGLE FAMILY AND FARM PROPERTIES" SHALL PAY \$4.32 PER MONTH FOR EACH PARCEL AND THAT THE CHARGE FOR "CLASS B PROPERTIES: ALL OTHER PARCELS" SHALL BE BASED ON THE AMOUNT OF IMPERVIOUS SURFACE, EXPRESSED IN EQUIVALENT RESIDENTIAL UNITS (ERUs), DETERMINED TO BE 2,500 SQUARE FEET OF IMPERVIOUS SURFACE, MULTIPLIED BY \$4.32 PER MONTH BUT IN NO EVENT SHALL ANY PARCEL PAY LESS THAN \$4.32 PER MONTH; PROVIDING THAT WATER QUALITY MANAGEMENT FEES SHALL BE ADJUSTED ANNUALLY EACH FISCAL YEAR BEGINNING JULY 1, 2011, IN ACCORDANCE WITH THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS; PROVIDING FOR MONTHLY BILLING AND PROVIDING THAT THE OWNER, TENANT, OR PERSON RESPONSIBLE FOR PAYMENT OF WATER SERVICE AND /OR SEWER SERVICE CHARGES IS ALSO RESPONSIBLE FOR PAYMENT OF THE WATER QUALITY MANAGEMENT FEES; PROVIDING FOR ALLOCATION OF FEES AMONG MULTIPLE OCCUPANTS FOR SHOPPING CENTERS, APARTMENTS, CONDOMINIUMS, ETC., WITH THE OWNER REMAINING FULLY RESPONSIBLE FOR PAYMENT OF ALL WATER QUALITY MANAGEMENT FEES; PROVIDING FOR COLLECTION OF FEES, INCLUDING ESTABLISHING A PENALTY OF TEN PERCENT (10%) AND INTEREST OF ONE PERCENT (1%) PER CALENDAR MONTH ON BILLS REMAINING UNPAID FOR MORE THAN THIRTY (30) DAYS, AND AUTHORIZING AND DIRECTING THE DEPARTMENT OF LAW TO INSTITUTE LEGAL PROCEEDING FOR COLLECTION OF FEES; ESTABLISHING A THIRTY PERCENT (30%) DISCOUNT PROGRAM FOR QUALIFYING SENIOR CITIZENS AND DISABLED CITIZENS; TO ESTABLISH A GRANT PROGRAM PROVIDING FOR QUALIFYING CUSTOMERS TO RECEIVE A FIFTY PERCENT (50%) ADJUSTMENT TO THEIR BILL FOR WATER QUALITY MANAGEMENT FEES; PROVIDING THAT ALL MONIES COLLECTED THROUGH WATER QUALITY MANAGEMENT FEES SHALL BE SEPARATELY IDENTIFIED AND ACCOUNTED FOR AND ALL EXPENSES RELATING TO THE URBAN COUNTY GOVERNMENT'S STORMWATER PROGRAM SHALL BE SEPARATELY IDENTIFIED AND ADMINISTERED; PROVIDING AN APPEAL PROCESS FOR PERSONS WHO CONSIDER THAT FEES APPLIED ARE INACCURATE; ESTABLISHING A WATER QUALITY FEES BOARD TO REVIEW DENIALS OF REQUESTS FOR ADJUSTMENT OF SANITARY SEWER USER FEES AND DECISIONS ON APPLICATIONS FOR ADJUSTMENT TO WATER QUALITY MANAGEMENT FEES, PROVIDING THAT THE BOARD SHALL BE COMPOSED OF FIVE (5) CITIZENS APPOINTED BY THE MAYOR AND AN EX OFFICIO MEMBER FROM THE DEPARTMENT OF LAW, AND PROVIDING THAT NO TWO CITIZEN MEMBERS MAY RESIDE IN THE SAME COUNCIL DISTRICT; PROVIDING THAT A FORMAL REVIEW AND AUDIT OF THE WATER QUALITY MANAGEMENT FEES SHALL BE PERFORMED ON OR BEFORE JANUARY 31, 2013 AND EVERY FIVE (5) YEARS THEREAFTER AND PROVIDING THAT AT LEAST ONE PUBLIC HEARING SHALL BE HELD EVERY TIME THE REVIEW AND AUDIT IS PERFORMED; ESTABLISHING A STORMWATER QUALITY PROJECTS INCENTIVE GRANT PROGRAM TO PROVIDE COST-SHARING ASSISTANCE FOR ELIGIBLE PROJECTS THAT WILL IMPROVE WATER QUALITY TO BE FUNDED ANNUALLY IN AN AMOUNT NOT LESS THAN TEN PERCENT (10%) OF THE TOTAL REVENUE GENERATED BY THE FEES; PROVIDING THAT THE FEES WILL NOT BE IMPLEMENTED BEFORE JANUARY 1, 2010; AND REPEALING SECTION 16-63(c) RELATING TO THE SANITARY SEWER USER FEE APPEALS BOARD.

WHEREAS, the Urban County Government is authorized by statutory authority including, without limitation, KRS 67A.060, KRS 67.080, KRS 67.083 and KRS 82.082 to operate a stormwater drainage system to collect and convey stormwater which may be referred to as the MS4 or "municipal separate storm sewer system"; and

WHEREAS, the mission of the stormwater management program of the Urban County Government is to safely and efficiently manage stormwater runoff, enhance public health and safety, enhance public education of stormwater management issues, protect lives and property, facilitate mobility and enable access, complement and support other programs/objectives, minimize the discharge of pollutants in stormwater in compliance with applicable federal and state laws, and enhance the natural resources of the community; and

WHEREAS, the Urban County Government, the United States Environmental Protection Agency, and the Commonwealth of Kentucky have entered into a Consent Decree in a case styled *United States, et al. v. Lexington-Fayette Urban County Government*, United States District Court for the Eastern District of Kentucky, Case No. 5:06-CV-00386, wherein the Urban County Government is required to impose a stormwater management fee to fund the stormwater management program described therein; and

WHEREAS, KRS 91A.510 et seq. authorizes local governments to impose a fee or charge on users of a public service not also available from a non-governmental provider; and

WHEREAS, it is the desire of the Urban County Council to adopt and implement a schedule of fees sufficient to fund the stormwater management program.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That Article XIV of Chapter 16 of the Code of Ordinances of the Lexington-Fayette Urban County Government be, and hereby is, created and enacted to read as follows:

ARTICLE XIV. WATER QUALITY MANAGEMENT FEES

Sec. 16-401. Establishment.

A system and structure of water quality management fees to be applied to all developed parcels of land within Fayette County is hereby established in accordance with the provisions of this chapter.

Sec. 16-402. Definitions.

(1) *Developed* means the condition of real property altered from its natural state by the addition to or construction on such property of impervious ground cover or other manmade physical improvements so that the hydrology of the property or a portion thereof is affected.

(2) *Stormwater Management Program* means the plan for managing storm drainage and surface water runoff facilities and features within the water quality management area and the drainage basins therein.

(3) *Water Quality Management Area* includes all developed parcels within Fayette County.

(4) *Water quality management fee* means the fee levied by the urban county government upon all developed parcels within the boundaries of the water quality management area as authorized by this chapter.

(5) *Equivalent Residential Unit (ERU)* means the measure of impervious ground cover for a typical single-family residential property used in assessing the water quality management fees for each parcel of property and which has been determined to be 2,500 square feet.

(6) *Impervious Surface* means those hard surface areas either which prevent or retard the entry of water into the soil in the manner that such water entered the soil under natural conditions pre-existent to

development, or which cause water to run off the surface in greater quantities or at an increased rate of flow than that present under natural conditions pre-existent to development, including, without limitation, such surfaces as roof tops, asphalt, concrete, pavers, aggregate, paving, driveways and parking lots, private streets, walkways, patio areas, storage areas or other surfaces which similarly affect the natural infiltration or runoff patterns existing prior to development.

(7) *Non-Single Family Residential Properties or Parcels* means properties or parcels which contain more than one residential structure or one residential structure with more than two residential dwelling units and institutional, commercial or industrial properties.

(8) *Residence* means a building or structure or portion thereof, designed for and used to provide a place of abode for human beings. The term *Residence* includes the term *Residential* and *Residential Unit* as referring to the type of or intended use of building or structure.

(9) *Single Family Residential Property or Parcel* means any property or parcel which contains one residential structure with one or two residential dwelling units.

(10) *Stormwater Drainage System* means a conveyance or system of conveyances, including, but not limited to, roads with drainage systems, urban county streets, inlets, curbs, gutters, ditches, basins, man-made channels or storm drains which are: (i) owned or operated by the urban county government; and (ii) designed or used for collecting or conveying stormwater.

(11) *Stormwater* means stormwater runoff, snow melt runoff, and surface runoff and drainage.

(12) *Undeveloped* means the condition of real property unaltered by construction or addition to such property by man of impervious ground cover or physical manmade improvements of any kind which change the hydrology of the property from its natural state.

(13) *Farm property* means any parcel occupied exclusively for "agricultural use" as defined in Article 1-11 of the Zoning Ordinance.

(14) *Parcel or lot* means a legally created and definable piece of real estate resulting from subdivision of a large area or from conveyance by deed or land sales contract.

Sec. 16-403. Water quality management fee.

(1) A water quality management fee is imposed on every parcel of land within the water quality management area except the following:

(a) undeveloped parcels;

(b) railroad tracks;

(c) state and federal roads;

(d) urban county government streets and roads.

(e) private streets which are used exclusively for access to single-family residential parcels.

(2) The following charges are hereby established and imposed for all parcels within the water quality management area, excluding exempted properties:

(a) Class A properties: single family residential or farm properties. The single family residential rate shall be \$4.32 per month for each parcel and the farm property rate shall be \$4.32 per month for each parcel. This flat rate fee is based on each single-family residential parcel or farm property being equal to one ERU. The urban county government shall determine the number of single family residential parcels and farm properties in the water quality management area.

(b) Class B: all other parcels: The charge for all other parcels within the water quality management area shall be based upon the number of square feet of measured impervious surface, as determined by the urban county government through aerial photography and surface feature evaluation processes, expressed in whole ERUs by rounding to the nearest ERU (determined to be 2,500 square feet of impervious surface). The charge for Class B properties shall be computed by multiplying the number of ERUs for a given parcel by the unit rate established by the urban county government of \$4.32 per ERU per month but in no event shall any such parcel pay less than \$4.32 per month.

(c) All rates and fees set forth in this section shall be adjustable each July 1 beginning on July 1, 2011, by an amount based upon the Consumer Price Index for All Urban Consumers, the U.S. City Average ("CPI-u") published monthly by the Bureau of Labor Statistics. These rates shall be adjusted up if so indicated by a factor determined by averaging the monthly CPI-u published for the 12-month period ending, and including, April of the year before the July 1 adjustment.

Sec. 16-404. Billing and Collection.

(1) Water quality management fees shall be billed and made payable monthly.

(2) The owner(s), tenant(s), or person(s) responsible for the payment of water service charges and/or sewer service charges shall also be responsible for the payment of water quality management fees for the same parcel(s) except for multiple occupancy such as shopping centers, apartments, condominiums, etc., in which cases the urban county government may either allocate the water quality management fees among the occupants of the parcel or may deem that a single billing to the parcel's owner(s), agent, or association is appropriate. In either case, the billed party shall be responsible for payment of water quality management fees. In all situations, the owners of properties subject to water quality management fees shall be fully responsible for payment of said charges regardless of any other parties herein above identified as also being responsible for payment of water quality management fees.

(3) Bills for water quality management service shall be due when rendered; and the face amount, without penalty or interest, shall be paid on the due date.

(4) All unpaid water quality management bills are subject to a penalty and interest charge to be computed in the following manner:

(a) Any water quality management bill or a portion of any unpaid water quality management bill remaining unpaid for more than thirty (30) days from the date of billing shall be assessed a penalty of ten percent (10%) of the unpaid balance.

(b) In addition to the penalty provided in subsection (4)(a) of this section, any water quality management bill or a portion of any water quality management bill remaining unpaid for more than thirty (30) days from the date of billing shall be assessed an interest charge of one (1) percent per calendar month or portion of a calendar month against the unpaid balance of such bill.

(5) The department of law is authorized and directed to institute legal proceedings in the name of the urban county government in any court having jurisdiction over such matter for the collection of delinquent water quality management fees, and to take any actions necessary in such proceedings to protect the interests of the urban county government.

Sec. 16-405. Adjustment of charges.

Any user subject to the water quality management fee who is the legal title/leaseholder/renter of the benefited property who is age 65 or older, or who is receiving social security disability benefits, and whose annual household income (as defined in section 16-405.1(a)(2) below) is \$25,000 or less, said amount of income to be adjusted annually in accordance with

the Social Security Administration's cost of living adjustment, can apply for a discount. Upon acceptance for the discount, said user's bill shall be decreased by thirty (30) percent of the billing amount.

Sec. 16-405.1 Grant Program.

(a) As used in this section only, the following terms shall have the meanings given:

(1) *Assets test* means that any person having assets in excess of either:

(i) Five thousand dollars (\$5,000.00) in liquid assets such as bank accounts, savings, certificates of deposits, stocks, bonds, etc.; or

(ii) Five thousand dollars (\$5,000.00) in equity in assessed value of nonhomestead property;

shall be ineligible to participate in the program, notwithstanding that he meets the income level qualifications set forth in this section. However, motor vehicles for personal use, household furnishings and the benefited property itself, as well as buildings located thereon which are occupied by the person seeking to qualify as a home for himself and his family, shall not be included in computing assets.

(2) *Income* means total cash receipts to the residential water quality management fee customer and any co-habitant after taxes from all sources. These sources include money, wages and salaries after any deductions required by law, but not including food or rent in lieu of wages. They include receipts from self-employment or from one's own farm or business after deductions for business or farm expenses. They include regular payments from public assistance, social security, unemployment and worker's compensation, strike benefits from union funds, veteran's benefits, training stipends, alimony and military family allotments or other regular support from an absent family member or someone not living in the household; government employee pensions, private pensions and regular insurance or annuity payments; and income from dividends, interest, rents, royalties or income from estates and trusts. For eligibility purposes, income does not refer to the following money receipts: any assets drawn down as withdrawals from a bank, sale of property, house or car, tax refunds,

gifts, one-time insurance payments or compensation for injury; also to be disregarded is noncash income, such as the bonus value of food and fuel produced and consumed on farms and the imputed value of rent from owner-occupied farm or nonfarm housing.

(3) *Program* means the grant program established in this section.

(4) *Qualified customer* means a residential water quality management fee customer who meets the assets test and has an annual income equal to or less than one hundred twenty-five (125) percent of the poverty income levels set forth in the poverty guidelines chart established by the Community Services Administration, annually published in the Federal Register, in effect at the time of application. However, income itself shall be measured by the definition contained in subsection (a)(2) of this section.

(b) Qualified customers may receive up to a fifty (50) percent grant for the cost of their water quality management fees, decreasing their obligation to fifty (50) percent of the total charges on the bill. All payments of water quality management fee grants by the urban county government are subject to an annual appropriation by the urban county council of the funds to make such payments, and neither the establishment of this program nor participation in the program shall constitute a contract between the urban county government and any qualified property owner for other than the fiscal year for which funds are appropriated to make payments. In the event funds are not appropriated for any given fiscal year, customers will be required to pay the full cost for that year.

(c) Qualified customers who participate in this program shall not be eligible to receive the discount allowed in Section 16-405.

(d) The administration of this program shall be under the direct supervision of the mayor of the urban county government. The mayor may prescribe such regulations and procedures, consistent with the provisions of this section, as he deems necessary or appropriate to carry out the intentions stated herein. The commissioners of the departments of finance, environmental quality and social services shall be responsible for administration of aspects of the program at the direction of the mayor.

Sec. 16-406. Stormwater Revenues; Expenses.

All monies collected through water quality management fees authorized herein shall be separately

identified and accounted for in the urban county government's financial records, and all expenses related to the urban county government's stormwater program overseeing drainage, flood control, and water quality, including any administrative costs related thereto shall be separately identified and administered according to generally accepted principles of governmental accounting.

Sec. 16-407. Adjustment of Charges; Appeals.

(1) Any owner who considers that water quality management fees applied to the owner's parcel are inaccurate or otherwise disagrees with the determination may apply to the director of the division of water quality for a rate review, stating in writing the grounds for the adjustment. The director or his designee will review the case and report findings to the commissioner of environmental quality. The commissioner shall consider the complaint and staff recommendations and determine whether an adjustment is necessary to provide for reasonable and equitable application of the water quality management fee.

(2) Appeals of decisions made by the commissioner may be brought before the Water Quality Fees Appeals Board created pursuant to section 16-408.

Sec. 16-408. Water Quality Fees Board.

(1) There is established a Water Quality Fees Board to review:

(a) Denials by the director of revenue and commissioner of finance in cases where sanitary sewer users have submitted written requests for adjustments to their bills for the sanitary sewer user fee pursuant to section 16-59.

(b) Decisions made by the director of water quality and commissioner of environmental quality on applications for adjustments to water quality management fees as provided in section 16-407(1).

(c) Recommendations of the Director of Water Quality pursuant to section 16-410.

(2) The board shall meet quarterly and shall be composed of five (5) citizens appointed by the mayor and one (1) ex officio member from the department of law. No two citizen members may reside in the same urban county council districts. The terms of board members shall be four (4) years, which terms shall be staggered so that at least half the membership of the board is eligible for appointment every two (2) years.

(3) When considering an appeal of a decision pursuant to section 16-59 or section 16-407(1), the board shall review

applicants' written requests for adjustment, the written responses from the commissioner of finance or commissioner of environmental quality, and any other relevant documents. The board's decision as to the appropriate adjustment shall be final.

(4) When considering the recommendation of the Director of Water Quality pursuant to section 16-410, the board shall review the application, supporting information, and the director's recommendation to determine if the project proposed for inclusion in the Water Quality Incentive Grant Program meets the criteria contained in section 16-410(2).

Sec. 16-409. Review; Audit; Public Hearing

A formal review and audit of the water quality management fees established in this chapter shall be performed on or before January 31, 2013 and every five (5) years thereafter and the audit report shall be sent to the urban county council. At least one public hearing shall be held by the council related to the water quality management fees every time the review and audit required by this section is performed.

Sec. 16-410. Stormwater Quality Projects Incentive Grant Program.

(1) There is established a Stormwater Quality Projects Incentive Grant Program ("Program") to provide funding where urban county monetary participation is justified for the following:

(a) Cost-sharing assistance for stormwater projects/programs on residential and commercial /industrial properties with existing stormwater concerns; and

(b) Grants for community-based stormwater projects.

(2) Projects that may qualify for participation in the Program include, but are not limited to:

(a) projects to reduce stormwater runoff from the property;

(b) projects to improve water quality; and

(c) projects to provide public or private education related to stormwater quality.

(3) In determining whether a project/program qualifies for participation in the Program by justifying monetary participation by the urban county government, the following factors may be considered:

(a) the extent to which the project/program reduces stormwater runoff from the property or improves water quality in an amount in excess applicable urban county government standards;

(b) the applicant's record of compliance with the provisions of chapter 16 of the code of ordinances.

(4) To participate in the Program an application and information supporting the project/program must be submitted as provided for in a form provided by the Division of Water Quality.

(5) Eligible applicants may include, but are not limited to, property owners, neighborhood associations, and conservation organizations.

(6) Applications for participation in the Program shall be reviewed by the Division of Water Quality. If additional information is required the applicant will be notified. The Director of Water Quality shall make a recommendation for approval or denial of the application. The recommendation shall be presented to the Water Quality Fees Board which shall review the application and recommendation pursuant to section 16-408(4).

(7) All grants under this section are subject to the limitations of funding each fiscal year.

(8) The program shall be funded annually at a minimum of ten (10) percent of the total revenue generated by the water quality management fee and shall be reviewed as part of the audit provided for in section 16-409.

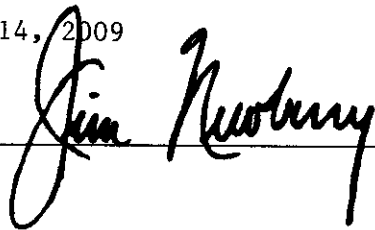
Section 2 - That the Water Quality Management Fees authorized in section 1 shall not be implemented before January 1, 2010.

Section 3 - That subsection 16-63(c) of the Code of Ordinances be and the same is hereby repealed.

Section 4 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: May 14, 2009

MAYOR



ATTEST:

CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: May 21, 2009-lt

X:\Cases\ECOQUALITY\08-CC1977\LEG\00210837.DOC