

Town of Franklin

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OFFICE OF THE TOWN ADMINISTRATOR

Memorandum

November 27, 2019

To: Town Council
From: Jamie Hellen, Town Administrator

Re: Bylaw 19-846: Stormwater Utility

Based on the presentation and the feedback we've received from the previous meeting, I am asking the Council to consider approval of creating a Stormwater Utility Enterprise fund, similar to the Water, Sewer and Trash enterprise funds the Town has.

As noted previously, the objective here is to create the framework to allow our finance staff the ability to work with MUNIS to create the utility in our financial systems. It will also allow the Council and staff to be able to do additional public outreach and engagement, as well as analyze the options for financing the federal regulations.

The vote before you tonight does not set any fee. The Ad Hoc committee will review the financials and recommend any fee structure to the full Town Council, which will be required to be put into the municipal fees section of the Town Code.

If you have any additional questions please feel free to ask.



**TOWN OF FRANKLIN
BYLAW AMENDMENT 19-846
CHAPTER 153 STORMWATER MANAGEMENT**

A bylaw to amend the Code of the Town of Franklin at Chapter 153 Stormwater Management by adding a new Article IV Stormwater Utility.

BE IT ENACTED BY THE FRANKLIN TOWN COUNCIL THAT Chapter 153 of the Code of the Town of Franklin Stormwater Management is hereby amended by adding a new Article IV Stormwater Utility as Follows:

**ARTICLE IV
STORMWATER UTILITY**

§153-19 GENERAL PROVISIONS

- a. Title
This bylaw shall be known as the Stormwater Utility By-Law of the Town of Franklin, Massachusetts, hereinafter referred to as the "by-law."
- b. Responsibility for Administration
The Town Administrator or his/her designee shall administer this by-law; the Town Administrator may delegate any powers granted to or duties imposed upon the Town Administrator to the Director of Public Works.
- c. Purpose
The stormwater management program of the Town shall be funded by revenue collected through the Stormwater Utility fee and such other revenue as may, from time to time, be appropriated. The stormwater management program is designed to collect and treat stormwater to promote the health and safety of the public, to protect property from flooding and the damage caused by stormwater runoff, to protect and manage water quality by controlling the level of pollutants in stormwater runoff, and to comply with Federal and state stormwater management mandates and permits.

§153-20 AUTHORITY

This by-law is adopted in accordance with the authority granted, inter alia, by Amendment Article 89 to Article II of the Massachusetts Constitution (the Home Rule Amendment), Section sixteen of Chapter 83 of the General Laws of the Commonwealth of Massachusetts and such other powers as are granted to cities and towns in the said General Laws.

§153-21 DEFINITIONS

The following words, terms and phrases, when used in this by-law, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) *Credit* means a reduction in the amount of a Stormwater Utility fee charged to the owner of a property where that property owner owns, maintains and operates on-site or off-site stormwater management systems or facilities, or provides services or activities that reduce or mitigate the Town's cost of providing stormwater management services, in accordance with the Town's approved credit policy.
- (b) *Developable* shall mean a parcel of land, as designated by the Assessor or other local jurisdictional authority, that can be altered from its natural state to include impervious surface area.
- (c) *Developed* means property altered from its natural state by construction or installation of greater than or equal to two hundred (200) square feet of impervious surfaces.
- (d) *Drainage system* shall mean natural and manmade channels, swales, ditches, swamps, rivers, streams, creeks, wetlands, branches, reservoirs, ponds, drainage ways, inlets, catch basins, gutters, pipes, culverts, bridges, head walls, storm sewers, lakes, and other physical works, properties, and improvements that transfer, control, convey or otherwise influence the movement of stormwater runoff.
- (e) *General Laws* means the General Laws of the Commonwealth of Massachusetts.
- (f) *Impervious surface* includes any material or structure on or above the ground that prevents precipitation from effectively infiltrating the underlying soil. Impervious surfaces include, without limitation, roads, paved or gravel parking lots, rooftops, buildings or structures, sidewalks, driveways, and other surfaces which prevent or impede the natural infiltration of stormwater runoff which existed prior to development.
- (g) *Stormwater* is surface water that results from precipitation and that travels over natural or developed land surfaces to discharge into a drainage system or surface water body. Stormwater includes stormwater runoff, snow melt runoff, and surface water runoff and drainage.
- (h) *Stormwater management services* mean all services provided by the Town which relate to the:
 - (i) Transfer, control, conveyance or movement of stormwater runoff through the Town;
 - (ii) Maintenance, repair and replacement of stormwater management systems and facilities owned, controlled, or maintained by the Town;
 - (iii) Planning, development, design and construction of additional stormwater management systems and facilities to meet current and anticipated needs;
 - (iv) Regulation, oversight, and enforcement of the use of stormwater management services, systems and facilities;
 - (v) Compliance with applicable State and Federal stormwater management regulations and permit requirements including, but not limited to, public education

and outreach. Stormwater management services may address the quality of stormwater runoff as well as the quantity thereof.

- (i) *Stormwater management systems and facilities* mean those natural and manmade channels, swales, ditches, rivers, streams, creeks, branches, reservoirs, ponds, drainage ways, inlets, catch basins, pipes, headwalls, storm sewers, outfalls and other physical works, properties and improvements which transfer, control, convey, detain, retain, treat or otherwise influence the movement of stormwater runoff.
- (j) *Stormwater Utility fee* means the periodic user fee that may be imposed pursuant to this by-law by the Town of Franklin which will be dedicated to the provision of public stormwater management services. The stormwater utility fee billing rate structure shall consist of a uniform flat rate based on the total number of billing units per property, an individual billing unit equalling one thousand (1000) square feet of impervious surface.
- (k) *Undeveloped land* shall mean all land that is not altered from its natural state to an extent that results in greater than two hundred (200) square feet of impervious surface area.

§153-22 STORMWATER UTILITY FEE AND ENTERPRISE FUND ESTABLISHED; RATES: DEPOSIT TO STORMWATER ENTERPRISE FUND

- (a) Pursuant to Section 16 of Chapter 83 of the General Laws, the Town may establish a charge for the use of the stormwater management services of the Town to be known as the Stormwater Utility fee. Stormwater charges shall be established such that they will provide sufficient funds, proportionately calculated and assessed, to construct, operate, maintain, and regulate the stormwater management systems and facilities in the Town of Franklin.
- (b) The Franklin Town Council (the Council) shall establish reasonable rates to defray the cost of administering and implementing the stormwater management program of the Town. The initial rates, and any later modifications, shall be based upon recommendation of staff and shall be set by the adoption of a Stormwater Fee Schedule by vote of the Council, to be included by amendment in the Code of the Town of Franklin Chapter 82 Fees, Municipal Service.
- (c) The Council (or their designee) shall establish a dedicated Stormwater Enterprise Fund in the Town budget and an accounting system to manage all funds collected for the purposes and responsibilities of the stormwater program. All revenues and receipts of the Stormwater Utility shall be placed in the Stormwater Enterprise Fund, which shall be separate from all other funds, and only expenses of the stormwater program shall be paid by the fund as provided in G.L. c.44,s. 53 F1/2.
- (d) Expenditure of funds may consider both stormwater quality and quantity management needs and can be used as described in Section 153-24.
- (e) The Stormwater Utility fee is to be assessed to each developed parcel in Town whether the property is occupied or not. The fee shall be calculated on an annual basis and billed to the record title owner of the property.

§153-23 SCOPE OF RESPONSIBILITY FOR STORMWATER MANAGEMENT SYSTEMS AND FACILITIES

- (a) The Town owns or otherwise has rights which allow it to operate, maintain, improve and access those stormwater management systems and facilities which are located:
 - (i) Within public road rights-of-way;
 - (ii) On private property but within easements granted to, and accepted by, the Town of Franklin, or are otherwise permitted to be located on such private property by written agreements for rights-of-entry, rights-of-access, rights-of-use or such other lawful means to allow for operation, maintenance, improvement and access to the stormwater management system facilities located thereon;
 - (iii) On public land which is owned by the Town and/or land of another governmental entity upon which the Town has agreements providing for the operation, maintenance, improvement and access to the stormwater management systems and facilities located thereon.
- (b) Operation, maintenance and/or improvement of stormwater management systems and facilities which are located on private or public property not owned by the Town, and for which the Town lacks a lawful right of entry, shall be and remain the legal responsibility of the property owner, except as otherwise provided for by state and federal laws and regulations.

§153-24 PURPOSES OF THE STORMWATER UTILITY FUND

Receipts from the Stormwater Utility fee, to the extent consistent with G.L. c. 44, s. 53 F1/2, shall be used for the following purposes:

- (a) The acquisition by gift, purchase or condemnation of real and personal property, and interests therein, necessary to construct, operate, and maintain stormwater management systems and facilities;
- (b) All costs of administration and implementation of the stormwater management program, including the cost of labor and equipment attributable to the stormwater management program and the establishment of reasonable operating and capital reserves to meet unanticipated or emergency stormwater management requirements;
- (c) Payment on principal and interest on debt obligations;
- (d) Engineering and design, debt service and related financing expenses, construction costs for new facilities (including costs for contracted services) and enlargement or improvement or existing facilities;
- (e) Operation and maintenance of the stormwater system, including catch basin cleaning, ditch maintenance, street sweeping, pipe repairs, and stormwater facility repairs;
- (f) Capital investments including stormwater best management practices (BMPs) and components (e.g., purchase of plants, soils, and other amenities to support stormwater management alternatives utilizing vegetation);

- (g) Illicit discharge detection and elimination;
- (h) Monitoring, surveillance, and inspection of stormwater control devices;
- (i) Water quality monitoring and water quality programs;
- (j) Retrofitting developed areas for pollution control;
- (k) Inspection and enforcement activities;
- (l) Billing and related administrative costs; and
- (m) Other activities which are reasonably necessary, including costs related to regulatory compliance and legal fees.

§153-25 STORMWATER UTILITY FEE EXEMPTIONS

- (a) The Town of Franklin finds that all developed property in the Town contributes to runoff and the owners thereof either use or benefit from the maintenance of the stormwater system. Therefore, except as provided in this section or otherwise provided by law, no developed public or private property located in the Town of Franklin shall be exempt from the Stormwater Utility fee charges. No exception, credit, offset, or other reduction in stormwater utility fee charges shall be granted based on age, tax status, economic status, race, religion or other condition unrelated to the cost of providing stormwater management services and facilities.
- (b) The Town establishes exemptions to the Stormwater Utility fee as follows:
 - (i) *Undeveloped land.*
 - (ii) *Public streets, highways and rights-of-way. However, maintenance buildings and/or other developed property used for road maintenance purposes shall not be exempt from Stormwater Utility fee charges. All other State, Federal, and County properties shall be subject to the user fee charges on the same basis as private properties.*
 - (iii) *Railroad rights-of-way (tracks). However, railroad stations, maintenance buildings, and/or other developed property used for railroad purposes shall not be exempt from Stormwater Utility fee charges.*

§153-26 STORMWATER UTILITY FEE CREDITS

- (a) The Director of Public Works is hereby authorized to grant credits to property owners to be applied against the Stormwater Utility fee based on the technical and procedural criteria set forth in the Stormwater Utility Credit Manual (Credit Manual) to be developed, maintained and, from time to time, amended by the Department of Public Works (DPW). The Credit Manual shall be implemented during the first year of the Stormwater Utility and shall be available for inspection by the public at the Department of Public Works.

- (b) The percentages for credits shall reflect the extent to which the subject properties reduce the peak rate of runoff from the property, or avoid other costs incurred by the stormwater management program in the delivery of services. The maximum possible credit for properties shall be detailed in the Credit Manual (to be developed by the Department of Public Works).
- (c) Any credit allowed against the Stormwater Utility fee is conditioned on continuing compliance with the Town's design and performance standards as stated in the Credit Manual and/or upon continuing provision of the controls, systems, facilities, services, and activities provided, operated, and maintained by the property owner or owners upon which the credit is based. The Town may revoke a credit at any time for noncompliance with applicable standards and criteria as established in the Credit Manual or this by-law.
- (d) In order to obtain a credit, the property owner must make application to the Town on forms provided by the Director of Public Works for such purpose. The forms are to be fully completed in accordance with the procedures outlined in the Credit Manual.
- (e) When an application for a credit is deemed complete by the DPW, the Town shall have adequate time from the date the complete application is accepted to either grant the credit in whole, grant the credit in part, or deny the credit. Credits applied for by the property owner and granted in whole or in part, shall apply to all Stormwater Utility fees in accordance with the terms defined in the Credit Manual.

§153-27 STORMWATER UTILITY FEE BILLING, DELINQUENCIES, COLLECTIONS AND ABATEMENTS

- (a) Failure to receive a Stormwater Utility bill will not be justification for non-payment. The property owner, as identified from public land records of the Town of Franklin, shall be obligated to pay the appropriate Stormwater Utility fee for that property. If a property is unbilled, or if no bill is sent for a particular parcel of developed land, the Town may back bill for the fees as applicable for a period not to exceed two years of charges, but no late fees or delinquency charges of any kind shall be charged or recovered from any property owner so back billed.
- (b) Stormwater Utility bills shall be committed to the Treasurer/Collector for collection. In any case of nonpayment of a Stormwater Utility bill for sixty (60) days after the same is due, the Treasurer/Collector shall send a notice to the delinquent and apply appropriate interest and late charges to the fees, as previously approved by the Treasurer.
- (c) In accordance with Sections 16A through 16F of Chapter 83 of the General Laws, charges for the Stormwater Utility fee, together with interest thereon and costs relative thereto, shall be a lien upon the real estate for which the charge was billed. Such lien shall take effect by operation of law on the day immediately following the due date of such charge and, unless dissolved by payment or abatement, shall continue until such charge has been added to or committed as a tax in accordance with the requirements of Section 16C of Chapter 83 of the General Laws, and thereafter, unless so dissolved, shall continue as provided in Section 37 of Chapter 60 of the said General Laws.

- (d) In addition to the method of collection specified in Sections 16A through 16F of the General Laws, the overdue charge may be collected through any other lawful means.
- (e) In the event that a property owner believes the Stormwater Utility fee is improperly calculated or is otherwise incorrect, the property owner may, within thirty (30) days from the date of issuance of the Stormwater Utility bill, and after payment of the bill in full, apply to the Director of Public Works for an abatement. The application for abatement shall be supported by such information as is necessary for a reasonable person to conclude that it is more likely than not that the billing is in error. DPW shall have sixty (60) days to consider the request for abatement and render a written decision which may deny the abatement, grant the abatement in full or grant the abatement in part.

§153-28 APPEALS AND HEARINGS

- (a) In the event that a property owner is aggrieved by a written decision from the Director of Public Works denying an application for abatement in whole or in part, or denying an application for a credit, in whole or in part, the property owner shall have sixty (60) days from the date of the written decision to seek a review of the decision by the filing of an appeal with the appellate tax board of the Commonwealth of Massachusetts. The appeal shall be in writing and shall specify the grounds thereof. Upon the filing of the notice of appeal, the DPW shall make available all documents constituting the record upon which the original decision was made.

§153-29 SEVERABILITY

The invalidity of any section, provision, paragraph, sentence, or clause of this by-law shall not invalidate any section, provision, paragraph, sentence, or clause thereof, nor shall it invalidate any permit or determination that previously has been issued.

This bylaw shall become effective in accordance with the provisions of the Franklin Home Rule Charter.

DATED: _____, 2019

VOTED:

UNANIMOUS _____

A True Record Attest:

YES _____ **NO** _____

ABSTAIN _____

ABSENT _____

**Teresa M. Burr, CMC
Town Clerk**

Glenn Jones, Clerk
Franklin Town Council