METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

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Legal Opinion 2009-01

To: Councilman Jim Forkum, Chair of Budget and Finance Committee
Councilman Parker Toler, Chair of Public Works Committee
204 Metropolitan Courthouse
Nashville, Tennessee 37201

Date: March 12, 2009

You requested a legal opinion to answer the following question:

QUESTION

Whether the storm water user fee as proposed in Sections 9 of Substitute Ordinance No. BL2009-407[1] is likely to be upheld by a court?

ANSWER

Yes, it is the opinion of the Department of Law that the proposed storm water fee will be upheld by a court.

ANALYSIS

BACKGROUND:

The Clean Water Act ("CWA"), 33 U.S.C. § 1251, *et seq.*, and the Tennessee Water Quality Control Act ("TWQCA"), Tenn. Code Ann. §§ 69-3-101, *et seq.*, were both enacted to improve the quality of water and are applicable to the water system within the area of the Metropolitan Government. In August, 2007, the Metropolitan Government approved an agreement with the United States and the State of Tennessee to work to improve the quality of that water system. (See Substitute Resolution RS2007-2144.) In order to help accomplish the goal of clean water by establishing a program of improvements, the Metropolitan Government is considering the creation of a storm water utility and a system of storm water user

[1] See Attachment A

fees. The fees collected will be used exclusively for construction, administration, operation and maintenance of the storm water system.

Tenn. Code Ann. § 68-221-1107 permits the Metropolitan Government to establish a graduated storm water user's fee.[2] The statute provides several factors that the Metropolitan Government must consider in setting the amount of the fee. These are:

- The fee must be reasonable in amount and used exclusively for storm water management.
- The fee must be based on actual or estimated use of the storm water or flood control facilities.
- Each user or user class shall only be required to pay its proportionate share of the storm water facilities.
- The proportionate share must be based on the actual or estimated proportionate contribution to the total storm water runoff from all users or user classes.
- To determine the proportionate distribution of the costs, factors such as the following are to be used:
    - The amount of impervious area[3] utilized by the user;

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[2] (a) All municipalities constructing, operating, or maintaining storm water or flood control facilities are authorized to establish a graduated storm water user's fee which may be assessed and collected from each user of the storm water facilities provided by the municipality. These fees shall be reasonable in amount and used exclusively by the municipality for purposes set forth in this part. Such a graduated storm water user's fee shall be based on actual or estimated use of the storm water and/or flood control facilities of the municipality, and each user or user class shall only be required to pay its proportionate share of the construction, administration, operation and maintenance including replacement costs of such facilities based on the user's actual or estimated proportionate contribution to the total storm water runoff from all users or user classes. To ensure a proportionate distribution of all costs to each user or user class, the user's contribution shall be based on factors such as the amount of impervious area utilized by the user, the water quality of user's storm water runoff or the volume or rate of storm water runoff. Persons, including, but not limited to, owners and operators of agricultural land, whose storm water runoff is not discharged into or through the storm water or flood control facilities, or both, of the municipality shall be exempted from payment of the graduated storm water user fee authorized by this section. The fee structure shall provide adjustments for users who construct facilities to retain and control the quantity of storm water runoff. Prior to establishing or amending such user's fees, the municipality shall advertise its intent to do so by notice published in a newspaper of general circulation in such municipality at least thirty (30) days in advance of the meeting of the governing body which shall consider such adoption or amendment.

Tenn. Code Ann. § 68-221-1107

[3] "... portion of a parcel of property that is covered by any material, including ... roofs, streets, sidewalks and parking lots paved with asphalt, concrete, compacted sand, compacted gravel or clay, that substantially reduces or prevents the infiltration of storm water." BL2009-407 §8(A)(4)

  - The water quality of the user's storm water runoff, or
  - The volume or rate of storm water runoff.
- People whose storm water is not discharged into the facilities are exempt from the fee.
- Adjustments are to be permitted for users who construct facilities to retain or control the quantity of storm water runoff.

WHETHER THE METHOD USED TO DETERMINE THE FEE IS VALID:

If the method for setting the fee is challenged, the Court reviewing the action of the Metropolitan Council would limit its analysis to whether there was any rational basis for the Council's decision. *See McCallen v. City of Memphis*, 786 S.W.2d 633 (Tenn. 1990).

> When the act of a local governmental body is legislative, judicial review is limited to "whether any rational basis exists for the legislative action and, if the issue is fairly debatable, it must be permitted to stand as valid legislation." *Keeton v. City of Gatlinburg,* 684 S.W.2d 97, 98 (Tenn.App. 1984). In general, courts of all jurisdictions have interpreted the fairly debatable standard as requiring considerable deference to the decision of the governmental authority ...

McCallen v. City of Memphis, 786 S.W.2d at 640. There would be a presumption that the ordinance is valid. *Hermitage Laundry Co. v. City of Nashville*, 22 Beeler 190, 193, 209 S.W.2d 5, 6 (Tenn. 1948)(upholding Nashville's licensing of wheeled vehicles as a regulation under its police power and not a tax and stating "legislation is presumed to be valid".); *Rutherford v. City of Nashville*, 4 Beeler 499, 79 S.W.2d 581, 586 (Tenn. 1935)(" ... an ordinance, reasonably calculated to attain an end within the scope of the police power, will be upheld. Even if it were fairly susceptible of two constructions, one of which would uphold it, and the other invalidate it, the former will be adopted by the courts.")

When determining whether the amount of the charge imposed is valid, a court will determine first whether the charge is tax revenue or fees necessary to enforce police powers. When taxes are imposed, they must be imposed in the same manner to all those similarly situated. When fees are imposed, they are imposed to recover the cost of regulation and "mathematical nicety is not exacted" by the Tennessee courts. *Hermitage Laundry Co.* at 193, 6; *City of Paris v. Paris-Henry County Public Utility Dist.,*11 McCanless 388, 340 S.W.2d 885 (Tenn. 1960)(upholding the city's right to require a utility to purchase a permit before it could dig in the street). The charge under consideration here is a fee because it is based on use of the storm water utility

and because the funds derived from the fee must be used for construction, administration, operation, and maintenance of the storm water utility. Tenn. Code Ann. § 68-221-1107(a). Therefore, a court will apply the "fee" analysis in determining whether it is valid.

Tennessee Courts will uphold different rates for classifications that are reasonable based on "difference of situation and condition." *City of Parsons v. Perryville Utility Dist.*, 594 S.W.2d 401, 406 (Tenn.App. 1979); *See also* 12 McQuillin Mun. Corp. § 35:57 (3rd ed.)[4].

> A wide range of discretion is allowed to lawmaking bodies in making classifications, and only when they are plainly arbitrary and palpably unjust are they condemned. State v. McKay, 137 Tenn. 280, 306, 193 S. W. 99, Ann. Cas. 1917E, 158.

Rutherford v. City of Nashville at 585. The McKay opinion relied upon a 1917 Tennessee Supreme Court opinion considering whether a difference could be made in the sale of seed by a farmer at the farm to the sale of seed in a store. In upholding the distinction, the Supreme Court stated:

> With the legislative departments rests the consideration and determination of the reasonableness of regulations under the police power, and a court will not examine the question de novo and overrule such judgment by substituting its own, unless it clearly appears that those regulations are so "beyond all reasonable relation to the subject to which they are applied as to amount to mere arbitrary usurpation of power" (Lemieux v. Young, supra), or is unmistakably and palpably in excess of the legislative power, or is arbitrary "beyond possible justice," bringing the case within "the rare class" in which such legislation is declared void.

State v. McKay, 137 Tenn. 280, 193 S. W. 99, 105 (1917)

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[4] A municipality has the right to classify consumers under reasonable classifications based upon such factors as the cost of service, the purpose for which the service or the product is received, the quantity or the amount received, the different character of the service furnished, the time of its use or any other matter that presents a substantial difference as a ground of distinction. Accordingly, a lack of uniformity in the rate charged is not necessarily unlawful discrimination. The establishment of classifications and charging different rates for the several classes is not unreasonable and does not violate the requirements of equality and uniformity. Discrimination to be unlawful must draw an unfair line or strike an unfair balance between those in like circumstances having equal rights and privileges. Discrimination with respect to rates charged does not vitiate unless it is arbitrary and without a reasonable fact basis or justification.

The classification of a user, and thus the amount charged, is within the municipality's discretionary authority.

12 McQuillin Mun. Corp. § 35:57 (3rd ed.)

STORM WATER RATES:

The proposed storm water rates first classify the property as either residential or non-residential. Within both the residential and non-residential classifications, there are sub-classifications that apply a greater fee to the property with greater areas of impervious surface. BL2009-407 §9. (Attachment A). Residential property to which the fee will be applied comprises 91.5% of the parcels within the Metropolitan Government area. Non-residential property comprises 8.5%. However, residential property contains 38.6% of the total impervious area subject to the proposed fees while non-residential property contains 61.4% of the impervious area. The proposed fees will generate 40.2% of the total fees collected from residential property and 59.8% of the fees from non-residential property. See Attachment B

Only one case has been found that considers a storm water fee imposed in Tennessee under Tenn. Code Ann. § 68-221-1107. In that case, *Vandergriff v. City of Chattanooga*, 44 F.Supp.2d 927 (E.D.Tenn. 1998), the court touched on the tax or fee question and whether there was a rational relationship between the fee and the classification of the property. In upholding the fee, the Court found that it was a fee, not a tax, because it was based upon the use of the system and that there was a rational relationship between the amount of storm water runoff from property and the cost to the city. *Vandergriff* at 940-941.

The United States Court of Appeals for the Sixth Circuit, the Circuit that hears cases from the Middle District of Tennessee, considered whether storm water fees can be assessed for storm water that flows into the sewer system in a case from Michigan. In upholding the fees that could be imposed based upon their classification,[5] that court noted that the police powers of a city include the collection of sewage and found that there is little distinction between handling storm water and sewage. In that case, the Sixth Circuit stated:

> Although, strictly speaking, these cases [cited in the opinion] involve the disposal of sewage, rather than the disposal of surface or storm water drainage, there may be little point in distinguishing between the two. Indeed, as one commentator notes:
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> > Broadly speaking, sewage is that which is carried off or drained from a city or town by means of sewers. "Sewage includes the water by which the foul matter, which passes through the drains, conduits, or sewers of a town, is carried off, the wastewater of

[5] "To compute this charge for 1980-81 and subsequent years [Detroit Water and Sewer Department] first estimated the system's total cost that was attributable to storm water runoff within the City of Detroit. This cost was then allocated between three classes: residential water users, nonresidential users, and state and county roads, based on their relative impervious acreage." *City of Detroit*, 803 F.2d at 1413.

> baths, warehouses, and other domestic operations, *and of the greater part of the surface drainage of the area drained. Water polluted by the filth from buildings and streets is sewage."* (Emphasis added).

11 E. McQuillin, *Municipal Corporations* § 31.04 at 158 (3d ed. 1983) (emphasis added) (citation omitted). See *Clay v. City of Grand Rapids,* 60 Mich. 451, 458, 27 N.W. 596, 599 (1886), where the Michigan Supreme Court states:

> There is nothing in the nature of a sewer which excludes it from being made, in whole or in part, out of a natural water-way. Such is a very common practice, and the sewerage, under the ancient system of the English sewer commissioners, was chiefly in natural streams, which were variously improved or confined for the purpose. *Neither is sewerage necessarily, if it is generally, intended as an escape for filthy water. It includes all kinds of drainage and water discharge* (emphasis added).

City of Detroit, By and Through Detroit Water and Sewerage Dept. v. State of Mich., Michigan Dept. of Transportation, 803 F.2d 1411, 1419 n. 8 (6th Cir. Mich. 1986).

Courts in the State of Washington recently held that a county may charge a larger fee to properties with more impervious surfaces because "… developed property with impervious surfaces significantly increased the volume and velocity of runoff and the amount of pollutants in storm water." *Storedahl Properties, LLC v. Clark County*, 143 Wash.App. 489, 504, 178 P.3d 377, 385 (Wash.App. Div. 2 2008). That fee structure also distinguished between residential and other types of uses.[6] Another Washington case cited in *Storedahl* upheld a county fee as reasonable that charged fees based on classifications and stated:

> In the present case, the County classified the properties, for purposes of computing the charges, based upon (1) the hydrologic impact of the development and use of the properties upon the peak rates of runoff and total quantity of runoff, and (2) water quality impacts. The annual charges were determined according to standard engineering knowledge regarding the estimated ratio of pervious to impervious land in each of the following categories: (1) single family residences; (2) residential

[6] "The third factor is whether there is a direct relationship between the fee charged and the service received by those who pay the fee or between the fee charged and the burden produced by the fee payer." If there is no relationship, the charge is probably a tax. But if such a direct relationship exists, this court can hold that the charge is a fee even though the charge is not individualized according to the benefit accruing to each fee payer or the burden the fee payer produced. Further, if a direct relationship exists, only a practical basis for the rates is required, as opposed to mathematical precision." (internal citations omitted)(emphasis added) *Storedahl Properties, LLC v. Clark County*, 178 P.3d at 385.

> duplexes, multi-family apartments, private schools; (3) retail, commercial, offices, hospitals, airports, utility stations; (4) industrial, manufacturing, railroad right-of-way. Thus, the charges are based on varying intensities of use and the relationship of that use to surface and subsurface water collection. Owners of all single family residence lots pay the same rate; owners of lots with more impervious surface (industrial, commercial) are charged more, depending on the size of the lot.

Teter v. Clark County, 104 Wash.2d 227, 237, 704 P.2d 1171, 1179 (Wash. 1985).

In reviewing a fee system for sewer charges that differentiated between industrial and residential fees, a Massachusetts court held that:

> ... as long as there is evidence that the rates indicate a reasonable attempt to balance the myriad concerns and costs of sewage treatment and a rational effort to roughly estimate the benefit received, the rate will be upheld. In other words, this court is not looking for the most proportional, sensible, or fairest rate. Instead, the court gives substantial deference to the democratically elected bodies that make the determination that the sewer rate adopted is just and equitable.

Merrimac Paper Co. v. City of Lawrence, 1995 WL 1286562 (unreported) (Mass.Super. 1995)[7].

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[7] "This does not mean that a municipality can ignore the statutory mandate to provide 'just and equitable' sewer charges. There must be credible evidence supporting the just and equitable nature of the charges. But as long as there is evidence that the rates indicate a reasonable attempt to balance the myriad concerns and costs of sewage treatment and a rational effort to roughly estimate the benefit received, the rate will be upheld. In other words, this court is not looking for the most proportional, sensible, or fairest rate. Instead, the court gives substantial deference to the democratically elected bodies that make the determination that the sewer rate adopted is just and equitable.

"Utilizing this standard of review, this Court concludes that the City of Lawrence's two-tiered rate satisfies the requirements of being "just and equitable." The largest dischargers of waste water in Lawrence undoubtedly pay, proportionately, a greater share of the costs of waste water treatment. But, the largest dischargers also burden the system more. Charging "in proportion to the extent of use ... is a reasonable way of estimating the extent benefit received."*Id.*[FN11]*See Fort Collins Motor Homes, Inc. v. City of Fort Collins,* 496 P.2d 1079 (Colo.Ct.App.1972) (classification system distinguishing between single residence and commercial approved); *McGrath v. City of Manchester,* 398 A.2d 842 (N.H.1979) (residential/multi-family home classifications upheld, mathematical equality not necessary); *Antlers Hotel v. Newcastle,* 341 P.2d 951 (Wyo.1951) (residential classifications). Even if one were to focus solely on Merrimac (which contributes 9% of the wastewater, but is charged 13.7% of the total treatment cost), the city need only base its rate in a roughly proportional fashion. An "overcharge" of 4.7% is not "grossly excessive." *Carson, supra,* 182 U.S. at 403.

"FN11. Even if Lawrence explicitly charged an "industrial" rate which was higher than the "residential" rate, such a rate might still be just and equitable because the content and nature of the industrial waste-not just the volume of flow-may well burden the city collection system more than

A 2003 case from the Supreme Court of Florida upheld storm water fees adopted by the City of Gainesville that were based upon impervious area as that determined the relative contribution to the storm water system. The Florida Supreme Court stated:

> The City created a stormwater utility. It based the rate structure for the utility fee on the "impervious area" of land. Impervious area means that part of the land through which stormwater cannot permeate, thus creating stormwater runoff. The vast majority of stormwater utilities across the country establish their rate structures by measuring impervious area.
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> . . .
>
> Section 403.031(17) requires that the fees charged be based on the beneficiaries' "relative contribution" to the need for a stormwater management system. Acting within its legislative discretion, the City determined that rain does not create the need for a stormwater management system. Rather, the need is created by impervious area, which prevents the rain from percolating into the ground. Therefore, the City properly based its fee on the amount of impervious area on each property. Moreover, in calculating the impervious area, the City acted within its discretion by using statistical estimates to determine that the typical single-family home in Gainesville creates a relatively equal need for a stormwater system.

City of Gainesville v. State, 863 So.2d 138, 142, 147 (Fla. 2003).

The City of Gainesville decided to place all residential property into two classes based upon statistical estimates of impervious area while it measured the impervious area on non-residential property.

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normal residential sewage or storm water. Likewise, industries may have a greater economic incentive to conserve resources-or, at least, possess a more comprehensive, organized ability to conserve. Finally, industries may well possess a greater ability to choose whether to use the sewer or install its own treatment system."

Merrimac Paper Co. v. City of Lawrence, 1995 WL 1286562 at *8.

CONCLUSION

While there are no Tennessee cases that directly decide the way in which the Metropolitan Government may impose the storm water fee authorized by Tenn. Code Ann. § 68-221-1107, many Tennessee cases are clear in stating that when a government exercises its police power to impose a fee for the protection of the health and safety of the public, wide discretion will be afforded the legislative body in its decision. If the fee set is reasonable, related to its purpose, and not arbitrary, it will be upheld. Further, Tennessee courts have repeatedly held that mathematical precision in setting fees for different classifications is not required. The courts from across the United States that have examined storm water fees have upheld fees based upon the amount of impervious area and with classification similar to the ones in the proposed ordinance. It is the opinion of the Department of Law, that a court is likely to find the proposed storm water fees valid.

THE DEPARTMENT OF LAW OF THE
METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY

Sue B. Cain

Sue B. Cain
Director of Law

cc: Mayor Karl F. Dean
Vice Mayor Diane Neighbors
Members of the Metropolitan Council

ATTACHMENT A

Section 8: Section 15.64.032 of the Metropolitan Code of Laws shall be replaced in its entirety with the following:

A. **Definitions**. For purposes of this Section,

1. "Department" shall mean the Department of Water and Sewerage Services.
2. "Director" shall mean the Director of the Department of Water and Sewerage Services.
3. "Impervious Area" shall mean the portion of a parcel of property that is covered by any material, including without limitation roofs, streets, sidewalks and parking lots paved with asphalt, concrete, compacted sand, compacted gravel or clay, that substantially reduces or prevents the infiltration of storm water. Impervious Area shall not include natural undisturbed surface rock.
4. "Residential Property" shall mean any property whose primary use, as shown on the use and occupancy permit issued by the department of codes administration, is residential single-family or residential two-family.
5. "Non-Residential Property" shall mean a parcel of property that is not a Residential Property as defined in this section.
6. The "Public System" shall mean and include storm water and flood control devices, structures, conveyances, facilities or systems, including natural watercourses, streams, creeks and rivers used wholly or partly to convey or control storm water or flood water within the jurisdictional boundaries of the Metropolitan Government. The Public System shall include, without limitation, natural conveyances (a) for which the Metropolitan Government has assumed maintenance responsibility; (b) to which the Metropolitan Government has made improvements; (c) which have or may pose a threat to public property because of flooding; or (d) for which the Metropolitan Government is accountable under federal or state regulations governing protection of water quality.
7. "Qualified Control Structure" shall mean a device or structure meeting design standards and approved by the Department that substantially limits the discharge of storm water from a parcel of property into or through any Public System or that substantially improves the purity of storm water so discharged.
8. "User" shall mean the owner of record of a non-exempt Residential or Non-Residential Property or the person or entity in possession if other than the owner.

B. **Storm Water Utility and User Fee Established.** There is established a storm water utility and a system of storm water user fees for each parcel of property in Davidson County. The fees shall be used by the Metropolitan Government, acting through the Department, exclusively for operation and management of the storm water utility and such storm water and flood control purposes as

authorized in Tenn. Code Ann. § 68-221-1101, et seq.. The fees shall be owed jointly and severally by the property owner of record and the person or entity in possession of such property in the amounts shown in Table 15.64.032. For each property having multiple dwelling or commercial units and more than one water meter, the Director shall fairly allocate the storm water user fees owed among Users based on their actual or estimated proportionate contribution to the storm water discharged by that property.

C. **Exemptions**. The following properties shall be exempt from payment of the fees created by this section:

1. Residential Properties zoned AG and AR2a of which half or more is used annually for the raising for sale of livestock or crops.
2. Properties from which no storm water is discharged into or through the Public System.
3. Properties having no Impervious Area.
4. Properties wholly within the corporate boundaries of Belle Meade, Berry Hill, Forest Hills, Goodlettsville, Lakewood and Oak Hill. Provided, however, that each such city may, upon approval of its legislative body, enter into the contract attached as Exhibit A to this ordinance, such that all property within its boundaries will participate in the Metropolitan Government's storm water utility and system of storm water user fees in the same manner as the remainder of the area within the General Services District. Such contract between any of the above cities and the Metropolitan Government shall be filed with the Metropolitan Clerk upon being executed.

D. **Adjustments.**

1. Properties on which a properly functioning Qualified Control Structure has been installed shall be entitled to a downward adjustment in the fees established by this section in proportion to the improvement achieved by the Qualified Control Structure in the purity of storm water discharged to the Public System or the reduction achieved by the Qualified Control Structure in rate or quantity of storm water discharged to the Public System or both.
2. A downward adjustment of not more than fifty percent in the fees established by this section shall be available to any entity exempt from taxation under state or federal law that provides to its students or members a regular and continuing program of education approved by the Director and concentrating on stewardship of water resources and minimization of demand on the Public System.
3. The Director shall develop regulations governing the fair and reasonable application of adjustments for properties entitled to one or more adjustment under the terms of this subsection. Prior to the adoption of such regulations governing adjustments in the fees, the regulations shall be published in a newspaper of general circulation and public comment thereon received and

considered. Further, such regulations shall be approved by the Stormwater Management Committee before becoming effective.

E. **Application.** Adjustments created under this subsection shall be granted by the Director upon written application by the User of any qualifying property and submission of such supporting documentation as the Director may reasonably require. The Director may, upon not less than 30 written days' notice, revoke a previously granted adjustment or cease to recognize an exemption upon his determination that the affected parcel of property does not qualify for the adjustment or exemption.

F. **Reports.** Not later than the 15th day of October each year, the Director shall deliver a report to the Finance Director and the Metropolitan Council providing the following information:

1. A list of properties that are exempt or have been granted adjustments under this section. The report shall identify each property by street address and owner name, and shall state the adjustment amount granted or the basis for considering the property exempt.
2. A list of all storm water projects completed within the previous year for each Council district broken down by priority category (A, B & C).

G. **Appeals.**

1. Appeals relating to exemptions shall be taken to the Stormwater Management Committee within 60 days after the Department issues a bill for storm water fees indicating that an applicable exemption has not been recognized.
2. An appeal from any decision made by the Director under this section, including a decision relating to an adjustment or allocation among Users of a single property, shall be taken to the Stormwater Management Committee within 60 days after issuance of the decision.
3. Users shall be entitled to appeal the Department's calculation regarding the amount of the User's Impervious Area to the Stormwater Management Committee. In the event the Stormwater Management Committee approves a reduction in the amount of billable Impervious Area, such User's storm water fee shall be adjusted accordingly on a prospective basis. Users shall not be entitled to a refund or credit of storm water fees paid prior to said appeal.

H. **Collection.** The Director shall bill the fees established by this section to Users who are retail customers of the Department on their regular monthly water or sewer bills. The fees shall be shown as a separately identified line item. The Director shall directly and at least semi-annually bill the fees created by this section to Users not receiving water or sewer service from the Department or shall contract for the inclusion of such fees on bills issued to the customers of other utilities operating in Davidson County, such contracts to be approved by resolution of the Metropolitan Council.

I. **Remedies.** In addition to any other remedy available to the Metropolitan Government under law or contract, the Department shall discontinue water service to the property of any User who fails to pay the fees established by this section in accordance with the procedures regularly used by the Department when customers fail to pay bills for water or sewer service. Fees established under this section shall constitute a lien against the property served, which lien shall run with the land. The Metropolitan Government may enforce the lien as prescribed by law.

J. **Regulations.** The Director shall promulgate regulations to facilitate administration of this section. Prior to adoption, such regulations shall be published in a newspaper of general circulation and public comment thereon received and considered. The regulations further shall be approved by the Stormwater Management Committee before becoming effective. Any material change in the regulations shall be made in accordance with the same process.

K. **Review of impervious area.** The Department shall review all User properties at least every five years to ensure such Users are being billed for the correct amount of Impervious Area. Upon completion of the periodic review, if a User's amount of Impervious Area has changed, the Department shall adjust such User's storm water fee accordingly to reflect the updated amount of Impervious Area.

Section 9: The following new Table 15.64.032 shall be inserted after Section 15.64.032 of the Metropolitan Code of Laws:

Graduated Storm Water User Fee Schedule

Property Type; Impervious Area (Square Feet)	Monthly Fee
All; Less than 400	$0.00
Residential; Between 400 and 2,000	$1.50
Residential; Between 2,000 and 6,000	$3.00
Residential; More than 6,000	$4.50
Non-Residential; Between 400 and 6,000	$10.00
Non-Residential; Between 6,000 and 12,800	$20.00
Non-Residential; Between 12,800 and 51,200	$40.00
Non-Residential; Between 51,200 and 300,000	$100.00
Non-Residential; Between 300,000 and 1,000,000	$200.00
Non-Residential; More than 1,000,000	$400.00

ATTACHMENT B

Metro Nashville Stormwater User Fee
SFR and NSFR Comparison for Parcels Receiving a Bill

		Residential (SFR)		Non-Residential (NSFR)	
OWNER	**Total**	**Number**	**Percentage**	**Number**	**Percentage**
Number of Parcels	202,901	185,625	91.5%	17,276	8.5%
Total Parcel Area (ft2)	9,859,719,672	5,912,730,696	60.0%	3,946,988,976	40.0%
Total Parcel Area (acres)	226,348	135,738	60.0%	90,610	40.0%
Total Impervious Area (ft2)	1,391,971,640	537,462,804	38.6%	854,508,836	61.4%
Total Impervious Area (acres)	31,955	12,338	38.6%	19,617	61.4%

Note: Impervious area for residential parcels is an estimated, not measured, number.

Stormwater Fee Analysis 25Feb2009

Residential

Tier	Impervious Area	Median IA	IA Ratio to Middle	Number of Parcels	Monthly Fee	Fee Ratio to Middle	Annual Revenue	% Revenue	% Parcels
Low	400 > IA < 2,000	1315	0.4	58251	$1.50	0.5	$1,048,518	17.9%	31.4%
Middle	2,000 > IA < 6,000	3413	1.0	114965	$3.00	1.0	$4,138,740	70.7%	61.9%
High	IA > 6,000	7868	2.3	12409	$4.50	1.5	$670,086	11.4%	6.7%
Totals				185625			**$5,857,344**		

Non-Residential

Level	Impervious Area	Median IA	IA Ratio to Level 1	Number of Parcels	Monthly Fee	Fee Ratio to Level 1	Annual Revenue	% Revenue	% Parcels
1	400 > IA < 6,000	3,172	1.0	4880	$10	1.0	$585,600	6.7%	28.2%
2	6,000 > IA < 12,800	8,419	2.7	3740	$20	2.0	$897,600	10.3%	21.6%
3	12,800 > IA < 51,200	22,610	7.1	5444	$40	4.0	$2,613,120	30.0%	31.5%
4	51,200 > IA < 300,000	100,105	31.6	2696	$100	10.0	$3,235,200	37.2%	15.6%
5	300,000 > IA < 1,000,000	428,197	135.0	457	$200	20.0	$1,096,800	12.6%	2.6%
6	IA > 1,000,000	1,418,349	447.1	58	$400	40.0	$278,400	3.2%	0.3%
Totals				17275			**$8,706,720**		

Summary

Revenue Source	Number of Parcels	Annual Revenue	% Revenue	% Parcels
Residential	185625	$5,857,344	40.2%	91.5%
Non-Residential	17275	$8,706,720	59.8%	8.5%
Totals	202900	**$14,564,064**		