

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: Nov. 19, 2013 **CUT OFF DATE:** _____

RESOLUTION ___ **ORDINANCE** ___ **PUBLIC HEARING** ___ **DISCUSSION X**

ITEM TITLE: City Council Consideration of Implementing a Storm Water Utility - Discussion #1 - Storm Water Regulatory Issues

STAFF RECOMMENDATION: NA

PUBLIC NOTICE AND HEARING: NA

ADVISORY BOARD RECOMMENDATION: NA

FUNDING DATA: See attached.

INSURANCE: NA

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Finance	_____	_____	_____
2. City Attorney	_____	_____	_____
3. City Manager	_____	_____	_____
4. Clerk of Council	_____	_____	_____

Initiating Department Director's Signature: _____

_____ Date

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Perry Eisenach, Public Services Director
Date: November 19, 2013 (Council work session)
Re: Proposed Storm Water Utility – Discussion #1 – Regulatory Issues

THE ISSUE: Consideration of Implementing a Storm Water Utility – Regulatory Issues

RELATIONSHIP TO STRATEGIC PLAN: **Goal 4:** Create a More Livable City for All. Specifically, **Policy Agenda Item #6:** Develop a storm water management policy with policy directions, project priority and funding mechanisms, which could include the establishment of a storm water utility.

BACKGROUND: The City of Winchester, along with other communities in Virginia, is facing some significant storm water issues related to regulatory compliance. These challenges are associated with more stringent Phase 2 storm water regulations and the newly created Chesapeake Bay initiatives, both of which are federal mandates regulating storm water discharges. In addition, there are many regulations associated with the National Flood Insurance Program that have an impact on the City.

There are three primary areas that the City must address related to storm water regulatory issues. These are:

1. Virginia Stormwater Management Program (VSMP).
2. Municipal Separate Storm Sewer Systems Permit (MS4).
3. National Flood Insurance Program (NFIP).

Detailed information on each of these three areas is provided on the attached sheets. The VSMP and MS4 programs are regulatory programs that are mandated by the state and federal governments. The NFIP is a voluntary program, but participation requires the City to adhere to numerous program requirements.

BUDGET IMPACT: It is estimated that it will cost the City at least \$250,000 or more per year to implement and adhere to the new and more stringent stormwater regulations during the next few years. Additional information regarding this will be provided during Discussion #3 – regarding a proposed Storm Water Utility at the Council work session on January 24, 2014.

OPTIONS FOR CITY COUNCIL:

1. Either implement or not implement the Virginia Stormwater Management Program. Formal Council action on this program is requested in the next agenda item via an ordinance to amend City Code Chapter 9.
2. Either continue or not continue the City's participation in the National Flood Insurance Program. No formal Council action is necessary at this time.

RECOMMENDATIONS: Staff recommends the following actions for City Council:

1. Amend Chapter 9 of the City Code to comply with the Virginia Stormwater Management Program (VSMP). The next agenda item contains the proposed ordinance that would implement this required program. The VSMP must be in place by July 1, 2014.
2. Continue the City's participation in the National Flood Insurance Program.

Stormwater Regulatory Issues

1. Virginia Stormwater Management Program (VSMP) - Program Adoption and Implementation

The City of Winchester is required to adopt and implement the Virginia Stormwater Management Program (VSMP) no later than July 1, 2014. This is the result of the Commonwealth of Virginia's adoption of Chapter 372 of the 2004 Virginia Acts of Assembly (HB1177) and subsequent amendments to the Virginia Stormwater Management Act which created the requirement for localities regulated as Municipal Separate Storm Sewer Systems (MS4s) and those located in Tidewater Virginia, to adopt a local stormwater management program approved by Virginia Soil and Water Conservation Board (responsibility for approving local programs was transferred in 2013 to the State Water Control Board). The General Assembly amended this requirement in 2012 (HB1065) to require that all Virginia localities, excluding towns that do not operate a regulated MS4, adopt a local stormwater management program approved by the Soil and Water Conservation Board within 15 to 21 months of the effective date of the regulations establishing local program criteria and procedures. Alternatively, localities were permitted a 12-month extension provided they demonstrated "substantive progress" toward development of a local program by April 1, 2013. The City of Winchester submitted the required documentation to the Board by this deadline, and received the 12-month extension by the Board's at its June 6, 2013 meeting. In order to comply with the VSMP, extensive changes are needed to City Code Chapter 9 – Water Protection.

Pursuant to this extension granted by the Board, the City has developed the required elements of a local VSMP and application package, including the draft VSMP ordinance, funding and staffing plan, and additional, required documentation. As a regulated small MS4 under the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems since 2003, the City has previously developed and implemented a local stormwater management program which includes many, but not all, of the elements required by the Virginia Stormwater Management Program. The City recognizes that these policies and procedures must be updated to comply with the new VSMP and MS4 requirements. Moving forward, the City stormwater management program must ensure consistency with all applicable laws and regulations as well as address any deficiencies or "gaps" between the regulatory requirements and current practices.

From a program implementation perspective, the City's administration of a local VSMP program will add obligations that heretofore have either not been part of the City's program or have been implemented in a different fashion. Specifically, the implementation of the VSMP requirements at the local level will require the Engineering Division to:

- Accept, review and approve stormwater management plans and applications for VSMP Authority Permits, including required attachments;
- Inspect land-disturbing activities subject to VSMP authority permits during construction to ensure that stormwater facilities are constructed in accordance with approved stormwater management plans, approved Stormwater Pollution Prevention Plans (SWPPPs), and all other state and local regulatory requirements; and

- Monitor and inspect stormwater management facilities/BMPs subject to a private maintenance agreement to confirm that permanent BMPs are functioning as intended and regularly maintained by the owner.

The City does not currently have adequate staff to review stormwater management plans and VSMP Authority Permit applications as required by the VSMP requirements. To remedy this deficiency, it is anticipated that a new Stormwater Engineer position will be needed to review and approve stormwater management plans and applications for VSMP Authority Permits, including required attachments. Additional information regarding this proposed new position will be provided during Discussion #3 of the Proposed Stormwater Utility at the Council work session in January 2014.

2. Municipal Separate Storm Sewer System Permit (MS4) Program Development and Implementation

Based on the City's designation as a U.S. Census defined Urbanized Area, Winchester is subject to the terms of the Virginia Small Municipal Separate Storm Sewer System General Permit for Stormwater Discharges (small MS4 general permit). Beginning in 2003, Winchester developed and implemented a program to address the six minimum control measures of the small MS4 permit. The City's program includes public education and outreach on stormwater management concerns; an illicit discharge detection and elimination program; a construction site management program; a post-construction management component; and a "good housekeeping" component, as mandated by the Phase II regulations.

The City has developed, and is executing, a program plan that includes a series of best management practices (BMPs) designed to address each of the minimum control measures listed above. Each BMP includes a schedule for implementation, responsible parties, and measureable goals from which to evaluate the BMPs implementation and effectiveness to the degree feasible. The small MS4 general permit period in Virginia covers a five year permit cycle, with permit years running from July 1 through June 30 – concurrent with the City's Fiscal Year. MS4 Program Annual Reports are due to Virginia DEQ by October 1 for each permit year. The current general permit was initiated in July 2013, and is set to expire in June 2018.

To date, implementation of the MS4 program has constituted a significant portion of the City's stormwater management effort on an ongoing basis, and the recently initiated permit cycle promises to continue that emphasis. In addition, however, this new MS4 permit also includes additional requirements over and above previous permit cycles that mandate a more prescriptive approach to permit compliance. While MS4 permit compliance is still based on identification of a menu of iterative best management practices (BMPs) that address the requisite six minimum control measures, this permit cycle includes a series of implementation milestones that have been included in the permit language itself, mandating completion of specific portions of planning and programming by certain dates. Many of these prescriptive dates center on coordination of local VSMP program implementation (outlined above); more aggressive pollution prevention and good housekeeping initiatives for municipal operations, and planning and implementation of programming to address Total Maximum Daily Loads (TMDLs) which have a Wasteload Allocation (WLA) assigned to the MS4.

As the City of Winchester is located in the Shenandoah River watershed, the City is subject to the requirements of the TMDL established for the Chesapeake Bay. In addition, the City has multiple TMDLs

for tributary streams developed with a WLA to its MS4, including Opequon Creek and Abrams Creek. The City of Winchester developed an internal assessment of the City BMPs needed to approximate compliance with the nutrient and sediment goals of the Chesapeake Bay TMDL. In so doing, the City identified a number of practices and retrofits designed to meet the allocations as currently modeled. Among the items identified were more frequent street sweeping (increase of 50%), development and implementation of nutrient management plans, and the retrofitting of existing stormwater detention facilities to "extended detention" facilities – allowing for a longer draw down period and thus improving water quality. The estimated need for retrofitting these facilities is based on the average area treated by constructed ponds in the City and the number of facilities that would need retrofitting to achieve the treated area calculation developed for the City's implementation scenario. Annual cost estimates, including design and construction costs for retrofits, enhanced nutrient management planning through the Chesapeake Bay TMDL implementation date of 2025 averaged approximately \$230,000 per year.

Of note, recent EPA evaluation of the Commonwealth of Virginia's administration of the MS4 program has led to EPA scheduling MS4 program audits for multiple MS4 Phase I and Phase II communities in Virginia, starting in 2011. As such, local MS4 programs in Virginia are likely to receive increased scrutiny as EPA evaluates the state's administration of the program (especially now that state oversight of the stormwater management program, including MS4 permitting, has transferred back to Virginia DEQ) and local compliance with permit terms and conditions.

In order to maintain compliance with the City's MS4 permit which will continue to get more stringent, a significant amount of additional resources will be required in the future. Additional information regarding this will be provided during Discussion #3 of the Proposed Stormwater Utility at the Council work session in January 2014.

3. National Flood Insurance Program (NFIP)

The City of Winchester is currently a full participant in the National Flood Insurance Program and has been since 2008. There has been a long history of the City's participation in this program that includes the following:

- 1968: NFIP originated.
- 1978: Preliminary Flood Insurer Maps were issued for the City of Winchester.
- Late 1978: City Council votes not to participate in NFIP.

- 1994: Congress passes the Flood Insurance Reform Act requires federally-insured banks (FDIC) to require flood insurance for mortgages.
- Late 1990's: City Council votes to enter the NFIP. Primary reason cited was to allow residents to obtain flood insurance so that they could obtain a mortgage to purchase a property in the flood plain.
- 2000 – 2007: City expended significant resources to perform necessary studies and take various actions to allow the City to receive FEMA's approval to enter the NFIP.
- 2003: City reinstated in NFIP by FEMA on a probationary status.
- 2008: City receives FEMA's approval to enter the NFIP as a full participant.

Approximately 330 acres of the City of Winchester is located in a Federal Emergency Management Agency (FEMA) 100-year floodplain. This total includes 422 residential parcels and 307 non-residential parcels. Participation in the NFIP is voluntary. However, participation is mandatory for any City resident to be able to purchase flood insurance. The City currently has 175 flood insurance policies in effect insuring over \$44 million in property.

Recently, the policy rates for flood insurance have increased substantially. This is the result of the significant losses that the NFIP has incurred in recent years due to storms like Hurricane Katrina and Sandy. The new rates are intended to reflect the actual risk cost and help keep the NFIP self-sustaining.

Questions are often posed by City residents regarding the pros and cons of participating in the NFIP. The following are the primary pros and cons of participating:

Pros of NFIP Participation

1. Residents and businesses have the opportunity to purchase flood insurance. The vast majority of mortgages for properties in the floodplain require flood insurance. Without the ability to purchase flood insurance, mortgages on these properties would be extremely difficult to obtain.
2. The City is eligible to receive federal assistance to pay for damages in the event of an actual flood. The City would not be able to receive any federal assistance for flood damage without participating in the NFIP.

Cons of NFIP Participation

1. There are a significant number of floodplain regulations that must be followed that effect building and developments.
2. Administering and participating in the NFIP does require a significant amount of effort and City resources.

The Public Services Department feels strongly that the benefits of participating in the NFIP far exceed any of the disadvantages for participating. At present, only one City in the Commonwealth of Virginia does not participate in the NFIP – the City of Galax.

The City does have opportunities to help lower the cost of flood insurance for residents and businesses. The National Flood Insurance Program's Community Rating System (CRS) is a voluntary program that rewards floodplain management activities exceeding the NFIP's minimum requirements. Communities are rated Class 10 through Class 1 with flood insurance premium rates discounted in increments of 5% for each class up to a 45% premium discount for a Class 1 community. Communities that participate in the CRS program can earn points in the CRS manual for a variety of proactive stormwater management and floodplain management activities. For every 500 points earned, a community qualifies for a class rating reduction (10 to 9, 9 to 8, etc.). Participating in this program will be discussed in more detail during Discussion #3 of the Proposed Stormwater Utility at the Council work session in January 2014.