Ordinance – Development

- Resources used in the development of the Ordinance
  - Ad Hoc Committee to Study Stormwater and Flood Resiliency Funding Recommendations
  - Dover Utility Commission Rules
  - Other City Ordinances and Regulations
  - Consultant recommendations
  - Outside Stormwater Ordinances – Burlington, VT; Northampton, MA; and Portland, ME.

- Committee involvement and input
  - Ordinance Committee
  - Dover Utilities Commission
  - Public Input

- New Chapter of the City Code – Chapter 123 Municipal Stormwater Utility

Ordinance – Formation and Purpose

- Section 123-1 Formation and Purpose
  - Committee Recommendations

- Section 123-2 Scope of Responsibility of Stormwater Management System
  - Delegated to the Community Services department

- Section 123-3 Authority
  - RSA 149-I:6

- Section 123-4 Definitions
  - Committee Report
  - DUC Rules
  - City of Dover Code

Ordinance – Fee Established and Billing

- Section 123-5 Fee Established and Billing
- Identifying the User
  - presumed to be the fee holder
  - provides opportunity to shift the fee to an easement holder – specifies that the governmental entity responsible for a public highway “shall be regarded as the user”
- Billing
  - Consolidation with the water and sewer utilities
    - Permitted Under RSA 149-I:9
  - Application of payment first to the sewer utility, next to the water utility, and last to the stormwater utility fees
- Policy Point number 2
- Additional Consideration number 2

Ordinance – Rates

- Section 123-6 Rates
  - Consultant recommendations
  - Based on Impervious Area as measured by Equivalent Residential Units

- Rates to be set on an annual basis as part of the Schedule of Fees
  - Based on a forecast of the annual costs of the City’s stormwater management program

- Policy Point 1
- Policy Point 3

Ordinance – Fee Credits

- Section 123-7 Credits
  - RSA 149-I:6-c “The utility shall offer credits or fee abatements based on on-site management of water quality impairment or peak runoff storage, or both.”
  - Implementation will include the creation of a Credit Manual that will address the requirements of each credit
- Parts C. and D. are the Credit tables
  - Consolidated credit types into percentage of credit potential and specifies “per credit type” for clarity that users can apply for more than one type of credit
- Part E. covers Limitations, conditions, and other requirements
  - Allows for up to 50% credit for on-site management and up to 100% for off-site management
  - Allows for application for a credit through an Home Owners Association or other community property association for management projects funded by the shared community

- Policy Point 4
- Additional Consideration 3

Ordinance – Abatements & Appeals and Hearings

- For both sections 123-8 and 123-9 the intent is to be consistent with the current process as it is intended to run

- Section 123-8 Abatements
  - Sets timeline for filing an abatement request and when interest will begin to accrue if any
  - Provides standards to prevail on a request for abatement

- Section 123-9 Appeals and Hearings
  - Provides an appeal to the DUC and City Council before Superior Court

Ordinance – Enforcement and Maintenance

- Section 123-10 Liens, enforcement, and violations
  - Liens and collections procedures authorized by RSA 38:22 are applicable to the stormwater utility fees

- Section 123-11 Maintenance and use of stormwater utility funds
  - RSA 149-I:10-a covers the Stormwater Utility Fund
  - Restricted fund only for stormwater management
  - RSA 149-I:10-a III allows for any surplus to be placed in a capital reserve fund pursuant to RSA 35:7

Policy Points and Additional Considerations

- Policy Points identified at the joint meetings of the Ordinance Committee and DUC
  1) First tier of users
  2) Order of payment
  3) Private roads
  4) Maximum credit available

- Additional Considerations from staff
  1) Fee v. Tax
  2) Billing
  3) Staff administration waiver provision

Policy Point 1 – First Tier of Users

- Currently the first tier includes properties with 400 -1600 Sq Ft of Impervious Area with 0.5 ERU
- Proposed change would eliminate this tier and change the definition of “Undeveloped Land” to up to 1600 Sq Ft of Impervious Area
- Billing will begin at 1.0 ERU

Policy Point 2 – Order of Payment

- Section 123-5 part D directs how the payment of Municipal Utilities will be applied
  - Order of payment in this draft: Sewer, Water, then Stormwater
  - Previous order of payment: Stormwater, Sewer, then Water
  - Matter of enforceability; applying the stormwater fee first adds a layer of enforceability
- As the ordinance reads now the only enforcement mechanism is liening the property
  - Liens only last for six years - RSA 38:22 II(c)
  - Liens need to be enforced by suit
- Staff recommendation is the order of payment be first to the stormwater utility, next to the sewer utility, and finally to the water utility

Policy Point 3 – Private Roads

- Issue relating to the inclusion of private roads and the users living on the roads being charged the utility relating to the roads
- Proposed change for the rate to be “based on the ERUs of [user’s] structures and parking areas”
    - This change would result in either 1) an exemption of public roads or 2) the City paying the utility associated with private roads
    - This approach is not supported by statute
- RSA 149-I does not provide for exemption any type of property – explicitly includes government and non-profits
- RSA 231:81-a and case law – the maintenance of private roads is the responsibility of the residential owners on that road
    - The City cannot spend public funds for maintaining private roads
    - Implied assumption of a private road can occur if a municipality does maintain a private road

Policy Point 4 – Maximum Credit Available

- Make 100% credit available for users even without off-site management
- Current credit system:
  - Allows for up to 50% credit for users who apply for and receive credit for on-site management of stormwater
  - To be eligible for 100% credit users would need to apply for and receive off-site management credits
- Credits are available to both Single Family Residential Properties and Non-Single Family Residential Properties

Additional Consideration 1 – Fee v. Tax

- *City of Lewiston v. Robert R. Gladu* – a 2012 case out of the Maine Supreme Judicial Court challenging a Stormwater Utility. The Court found the utility to be a fee, not a tax, and identified four factors in determining whether the assessment is a fee.

1) Primary purpose is to raise revenue for a regulatory purpose
2) Assessment is directly related to the costs of the regulation
3) Assessment is voluntary – this factor concerns the availability of credits
4) Assessment is a fair approximation of the cost to the government and the benefit to the individual of the services provided

Additional Consideration 2 – Billing

- Potential of combining the billing of the Stormwater Utility with the tax bill

- The default User responsible for the utility fee is the fee owner of the subject real estate – Section 123-5 B.
  - The fee owner may show that one or more other persons maintain the impervious area on the property by right, all as determined within the discretion of the Director of Community Services or designee

- RSA 76:11 allows for the combination of utility billing with the tax bill provided that

  "Said bill shall be mailed separately and not included with mailing of other town or city bills, unless the governing body of the town or city votes to mail other town or city bills or information directly related to municipal business along with the tax bill."

- Other municipalities with a stormwater utility bill with the tax bill

Additional Consideration 3 – Staff Administration Waiver Provision

- Proposal for the inclusion of a section to allow staff to grant waivers or variances if necessary to accomplish the both the funding and stormwater management purposes of the utility

- This would be subject to the same appeal rights already included

- Provide staff with the discretion to address any unique situation that was not considered in this drafting process and meet the intent of the ordinance

- Similar to other variance provisions within the City