

CITY OF BETHLEHEM
INTER-DEPARTMENTAL CORRESPONDENCE

SUBJECT: Request for Approval by City Council of a New Ordinance
Stormwater Collection and Management User Fee

TO: City Council, all members, and Council Solicitor

FROM: Michael Alkhal, P.E., Director of Public Works/City Engineer

DATE: 11/20/2020

An adequate and sustainable source of revenue for stormwater management is necessary to protect the general health, safety, and welfare of the residents of the City of Bethlehem. The City must address its current and growing stormwater management responsibilities that include local flooding and stream health, significantly expanding State and Federal permit requirements, as well as the challenge of maintaining aging storm sewer infrastructure across the City. A plan has been developed to effectively update our current stormwater program to address these issues. Like many other municipalities, we have developed a "Stormwater User Fee" that allocates stormwater management program costs to property Owners based on impervious area.

Attached is the proposed ordinance for Council's review and consideration. The ordinance has been reviewed by our legal Bureau and we respectfully request a reading of it and placement on the December 1, 2020 meeting. We have held 5 meetings with the top 14 stakeholders, a public meeting on November 17, 2020, and anticipate the ordinance to be effective by the beginning of the new year, 2021.

If you have any further questions, please do not hesitate to contact me.

By: 

Department Head

Copies To: Mayor
Director of Administration
Director of Water & Sewer Resources
Director of Budget and Finance
Deputy Director of Public Works
Law Bureau
Controller

Attachment: proposed ordinance

ORDINANCE 2020-_____

AN ORDINANCE OF THE CITY OF BETHLEHEM,
COUNTIES OF LEHIGH AND NORTHAMPTON,
PENNSYLVANIA, ESTABLISHING A USER FEE FOR
STORMWATER COLLECTION AND MANAGEMENT

ARTICLE 929

STORMWATER COLLECTION AND MANAGEMENT USER FEE

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929.01 SHORT TITLE

This Ordinance shall be known and may be cited as the “City of Bethlehem Stormwater Collection and Management User Fee Ordinance.”

929.02 STATEMENT OF FINDINGS

- A. The City of Bethlehem is authorized under The Pennsylvania Stormwater Management Act, Act 167, 32 P.S. § 680.1 et seq., the Third Class City Code, 11 Pa.C.S. § 13401, the Municipalities Planning Code, 53 P.S. § 10101 et seq., of the Commonwealth of Pennsylvania, 40 CFR Part 122 - The National Pollutant Discharge Elimination System and in particular pursuant to its Municipal Separate Storm Sewer System (MS4) Permit, to regulate stormwater.

- B. The City's existing stormwater management system and infrastructure requires maintenance, repair, improvements, and replacement to meet current and future needs, including addressing increased precipitation and flooding events.
- C. The City through its obligations under its Stormwater Management Ordinance and MS4 Permit requirements, maintains significant capital and operational infrastructure necessary to provide for water quality and rate control.
- D. A comprehensive multi-phased analysis was completed to evaluate the feasibility, need, and structure of a proposed Stormwater Management User Fee.
- E. The Bethlehem City Council hereby determines that a Stormwater Management User Fee is necessary to equitably and proportionately assess developed property in the City that requires a provision of a public drainage system and stormwater management program.

929.03 PURPOSE AND POLICY

City Council finds that an adequate, sustainable source of revenue for stormwater management is necessary to protect the general health, safety, and welfare of the residents of the City of Bethlehem, also referred to throughout this ordinance as the "City." Further, City Council finds that higher amounts of impervious area contribute greater amounts of stormwater and associated pollutants to the stormwater management system. Therefore, City Council determines that it is in the best interest of the public to enact a "Stormwater User Fee" that allocates stormwater management program costs to property Owners based on impervious area, hereinafter also referred to as the "User Fee."

929.04 DEFINITIONS AND USAGE

Unless a provision explicitly states otherwise, the following terms and phrases used in this Article shall have the following meanings:

- A. **Billing Unit** - one billing unit equates to 2,101 square feet of impervious area, the median of a statistical sample of single-family detached residential parcels within the City boundary, also known as an Equivalent Residential Unit.
- B. **Developed Parcel** - a parcel that contains an impervious area equal to or greater than 500 square feet.
- C. **Director** – means the Director of Public Works or his/her designee or the person appointed by the mayor as the acting Director.

- D. **Equivalent Residential Unit** - average amount of impervious surface area on a single-family detached residential property, used to set the billing unit in square feet of impervious area.
- E. **Impervious Area** - a surface area which prevents the percolation of water into the ground. The Director may develop specifications for mapping to define impervious area for the purpose of this Article, including the establishment of a uniform threshold under which a contiguous unit of impervious area is considered de minimis and not subject to mapping. The Director may use any appropriate primary and secondary methods for data capture, including but not limited to aerial photography and surface feature evaluation processes, to determine Impervious Area for purposes of mapping and User Fee calculation.
- F. **Owner** - any person, firm, corporation, partnership, trust, company, association, government agency, society, or group owning real property in the City. Owner as used in this ordinance shall also mean the multiple owners of a single parcel of real property.
- G. **Single Family Detached Residential** - a separate detached building providing a dwelling unit for one family.
- H. **Stormwater** - drainage runoff from the surface of the land resulting from precipitation or snow or ice melt.
- I. **Stormwater Management Program** - the activities of the City necessary to operate, maintain, enhance, and expand the stormwater management system and the activities necessary to carry out the City's municipal separate storm system (MS4) permit and the stormwater-related provisions of the Subdivision and Land Development Ordinance, Floodplain Conservation Ordinance, and the Stormwater Management Ordinance.
- J. **Stormwater Management System** - the system of runoff avoidance, infiltration, collection, and conveyance, including storm sewers, curbs, pipes, conduits, mains, inlets, culverts, catch basins, gutters, ditches, channels, detention ponds, stormwater wetlands, streets, drains, and all devices, appliances, and stormwater management practices and facilities used for collecting, conducting, pumping, conveying, detaining, infiltrating, reducing, managing, avoiding generation of, and treating stormwater.

929.05 STORMWATER USER FEE IMPOSED

- A. A stormwater User Fee shall be imposed on every developed parcel in the City that appears in the Lehigh or Northampton County parcel database as of the date of bill preparation. All stormwater User Fees shall be deposited into the Stormwater Management Fund of the City described in Section 929.07.

- B. The base rate per billing unit to be used for calculating the stormwater User Fee shall be revised by resolution by City Council adopting the new billing unit rate. The rate may be revised annually concurrent with annual budget adoption or in relation to another annual date as determined appropriate by the Director.

929.06 EXEMPTION FROM STORMWATER USER FEE

The following Impervious Areas shall be exempt from the imposition of the Stormwater User Fee:

- A. Public Streets as established in the General Plan of Streets under City Article 901, “Street Plan Map”; or a street owned by the Commonwealth of Pennsylvania; or a street accepted by the City as a right-of-way dedicated to the public for the movement of traffic with space for utilities and providing access to abutting properties.
- B. Rail and associated rail ballast.

929.07 STORMWATER MANAGEMENT FUND

The Stormwater Management Fund is established as a separate enterprise fund of the City, which shall be used solely to cover the cost of the City ’s stormwater management program. The fund shall consist of revenue generated by the stormwater User Fee and other deposits that may be made from time to time by the City, including but not limited to federal or state grants and revenue from the sale of bonds. All interest or other income derived from stormwater User Fees shall remain or otherwise be deposited into the fund.

929.08 STORMWATER USER FEE CALCULATION

- A. Unless otherwise specified in this Article, the stormwater User Fee for each parcel shall be calculated in the following manner:
 - 1. A single billing unit rate shall be \$60 per year.
 - 2. All single family detached residential parcels shall be billed as one billing unit.
 - 3. For all other parcels, determine the impervious area of the parcel in square feet:
 - a. Divide the impervious area of the parcel by the Equivalent Residential Unit of 2,101 square feet;
 - b. Round the resulting calculation using natural rounding to determine the number of billing units; and
 - c. Multiply the number of billing units by the rate established by ordinance enacted by City Council to obtain the stormwater User Fee for the parcel.
 - d. The minimum impervious surface area for billing purposes is 500 square feet.

- B. Impervious area held in common Ownership shall be calculated using the methodology in Section 929.08 A. above. The resulting stormwater User Fee will then be divided equally among parcels sharing common Ownership. The Director may, on a case by case basis and at the request of an association representing the Owners of the property under common Ownership or the recommendation of the Director, implement alternative methodology for dividing the stormwater User Fee, including but not limited to an established par value. In addition, the Director may establish separate billing accounts where there are multiple owners for a single parcel. Establishing separate accounts shall not reduce or negate joint and several liability of all owners of one parcel for the full User Fee.

929.09 STORMWATER USER FEE CREDITS

- A. The City Council shall adopt by ordinance a Stormwater Management Program Credit Policy Manual for reductions in the stormwater User Fee in recognition of practices that are targeted to reduce the cost of the City's stormwater management program. The credits shall be applied after determination of the stormwater User Fee in accordance with Section 929.08 above.
- B. The Director shall develop written policies and procedures necessary to implement the system of credits. These policies and procedures shall include, but not be limited to, provisions to reduce or eliminate the amount of credit if the Director determines that the practice is not functioning as intended.

929.10 BILLING, INTEREST, AND ENFORCEMENT

- A. The stormwater User Fee shall be billed to the record Owner of each parcel subject to the fee. Any portion of a stormwater User Fee that is unpaid as of twenty (20) days after the date the invoice is mailed shall be subject to collection by the City in a civil action filed in the court of common pleas or in a magisterial district court, except while the unpaid stormwater User Fee is the subject of an appeal to the Hearing Officer or the Director in accordance with Section 929.11. The City shall be entitled to recovery of the unpaid User Fee interest penalties, collection costs and reasonable attorney's fees if it prevails in such action. These remedies shall not be exclusive or preclude the City's pursuit of the remedies set forth in paragraph D. below.
- B. The penalty assessed for delinquent fees will be 1.5% per month on unpaid and overdue balances. The penalty on such unpaid amounts shall accrue during any period of appeal and be payable upon unpaid balances owed as a result of the final decision of an appeal.

- C. In addition to any penalty assessed in paragraph B. above, any cost or fee incurred by the City in conjunction with the collection of a delinquent fee shall be the responsibility of and paid by the Owner of record of the subject parcel.
- D. City may in its sole discretion enter into written payment plan agreements when in the judgment of the City Administration financial hardship is evident.
- E. The delinquent fee, along with any and all interest penalties, collection costs, and reasonable attorney's fees, shall constitute a lien on the parcel by virtue of the provisions of the Municipal Claims and Tax Lien Act of May 16, 1923 P.L. 207 No. 153, 53 P.S. §7101 et seq. (the "MCTLA") and shall be collectible via the remedies provided for therein.
- F. Legal enforcement remedies under this ordinance may be initiated and pursued by the solicitor's office or by the City's independent collection agency or law firm under an existing contract for collection services.
- G. Nothing in this Ordinance shall be construed to prohibit or limit an Owner's ability to collect by lease (written or existing by law) or contract sums due under this ordinance from a tenant or other occupier of the Owner's property, but such lease or contract shall not supersede the Owner's primary liability, or bind the City, or limit the City's authority to impose, assess, lien and collect User Fees from the Owner.
- H. City is not obligated to exercise its remedies in any sequence or priority. City remedies shall be deemed cumulative and not preclusive of each other.

929.11 APPEAL PROCESS AND PROCEDURE

- A. Any Owner of a parcel who believes the provisions of this Article have been applied in error may appeal in accordance with this Section, provided, however, that grounds for appeal are limited to the following:
 - a. An error was made regarding the square footage of the impervious area attributed to the parcel;
 - b. The property is exempt under Section 929.06;
 - c. There is a mathematical error in calculating the stormwater User Fee;
 - d. The identification of the parcel Owner invoiced is in error; and/or
 - e. An approved credit was incorrectly applied.
- B. The parcel Owner of record shall complete and submit to the Director a Stormwater User Fee Appeal Form in a format approved by the City within thirty (30) days of the charge being mailed or otherwise issued to the Owner ("appeal date"). A Hearing Officer designated by the Director from the City's engineering staff assigned to stormwater utility duties, shall review the appeal for completeness and make a determination within

fifteen (15) calendar days. In the event that the Hearing Officer finds that the appeal is incomplete, the Hearing Officer shall offer the Owner of record thirty (30) calendar days from the determination that the appeal is incomplete to supply the missing information. If all information requested is not provided within the thirty (30) calendar days, the petition for appeal shall be deemed to have been withdrawn.

- C. Once the appeal has been determined to be complete, the Hearing Officer shall conduct a technical review of the alleged error and respond to the Owner in writing within thirty (30) calendar days. The Hearing Officer may deny the appeal or adjust the stormwater User Fee if it is found to be in error.
- D. A decision by the Hearing Officer that is adverse to the appellant may be further appealed to the Director within thirty (30) days of the determination being mailed or otherwise issued to the Owner. The Director shall review the determination of denial made by the Hearing Officer and either affirm, reject, or modify the determination. The Director's determination will be provided to the Owner in writing by certified or registered mail within thirty (30) calendar days of receiving the denial appeal request.
- E. Any person aggrieved by a decision of the Director may further appeal to the appropriate County Court of Common Pleas within thirty (30) days of receipt of such written final decision.
- F. If payment is not made within fifteen (15) calendar days after the expiration of the Owner's right to appeal in accordance with this Section or a decision that is adverse to the Owner made by the appropriate County Court of Common Pleas, the unpaid fee shall be considered delinquent and subject to the provisions of Section 929.10.

929.12 POLICIES AND PROCEDURES

- A. The City Council may by resolution or ordinance adopt and amend such policies and procedures it deems appropriate to ensure collection of Stormwater User Fees imposed pursuant to this article.
- B. The Director may implement such administrative procedures necessary to implement the requirements set forth in this Article.

929.13 NO WAIVER OF LIABILITY BY CITY

Floods from stormwater may occur occasionally that exceed the capacity of the Stormwater Management System maintained and financed with User Fees. Nothing in this ordinance shall be deemed to imply that properties subject to charges shall always be free from flooding or flood damage, or that all flood control projects to control stormwater can provide complete protection from all flood and storm events. Nothing whatsoever in this ordinance shall deem City liable for any damages incurred from stormwater or from adverse water quality or establish a standard of

care for stormwater management. Nothing in this ordinance purports to reduce the need or necessity for an Owner to secure property flood insurance. City does not expressly waive any immunity or defense to liability by enacting or enforcing this ordinance; and City expressly reserves the right to assert all available immunities, defenses and limitations of action in any action seeking monetary damages from City, its officers, employees and agents arising out of any alleged failure or breach of duty with respect to City's Stormwater Management System.

929.14 REPEALER

Any and all previous Ordinance(s) or parts thereof which are inconsistent with the terms and provisions of this Ordinance are hereby repealed.

929.15 SEVERABILITY

If any section, subsection, sentence, clause, phrase, provision, or portion of this Ordinance is found to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision. Such decision shall not affect the validity of the remaining portions of this Ordinance.

929.16 EFFECTIVE DATE

This Ordinance shall become effective on January 1, 2021 and shall be carried on the next most appropriate utility bill for monthly or quarterly billing of the fees due.

Sponsored by /s/ _____

/s/ _____

PASSED finally in Council on this _____ day of _____, 2020

ATTEST:

City Clerk

/s/ _____
President of Council

This Ordinance approved this _____ day of _____, 2020

/s/ _____
Mayor