

DATE: AUGUST 16, 2010

CLERK: MARY BETH BAILEY

MASSILLON CITY COUNCIL
CITY OF MASSILLON, OHIO
GLENN E. GAMBER, PRESIDENT

COUNCIL CHAMBERS

LEGISLATIVE DEPARTMENT

AMENDED

ORDINANCE NO. 95 - 2010

BY: ENVIRONMENTAL COMMITTEE

TITLE: AN ORDINANCE enacting a new CHAPTER 943 "STORMWATER UTILITY", of the Codified Ordinances of the City of Massillon, and declaring an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1:

There be and is hereby enacted a new CHAPTER 943 "STORMWATER UTILITY", of the Codified Ordinances of the City of Massillon. Said newly created Chapter shall read as follows:

(SEE ATTACHED EXHIBIT "A")

Section 2:

This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the health, safety, and welfare of the community, and for the additional reason that the Ohio Environmental Protection Agency is requiring the city to comply for our MS4 permit. Provided it receives the affirmative vote of two-thirds of the elected members to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED IN COUNCIL THIS 1st DAY OF November, 2010

APPROVED: Mary Beth Bailey
MARY BETH BAILEY, CLERK OF COUNCIL

Glenn E. Gamber
GLENN E. GAMBER, PRESIDENT

APPROVED: November 2, 2010

Francis H. Cicchinelli, Jr.
FRANCIS H. CICCHINELLI, JR., MAYOR

CHAPTER 943

Stormwater Utility

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943.01 Stormwater Utility

It is hereby declared necessary for the protection of the public health, safety, welfare and convenience of the City of Massillon and its inhabitants to codify the establishment of the storm drainage utility and to codify just and equitable rates or charges to be paid to the City for the use of such services which shall be used for the payment of the cost of the management, maintenance, operation, repair, construction, reconstruction, enlargement, replacement and related costs of the storm drainage system and items relating to the City Stormwater Management Plan as required through the Ohio Environmental Protection Agency (OEPA).

943.02 Findings, Determinations and Power

It is hereby found, determined, and declared that those elements of the system which provide for the collection, treatment and disposal of stormwater and regulation of ground water are of benefit and provide services to all property within the incorporated City limits, including property not presently served by the storm elements of the system. The beneficiaries of the system include all real properties within the City of Massillon which benefit by the provision, operation and improvement of the system. Such benefits may include, but are not limited to, the provision of adequate systems of collection, conveyance, detention, treatment and release of stormwater, the reduction of hazard to property and life resulting from stormwater runoff, improvement in general health and welfare through reduction of undesirable stormwater conditions, and improvement to the water quality in the storm and surface water system and its receiving waters.

The stormwater utility, under the direction of the Director of Public Service and Safety shall, and does, have the power to:

- (a) Prepare regulations as needed to implement this Chapter and forward the same to City Council for consideration and adoption, and adopt such policies and procedures as are required to implement said regulations or carry out other responsibilities of the utility.
- (b) Administer the acquisition, design, construction, maintenance and operation of the utility system, including capital improvements.
- (c) Administer and enforce this Chapter and all regulations and procedures adopted relating to the design, construction, maintenance, operation and alteration of the utility system including, but not limited to, the quantity, quality and/or velocity of the storm water conveyed thereby.
- (d) Inspect private systems as necessary to determine the compliance of such systems with this Chapter and any regulations adopted pursuant to this Chapter.
- (e) Advise City Council, the City Administration and City departments on matters relating to the utility.
- (f) Prepare and revise a comprehensive drainage plan for adoption by City Council periodically.
- (g) Review plans, approve or deny, inspect and accept extensions to the system.

(h) Establish and enforce regulations to protect and maintain water quality within the system in compliance with water quality standards established by the city, state, regional and/or federal agencies as now adopted or hereafter amended.

(i) Analyze the cost of services and benefits provided, and the system and structure of fees, charges, fines and other revenues of the utility annually.

943.03 Definitions

For the purpose of this Chapter, the following definitions shall apply; words used in the singular shall include the plural, and the plural, the singular; words used in the present tense shall include the future tense. The word "shall" is mandatory and not discretionary. The word "may" is permissive. Words not defined herein shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary.

(A) **"Billing period"** means the period identified from the first day of the month to the last day of the month. All bills rendered during a month are for the period beginning on the first day of the same month and are valid for that entire month unless otherwise identified. When a developed or undeveloped property does not receive City sanitary sewer service changes ownership during a billing period, the account existing on the first day of the billing period shall be liable for the prorated portion of the drainage fee for that billing period from the first day of the billing period until the day the property transaction is recorded with the Stark County Recorder.

(B) **"Bonds"** mean revenue bonds, notes, loans or any other debt obligations issued or incurred to finance the costs of construction.

(C) **"Calendar year"** means a twelve month period commencing on the first day of January of any year.

(D) **"Costs of construction"** means costs reasonably incurred in connection with providing capital improvements to the storm system or any portion thereof, including, but not limited to, the costs of:

- (1) Acquisition of all property, real or personal, and all interests in connection therewith including all rights-of-way and easements therefore.
- (2) Physical construction, installation and testing, including the costs of labor, services, materials, supplies and construction services used in connection therewith.
- (3) Architectural, engineering, legal and other professional services.
- (4) Insurance premiums taken out and maintained during construction, to the extent not paid for by a contractor for construction and installation.
- (5) Any taxes or other charges which become due during construction.
- (6) Expenses incurred by the City or on its behalf with its approval in seeking to enforce any remedy against contractor or sub-contractor in respect of any default under a contract relating to construction.
- (7) Principal of interest of any bonds.
- (8) Miscellaneous expenses incidental thereto.

(E) **"Debt service"** means, with respect to any particular calendar year and any particular series of bonds, and amount equal to the sum of (i) all interest payable on such bonds during such calendar year, plus (ii) any principal installments of such bonds during such calendar year.

(F) **"Developed property"** means that which has been altered from its natural state by the removal of vegetation and/or topsoil or by the addition of any improvements such as a building, structure, impervious surface, change of grade, or landscaping. For new construction, a property shall be considered developed pursuant to this ordinance:

- (1) Upon issuance of a Certificate of Occupancy, or upon completion of construction of final inspection if no such certificate is issued; or
- (2) Where construction is at least 50 percent complete and construction is halted for a period of three months.
- (3) Where vegetation and/or topsoil have been removed leaving exposed soil surfaces for a period of three months.

(G) **"Director"** means the Director of Public Service and Safety, or his designee.

(H) **"Dwelling unit"** means any residential space for habitation as classified by the City building Code.

(I) **"Equivalent Residential Unit"** or ERU means the statistical average horizontal impervious area of "residential units" (single family, mobile homes, multifamily, condominiums, etc., within the City of Massillon). The horizontal impervious area includes, but is not limited to, all areas covered by structures, roof extensions, patios, porches, driveways, and sidewalks.

(J) **"ERU rate"** means a drainage fee charged on each ERU as established by City Council.

(K) **"Exempt property"** means public rights of way, public streets, public alleys and public sidewalks.

(L) **"Extension and replacement"** means costs of extensions, additions and capital improvements to, or the renewal and replacement of capital assets of, or purchasing and installing new equipment for, the system, or land acquisitions for the system and any related costs thereto, or paying extraordinary maintenance, including the costs of construction, or any other expenses which are not costs of operation and maintenance or debt service.

(M) **"Impervious area"** and **"impervious surface"** means a horizontal surface that has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water. It includes, but is not limited to, semi-pervious surfaces such as compacted clay or gravel, un-vegetated and under vegetated solid surfaces, as well as streets, roofs, sidewalks, patios, porches, parking lots, athletic courts and other similar surfaces.

(N) **"Nonresidential developed property"** means any lot or parcel not exclusively residential as defined herein, including transient rentals such as hotels and motels.

(O) **"Operating budget"** means the annual operating budget adopted by the City for the succeeding calendar year.

(P) **"Operations and maintenance"** means the current expenses, paid or accrued, of operation, maintenance and current repair of the system, as calculated in accordance with sound accounting practice, and includes, without limiting the generality of the foregoing, insurance premiums, administrative expenses, labor, executive compensation, and cost of materials and supplies used for current operations, and charges for the accumulation of appropriate reserves for current expenses not annually incurred, but which are such as may reasonably be expected to be incurred in accordance with sound accounting practice.

(Q) **"Residential property"** means any lot or parcel developed exclusively for residential purposes including, but not limited to, single family homes, manufactured homes, multifamily, apartment buildings, and condominiums.

(R) **"Revenues"** mean all rates, fees, assessments, rental or other charges or other income received by the Stormwater Drainage Fund, in connection with the management and operation of the system, including amounts received from the investment or deposit of moneys in any fund or account and any amounts contributed by the City, all as calculated in accordance with sound accounting practice.

(S) **"Stormwater Management System"** or **"system"** means the existing stormwater management of the City and all improvements thereto which by this Chapter are constituted as the property and responsibility of the City, to be operated as an enterprise fund to, among other things, conserve water, control discharges necessitated by rainfall events, incorporate methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over-drainage, environmental degradation and water pollution or otherwise affect the quality and quantity of discharge from such system.

(T) **"Stormwater fee"** means a fee authorized by Ordinance(s) established to pay operations and maintenance, extension and replacement and debt service.

(U) **"Stormwater Drainage Fund"** means the enterprise fund created by City Council to operate, maintain and improve the system and for such other purposes as stated in this Chapter.

(V) **“Undeveloped Property”** means real property which is a build able lot with in the corporation limits.

(W) **“Undisturbed property”** means real property which has not been altered from its natural state by dredging, filling, removal of trees and vegetation or other activities which have disturbed or altered the topography or soils on the property.

(X) **“User Fee District”** means the area or property within the corporate limits of the City of Massillon.

(Y) **“Vacant improved property”** means vacant property which is, or could reasonably be, served by any subdivision improvements that allow egress.

943.04 Stormwater Fee

Subject to the provisions of this Chapter, each and every residential developed and nonresidential developed, other than exempt property, within the corporate limits of the City, and the owners and non-owner users thereof, have imposed upon them a stormwater fee. The stormwater fee shall be billed on a quarterly basis which shall be determined by the provisions of this Chapter and the ERU and ERU Rate which shall be established and changed from time to time by City Council. The rate hereby adopted by the City Council is \$1.00 per month per Equivalent Residential Unit (ERU) and \$2.00 per month for any developed property not considered Residential beginning October 1, 2010.

943.05 Stormwater Fee Collection

The fee provided in Section 943.04 shall be billed to the person or entity currently receiving the City's utility bill for sanitary sewer services. The owner of the parcel of property in question shall always be responsible for said bills. Such fee shall appear on the utility bill rendered by the City for sanitary sewer services as a separate item and shall be considered an integral part of such bill. Failure to remit the entire amount of the charges for all services shall constitute a delinquency, with termination of all services to take place in accordance with the provisions of the Codified Ordinances of the City of Massillon, thirty days after such delinquency. For those properties within the corporate limits of the City that do not utilize the City's sanitary sewer services the property owner, or their designee shall be billed separately for the stormwater fee.

943.06 Stormwater Drainage Fund

The revenues received pursuant to this Chapter 943 shall be deposited with the City Auditor and shall be kept in a separate and distinct fund known as the Stormwater Drainage Fund. The Stormwater Drainage Fund shall be used for the payment of the cost of items related to the City's Storm Water Management Plan as mandated by the Ohio Environmental Protection Agency (OEPA) and of the management, maintenance, operation and repair of the stormwater utility system and for the enlargement or replacement of the stormwater utility system, for the construction and reconstruction of said system, for the payment of interest on any indebtedness incurred for the construction thereof, and for the creation of a sinking fund for the payment of such indebtedness, but shall not be used for any other purpose not related to items in this chapter or for private storm sewer apputances.

943.07 Stormwater District Review and Appeals Board

(a) The City of Massillon Stormwater District Review and Appeals Board is hereby established. Said Board shall consist of five (5) members; The City Engineer and the Director of Public Service and Safety. The other two (3) members shall consist of electors of the City appointed by the Mayor and approved by City Council. Appointed members may be removed by the Mayor with the approval of a vote of two-thirds (2/3) of the members of City Council. The term of office for appointed members of said Board shall be two (2) years. Should a vacancy occur on the Board, the remaining portion of the unexpired term shall be filled by the Mayor and approved by City Council.

(b) The Board is authorized to hear appeals regarding disputes and complaints brought by owners and nonowners concerning application of this chapter, including the authority to make adjustments as appropriate to provide relief from a strict application of the provisions of this chapter due to unique circumstances which reduce the burden of operating, constructing, repairing and maintaining the stormwater utility system and the structures and devices related thereto, while accomplishing the intent of this chapter, as follows:

1. Calculation of the total number of building units assigned to a property that are claimed to be inaccurate due to alleged inaccuracies in data utilized by the billing staff.
2. Adjustment to or credit against billing units assigned to a property which wholly or partially drains directly outside the City limits.
3. Adjustments to or credits against billing units assigned to properties containing stormwater detention or retention facilities providing on-site management of stormwater prior to discharge to the public stormwater system.
4. Adjustments arising from a break in billing units due to change in property ownership, account responsibility or similar matters.
5. Any other adjustments or credits against billing services assigned to properties which diminish the quantity of stormwater handled by the stormwater utility system or reduce the cost to the City of constructing, operating and maintaining said system, such as a property owner's agreement to install oversize storm sewer pipes at its own cost, which provides stormwater drainage for other properties, obligations assumed by an owner to maintain and repair storm sewer lines which are a part of the City's stormwater utility system, providing stormwater retention of detention facilities designed and installed to detain or retain stormwater originating from other properties.

(c) Any appeal must be filed in writing, must describe the specific error alleged, and contain the resolution of said dispute which the appealing party feels is correct. Said Board may request additional information from either the appealing party or the City. The decision of said Board shall be final.

943.08 Flooding, Liability

Floods from Stormwater runoff may occasionally occur which exceed the capacity of Storm drainage Facilities constructed, operated, or maintained by funds made available under this chapter. This chapter does not imply that Property subject to the fees and charges established herein will always be free from Stormwater flooding or flood damage, or that Stormwater systems capable of handling all Storm events can be cost effectively constructed, operated, or maintained. Nor shall this chapter create a liability on the part of, or cause of action against, the City or any officer or employee thereof for any flood damage that may result from such Storms or the runoff thereof. Nor does this chapter purport to reduce the need or the necessity for obtaining flood insurance.

943.09 Notice to Correct Drainage

- (a) Whenever the Director of Public Service and Safety or his designee shall find that a tract of land is inadequately drained, or that there is an obstruction to a culvert, covered drain, or other natural or man-made watercourse that interferes with water naturally flowing therein or that such culvert, drain, or watercourse is of insufficient capacity to reasonably accommodate the flow of water, as required by this chapter, the Director of Public Service and Safety or his designee shall notify the owner or person having possession, charge, or management of such land to remove the obstruction or provide the necessary drainage. Such Notice shall be served on such persons by personal delivery, by mail at the last-known place of residence, or by posting on the Premises.
- (b) The owner must comply with the Director of Public Service and Safety orders within the time specified and not to exceed thirty (30) days. Failure to comply with such order shall constitute an unlawful act and be subject to section 44 13 of this chapter. Each additional period of ~~ten (10)~~ **thirty (30)** days thereafter during which the owner fails to carry out the order of the Director of Safety Service or his designee, shall constitute a separate offense.

943.10 Emergencies, Abatement

- (a) In case of an emergency, the Director of Public Service and Safety or his designee may direct that action be taken immediately to correct the condition or abate the activity to protect the public health, safety, and welfare. The City may perform the required work and charge the owner the Abatement costs.
- (b) In any case where a condition described in Section 943.09 exists for more than thirty (30) days after service of Notice, Council may by resolution direct the owner to fill or drain such land, remove any obstruction and, if necessary, enlarge the culverts, drains, or watercourse to meet the requirements of this chapter.
- (c) After service of a copy of such resolution or after publication in a paper of general circulation in the City for two consecutive weeks, the owner, or agent or attorney, shall comply with the directions of the resolution within the time therein specified. When the resolution is submitted to the appropriate Council committee, the owner shall be afforded Notice and an opportunity to be heard prior to passage of the resolution. In the event an owner fails or refuses to comply with Council's resolution, the City may perform the required work and charge the owner the Abatement costs. Such costs shall constitute a lien on the real Property from the time of the adoption of the resolution which may be enforced by suit in the court of common pleas.

943.11 Abatement Costs

- (a) The Director of Safety Service or his designee shall account for all costs associated with an emergency or Abatement, including but not limited to administration, notification, inspection, serving of papers or documents, legal counsel, force account labor, enforcement, operational services, and outside contracted services. These costs shall ~~be added to the owner's Storm drainage service charge~~ **constitute a lien on the real Property from the time of the emergency or abatement which may be enforced by suit in the court of common pleas.**
- (b) This section shall not be construed to relieve the owner of any penalties prescribed by other sections of this chapter.

943.12 Emergency Situations

Nothing in this Chapter shall be construed to prevent immediate action by the Director of Public Service and Safety or his designee in emergency situations.

943.13 Penalty

- (a) Any person, being the owner ~~or agent, or having control~~ of the Premises, who violates any of the provisions of this chapter, or fails to conform to any of the provisions thereof, or fails to obey any order of the Director of Public Service and Safety or his designee, shall be guilty of a misdemeanor of the first degree. ~~Each and every day~~ **Every thirty (30) days** on which such person continues to violate the provisions of this chapter after having once been notified of such violation shall constitute a separate offense.
- (b) Any person, being the owner, agent, or having control of the Premises, architect, engineer, contractor, builder, subcontractor, foreman, mechanic, employee, or other person who shall violate or assist in the violation of this Chapter, or of any certificate, order, or permit issued hereunder, shall be guilty of a misdemeanor of the fourth degree on each offense.