

ORDINANCE NO. 34-12

**AN ORDINANCE ESTABLISHING USER FEES TO BE COLLECTED BY
THE CITY OF WEST LAFAYETTE FROM OWNERS OF PROPERTY
LOCATED WITHIN THE CITY.**

WHEREAS, the City of West Lafayette, Indiana has constructed and has in operation a system for the collection of stormwater runoff;

WHEREAS, the National Pollutant Discharge Elimination System (“NPDES”) permit program, as authorized by the Clean Water Act, 33 U.S.C. § 1251 et. seq., controls water pollution by regulating point sources that discharge pollutants into the waters of the United States;

WHEREAS, the City is designated by the State of Indiana as an operator of a Municipal Separate Storm Sewer System (MS4) and is therefore obligated to comply with all requirements of 327 IAC 15-13 (Rule 13) and the NPDES program and the City generally desires to reduce the discharge of pollutants into the waters of Tippecanoe County and the State of Indiana;

WHEREAS, the City finds that a stormwater user fee must be enacted to pay for the costs of operating and maintaining the MS4 and general stormwater runoff management in compliance with the NPDES;

NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF WEST LAFAYETTE that:

Revised and New Articles shall be added to Chapter 116 of The West Lafayette City Code, to read as follows:

Article I: Section 116.101 Authority and Title (Revised)

This code is adopted in accordance with statutory authority granted under IND. CODE Chapters 36-9-23, 36-9-28.8 and Ind. Code § 36-9-2-8-13, and the requirements of Phase II of the National Pollutant Discharge Elimination System program (FR Doc.99-29181) authorized by the 1972 amendments to the Clean Water Act, and the Indiana Department Environmental Management’s Rule 13 (327-15-13), and the Indiana Department Environmental Management’s Rule 5 (327-15-5). Based on this authority and requirements, this code regulates:

- (a) Discharges of prohibited non-stormwater flows into the storm drain system.
- (b) Stormwater drainage improvements related to development of lands located within the City of West Lafayette.
- (c) Drainage control systems installed during new construction and the grading of lots and other parcels of land.
- (d) Erosion and sediment control systems installed during new construction and grading of lots and other parcels of land.
- (e) The design, construction, and maintenance of stormwater facilities and systems.
- (f) The design, construction, and maintenance of stormwater quality facilities and systems.

- (g) The establishment and implementation of a Stormwater Service Charge.

This code shall be known and may be cited as the West Lafayette Stormwater Code.

Article IX. Stormwater Service Charge (New)

Section 116.901 Stormwater Service Charge

- (a) A Stormwater Service Charge shall be imposed on each and every lot and parcel of land within the City of West Lafayette which directly or indirectly contributes to the stormwater system of the City of West Lafayette, which charge shall be assessed against the owner, who shall be considered the user and ultimately responsible for the service charge for the purposes of this Article.
- (b) This charge is deemed reasonable and is the minimum necessary to pay for the repair, replacement, planning, improvement, operation, regulation and maintenance of the existing and future City of West Lafayette stormwater system and for compliance with the City of West Lafayette NPDES stormwater discharge permit.

Section 116.902 Stormwater Rate and Fee Establishment Procedures

- (a) Each parcel of property within the City of West Lafayette shall be individually subject to a Stormwater Service Charge.
- (b) For each parcel that directly or indirectly contributes to the stormwater system of the City of West Lafayette, the Stormwater Service Charge shall be based on the presence of and/or measure of impervious surface area on the parcel or property.
- (c) Each parcel of property shall be classified as Residential or Non-residential. The Board is authorized to establish the classification of an individual parcel or property based upon its primary use.
- (d) This stormwater rate is designed to recover the cost of rendering stormwater service to the users of the stormwater system and shall be the basis for assessment of the City of West Lafayette's Stormwater Service Charge. This rate is further designed to maintain adequate reserves to provide for reasonably expected variations in the cost of providing services, as well as variations in the demand for services.
- (e) This rate shall be evaluated annually as to its sufficiency and an evaluation report shall be provided to the Board no later than April 31 of each year.

Section 116.903 Rate Structure and Calculations

- (a) For the purposes stated in Section 116.901, there is hereby assessed a Stormwater Service Charge to each user in the City of West Lafayette who contributes directly or indirectly to the stormwater system of the City of West Lafayette, in an amount defined below.

- (b) It is hereby established that an Equivalent Residential Unit (“ERU”) shall be based upon 3,200 square feet of impervious surface area.
- (c) All properties having impervious surface area within the City of West Lafayette shall be assigned an ERU, or multiple thereof, with all properties having impervious area assigned at least one (1) ERU.
- (d) The Stormwater Service Charge for one (1) ERU is hereby established at the rate of \$8.00 per month. The total service charge for a particular property shall be determined by taking the number of ERUs assigned to a particular property and multiplying it by the established rate.
- (e) *Residential Properties.* Residential properties shall be assessed a monthly service charge for stormwater service of one (1) ERU. This flat fee shall apply to all residential properties as defined herein.
 - 1. Contiguous residential properties having common ownership and sharing a single structure containing two (2) or less dwelling units shall be assigned one (1) ERU.
- (f) *Non-Residential Properties.* The total impervious surface area of each Non-Residential property shall be individually calculated. Non-Residential properties shall be assessed a monthly service charge for stormwater service based upon the total number of ERUs that encompasses the measured impervious surface area on the individual property. The calculation to determine the total number of ERUs for a Non-Residential property shall be completed by dividing the total square footage of measured impervious surface area for a property by 3,200 square feet. The division shall be calculated to the first decimal place. Total ERUs shall not be less than one (1) for any Non-Residential property containing measurable surface area.
- (g) Only whole ERUs shall be used in determining the assignment of gross ERUs to a property. All rounding necessary to reach the appropriate whole ERU shall be done according to mathematical convention (0 – 0.4 rounded down to the nearest whole ERU; 0.5 -0.9 rounded up to the nearest whole ERU).

Section 116.905 Billing; Collection

- (a) Stormwater Service Charge levied pursuant to this chapter shall be in effect from January 1, 2014, and shall be due and payable on or before the due dates shown on the billing statement.
- (b) Any Stormwater Service Charge not paid by the due date shall be considered delinquent. The delinquent charge shall be ten (10%) percent of the billed amount and shall be added to the next statement rendered.
- (c) Delinquent Stormwater Service Charges constitute a lien against a property and may be collected along with applied penalties, recording fees and service charges, in accordance

with the provisions of IC 36-9-23-32 and -33, as amended from time to time. Delinquent Stormwater Service Charges together with delinquent penalties, cost of collection, legal fees and other expenses of collection may be collected by any lawful remedy.

Section 116.906 Appeals

A user liable for payment of a Stormwater Service Charge may appeal any billing dispute to the West Lafayette City Engineer's office. Such appeal shall be filed in writing on forms prescribed by the Board together with supporting evidence no later than 30 days after the action or decision being appealed from. The City of West Lafayette Engineer's office shall consider the appeal and make a decision within 60 days from the date the appeal was filed. If a decision is not rendered within the 60 day period, or if the user disagrees with the decision rendered, the user may make a written request for a hearing before the Board no later than 90 days from the date the appeal was filed. The Board will render a final decision within 30 days thereafter. During the appeal period, the user will continue to pay the Stormwater Service Charge and any other charges hereunder, which charges will be subject to rebate if required by the final decision of the Board.

Section 116.907 Stormwater Revenue Fund

All revenues earned and Stormwater Service Charges collected for stormwater service, including but not limited to drainage service charges, permit and inspection fees, direct charges and interest earnings on any unused funds shall be deposited in an account entitled "City of West Lafayette Stormwater Revenue Fund" and shall be subject to the provisions of IC 36-9-23, as amended from time to time. Disbursements from the Stormwater Revenue Fund shall be authorized by the Board and, as required by law, by the Common Council. Such disbursements shall be used exclusively for the operation, maintenance and improvement of the City of West Lafayette's stormwater system. Funds from this account shall not revert to any other city utilities or the general fund of the City and may not be transferred for any other purpose. To the extent that there are outstanding revenue bonds of the City issued pursuant to the provisions of IC 36-9-23, as amended from time to time, revenues deposited in the Stormwater Revenue Fund shall be subject to the covenants contained in the ordinance or ordinances authorizing such outstanding bonds.

APPENDIX A (Revised to include the following)

ABBREVIATIONS

ERU Equivalent Residential Unit

DEFINITIONS

Board. The City of West Lafayette Board of Public Works and Safety.

Equivalent Residential Unit or "ERU". A unit equal to the average amount of impervious area of a residential property within the City of West Lafayette, Indiana, and is hereby established to be 3,200 square feet.

Impervious Area. Real property that has been paved with concrete, asphalt, brick, stone or compacted gravel (meaning gravel containing fines that has been compacted by mechanical means), or other material and real property covered with buildings or other structures such that the natural infiltration of water into soil is prevented. Examples of impervious areas include, but are not limited to: roofs of building structures, asphalt or concrete parking areas, asphalt or concrete private drives, and concrete pads. Public roads maintained by the City are considered to be a part of the Storm Sewer Conveyance System and do not constitute Impervious Area as defined by this Article

Property or Parcel. Real property having a legal description that is formally set forth in a document recorded in the Office of the Tippecanoe County Recorder or other similar official.

Non-Residential Property. All Properties and Parcels located within the City that are not Residential Property including, but not limited to: agricultural property, apartment complexes, common area, commercial property, industrial property, institutional property, and churches.

NPDES Permit. The permit required to be obtained by the City pursuant to Section 402 of the Clean Water Act.

Pervious Area. Real property that is not Impervious Area.

Residential Property. Property or Parcels on which a building or mobile home is situated which building contains a group of rooms forming a single inhabitable dwelling unit with facilities which are used or are intended to be used primarily for living, sleeping, cooking and eating. This definition also includes a lot containing one individual building containing two (2) or fewer separate or contiguous single-family dwelling units.

Storm Sewer Conveyance System. A sewer intended or designed to convey stormwater, surface runoff, waters from streets or sidewalks, and drainage from the surface of the Earth, and not intended or designed to convey waste, sanitary sewage, and industrial wastes other than unpolluted cooling water.

Stormwater Service Charge. A charge imposed on owners of real property located in the City.