

## **CITY OF OBERLIN, OHIO**

### **ORDINANCE No. 18-56 AC CMS**

AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF OBERLIN, OHIO, BY ADDING A NEW CHAPTER 916 MUNICIPAL STORMWATER UTILITY, IN ORDER TO ESTABLISH A STORMWATER RATE STRUCTURE, WHICH WILL PROVIDE FUNDING FOR THE OPERATION, MAINTENANCE, AND IMPROVEMENT OF THE STORMWATER SYSTEM, REPEALING ORDINANCE NO. 18-33 AC CMS AND DECLARING AN EMERGENCY

WHEREAS, the City of Oberlin currently owns and operates a stormwater system for the collection and conveyance of storm and other surface and subsurface waters and for flood control; and,

WHEREAS, Ordinance No. 18-33 AC-CMS passed by Oberlin City Council on June 4, 2018 to enact new Chapter 916 of the Oberlin Codified Ordinances is not yet effective; and,

WHEREAS, it is necessary to repeal and replace Ordinance No. 18-33 AC CMS to incorporate certain revisions to Section 1 thereof as are set forth herein.

WHEREAS, City Council finds that continuing maintenance, repair, replacement, improvement and regulation of the stormwater system is necessary to prevent further deterioration of the existing system, prevent or reduce flooding and to prevent water pollution; and

WHEREAS, it is the intent of the City of Oberlin that the costs of the operation, maintenance, and improvements of the stormwater system be borne by the users of the system in relation to their individual contributions of stormwater to the system; and

WHEREAS, the Oberlin City Council has determined to join the Lorain County Stormwater District chartered under Chapter 6117 of the Ohio Revised Code to effectively and efficiently administer the NPDES Phase II permit regulations as a co-permittee; and

WHEREAS, both the City of Oberlin and Lorain County, are required pursuant to the 1972 Federal Clean Water Act, amended by the Water Quality Act of 1987, regulated by the United States Environmental Protection Agency (EPA) and Ohio EPA to comply with and obtain a National Pollutant Discharge Elimination System (NPDES) Phase II small MS4 (Municipal Separate Storm Water System) permit to implement programs to improve the quality of stormwater and detect and eliminate illicit discharges; and

WHEREAS, EPA allows MS4 permit holders to jointly perform services for required compliance; and

WHEREAS, Lorain County has adopted a Storm Water Management Plan as the basis for the City of Oberlin and Lorain County to jointly and collectively coordinate and collaborate on compliance with the permit requirements; and



WHEREAS, the City of Oberlin and Lorain County have determined that it is in the best interests of their constituents to collaborate in the joint performance of certain EPA Phase II MS4 requirements as set forth in the Memorandum of Understanding (MOU) entered into by and between the City of Oberlin and the Lorain County Storm Water District in accordance with Ordinance 18-32 AC CMS; and

WHEREAS, it is necessary and desirable and in the best interest of the City, its citizens, and the users of the stormwater system to establish a mechanism for the financing of facilities, systems, and services provided by the City of Oberlin and that the stormwater utility program charge, which shall be designated the stormwater service charge, shall be imposed and collected as provided in this ordinance; and

WHEREAS, the stormwater service charge should be fair, equitable, revenue sufficient, and reflect the relative contribution of stormwater runoff from a property or parcel of land, benefits enjoyed, and services received by each property or parcel as a result of the collection of surface and subsurface water, and should consider the impervious area of the various properties or parcels located within the City limits, because the extent of stormwater, surface water and subsurface water runoff from a particular lot or parcel is largely a function of its impervious area; and

WHEREAS, the City of Oberlin has established standards to regulate the quantity of stormwater discharged and to regulate stormwater contaminants as necessary to protect the water quality; and

WHEREAS, the City will review and approve plans and plats for stormwater management in proposed subdivisions, commercial developments and any activity requiring a Construction Site General Permit from the Ohio Environmental Protection Agency; and

WHEREAS, the City may suspend, or revoke permits when it is determined that the permittee has violated any applicable ordinance, resolution or condition of the permit; and

WHEREAS, the City is responsible for the protection and preservation of the public health, safety, and welfare of the community and the environment and finds that it is in the best interest of the health, safety, and welfare of the citizens of the city, the community at large and the environment to proceed with the development, implementation, and operation of a stormwater utility program.

NOW, THEREFORE BE IT ORDAINED, by the Council of the City of Oberlin, County of Lorain, State of Ohio, a majority of all members elected thereto concurring:

SECTION 1. That new Chapter 916 of the Codified Ordinances of the City of Oberlin Ohio establishing the Municipal Stormwater Utility Division and providing for its administration, is hereby enacted as is set forth in **Exhibit A** attached hereto and incorporated herein by reference.

SECTION 2. That Ordinance No. 18-33 AC CMS be and is hereby repealed.



SECTION 3. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

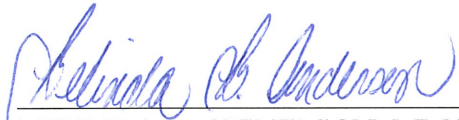
SECTION 4. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the citizens of the City of Oberlin, Ohio or to provide for the usual daily operation of a municipal department, to wit: to enact new Chapter 916 of the Oberlin Codified Ordinances to be effective contemporaneously with companion legislation previously enacted by Council that relate to the stormwater utility, and shall take effect immediately upon passage.

PASSED: 1<sup>st</sup> Reading: July 2, 2018 (E)

2<sup>nd</sup> Reading: \_\_\_\_\_

3<sup>rd</sup> Reading: \_\_\_\_\_

ATTEST:

  
\_\_\_\_\_  
BELINDA B. ANDERSON, MMC  
CLERK OF COUNCIL

  
\_\_\_\_\_  
BRYAN BURGESS  
PRESIDENT OF COUNCIL

POSTED: 07/03/2018

EFFECTIVE DATE: 07/02/2018



## **EXHIBIT A**

### **Chapter 916 Municipal Storm Water Utility**

916.01	DIVISION ESTABLISHED.
916.02	PURPOSE AND OBJECTIVE.
916.03	PERSONNEL.
916.04	POWERS AND DUTIES OF PUBLIC WORKS DIRECTOR.
916.05	DEFINITIONS.
916.06	FUNDING THE MUNICIPAL STORM WATER UTILITY DIVISION.
916.07	MUNICIPAL STORM WATER UTILITY DIVISION ENTERPRISE FUND.
916.08	MUNICIPAL STORM WATER UTILITY DIVISION RATE STRUCTURE AND FEES.
916.09	NECESSITY FOR SERVICE CHARGES.
916.10	RIGHT TO APPEAL.
916.11	COLLECTION AND PAYMENT OF SERVICE CHARGES.
916.12	ADJUSTMENTS TO STORM WATER SERVICE CHARGES.
916.98	FALSIFYING INFORMATION.

#### **916.01 DIVISION ESTABLISHED.**

City Council hereby establishes a Municipal Stormwater Utility Division within the Department of Public Works. The function of the newly created Stormwater Utility Division is to provide for the safe and efficient capture of stormwater runoff, to mitigate the damaging effects of stormwater runoff, to provide for the correction of stormwater problems; to fund activities of stormwater management, and to include design, planning, regulation, education, coordination, construction, operations, maintenance, inspection and enforcement activities.

It is the express intent of this newly created stormwater utility division, to protect the public health, safety and welfare of people, property and the environment.

#### **916.02 PURPOSE AND OBJECTIVE.**

The City Council finds, determines and declares that the stormwater system, which provides for the collection, treatment, storage, and disposal of stormwater provides benefits and services to all property or parcels within the city limits. Such benefits include, but are not limited to: the provision of adequate systems of collection, conveyance, detention, treatment and release of stormwater; the reduction of hazards to property and life resulting from stormwater runoff; improvements in general health and welfare through reduction of undesirable stormwater conditions; and improvements to the water quality in the stormwater, surface water and subsurface water systems and the receiving waters.

### **916.03 PERSONNEL.**

Personnel within the Municipal Storm Water Utility shall be in the Public Works Department and responsible to the Public Works Director or his/her designee.

### **916.04 POWERS AND DUTIES OF PUBLIC WORKS DIRECTOR.**

The Public Works Director shall administer the rules, regulations and service charge rates of the Municipal Storm Water Utility under the supervision of the City Manager, and shall be directly responsible to the City Manager. Notwithstanding other provisions of the Oberlin City Code, the Public Works Director or his/her Designee shall make and enforce such rules and regulations as deemed necessary for the safe, economical, and efficient management and protection of the City's stormwater system; for the construction and use of storm sewers and connections to the stormwater system consistent with policies established by the Oberlin City Council; and for the regulation, collection, rebating and refunding of such stormwater charges.

### **916.05 DEFINITIONS.**

- (1) "Adjustment" means a modification in a non-residential stormwater user fee for certain activities that impact stormwater runoff or that impacts the City's costs of providing stormwater management.
- (2) "Agricultural Property" means a lot or parcel located within the City of Oberlin regardless of the size of the building lot or the square footage of the buildings, classified as agricultural per County Auditor parcel classifications which for purposes of ERU determination will be classified as a single-family residential.
- (3) "Apartment Property" means a non-single-family lot or parcel on which is situated three or more dwelling units.
- (4) "Approved plans" means plans approved according to permit applications, plans review and permits issued which will govern all stormwater improvements, required or not, made within the City or changes or alterations to existing stormwater facilities.
- (5) "Best Management Practices" (BMP) means those practices recognized by the Ohio Department of Natural Resources and Ohio Environmental Protection Agency which provide the best available and reasonable physical, structural, managerial, or behavioral activity or activities which reduce or eliminate pollutant loads and/or concentrations leaving the site.
- (6) "Brownfield" means a former industrial or commercial site that is considered to be contaminated to varying extents, and certified as such by the Ohio Environmental Protection Agency.



(7) "Buffer" means a designated area adjacent to or part of a stream or wetland that is an integral part of the stream or wetland ecosystem.

(8) "Condominium Property Multi Story" means a lot or parcel of real estate in which individuals own their units and share joint ownership in common elements with other unit owners in a building or buildings containing more than one story.

(9) "Condominium Property" means a lot or parcel of real estate in which individuals own their own unit and share joint ownership in common elements with other unit owners in a building containing single story units on individual parcels according to the county auditor records.

(10) "Credits" means a one-time or an on-going reduction in a non-residential customer's stormwater user charge given for certain qualifying activities that either reduce the impact of increased stormwater runoff or reduce the City's costs of providing stormwater management.

(11) "Duplex Property" means a lot or parcel of real estate on which is situated a building containing two (2) single-family dwelling units.

(12) "Equivalent Residential Unit" (ERU) means a value, equivalent to 3,600 square feet of measured impervious area, and which is equal to the average amount of impervious area of single-family properties within the City of Oberlin.

(13) "Facilities" means various stormwater and drainage works that may include inlets, pipes, pumping stations, conduits, manholes, energy dissipation structures, channels, outlets, retention/detention basins, and other structural components.

(14) "Impervious area" means areas that have been paved and/or covered with buildings and materials, which include, but are not limited to, concrete, asphalt, rooftop, blacktop and gravel.

(15) "Municipal Separate Storm Sewer System" means a conveyance or system of conveyances (including roads with drainage systems and municipal streets), including but not limited to catch basins, ditches, curbs, gutters, storm sewers, manmade channels or storm drains and similar means of collecting and/or conveying runoff that do not connect with a wastewater collection system or treatment plant and which are owned or operated by a state, city, town, borough, county, parish, district, association, or other public body as defined by USEPA.

(16) "Non-residential property" means all property that contains any impervious area not encompassed by the definition of Single-Family Residential Parcel, Duplex Property, Agricultural and/or certain Condominium Property.

(17) "NPDES" means the National Pollutant Discharge Elimination System permit program as administered by the USEPA or the State of Ohio.

(18) "NPDES permit" means the National Pollutant Discharge Elimination System permit setting forth conditions for the discharge of any pollutant or combination of pollutants to the navigable waters of the United States pursuant to Section 402 of PL 92-500.

(19) "Operation and maintenance" means those functions that result in expenditures during the useful life of the collection, conveyance and/or treatment works for materials, labor, utilities and other items which are necessary for managing and operating the stormwater system in a manner for which such works were designed and constructed. The term "operation and maintenance" includes replacement.

(20) "Operation and maintenance costs" include all costs, direct and indirect, necessary to provide adequate stormwater management on a continuing basis and to produce discharges to receiving waters that conform with all related Federal, State and local requirements including replacement costs.

(21) "Other service charges" means Excavation/Utility Tap-in Permit charges, connection charges, and other identifiable charges, other than user charges, or service charges, and debt service charges.

(22) "Owner" means any and all persons, natural or artificial, including any individual, firm, company, municipal or private corporation, partnership, co-partnership, joint stock company, trust, estate, association, society, institution, enterprise, governmental agency, State of Ohio, the United States of America or other legal entity, or their legal representatives, agents or assigns. The masculine gender includes the feminine, and the singular includes the plural where indicated by context.

(23) "Private stormwater facilities" mean various stormwater and drainage works not under the control and/or ownership of the City, County, State and/or Federal government which may include inlets, conduits, pipes, pumping stations, manholes, structures, channels, outlets, retention or detention basins, other structural components and equipment designed to transport, move or regulate stormwater.

(24) "Public stormwater facilities" mean various stormwater and drainage works under the control and/or ownership of the City, County, State, or Federal government which may include natural streams, inlets, conduits, pipes, pumping stations, manholes, structures, channels, outlets, retention or detention basins, other structural or not structural components and equipment designed to transport, move or regulate stormwater

(25) "Replacement costs" means the expenditures for obtaining and installing equipment, accessories or appurtenances which are necessary during the service life of the treatment works to maintain the capacity and performance for which such works were designed and constructed.

(26) "Shall" is mandatory and "may" is permissive.

(27) "Single-family Residential Parcel" means all single-family residential parcels located within the City of Oberlin regardless of the size of the building lot or the square footage of the buildings.

(28) "Square footage of impervious area" means the square footage of all impervious area using the outside boundary dimensions of the impervious area to include the total enclosed square footage, without regarding for the topographic features of the enclosed surface and used for the purpose of assigning an appropriate number of ERUs to a parcel or real property.

(29) "Stormwater" means stormwater runoff, snowmelt runoff, and surface runoff, subsurface water and drainage.

(30) "Stormwater service charge" means a charge assessed to users of the City's stormwater system.

(31) "Stormwater system" means all man-made facilities, structures, and natural watercourses owned, operated and/or maintained by the City of Oberlin, used for collection and conducting stormwater to, through, and from drainage areas to the points of final outlet including, but not limited to, any and all of the following: conduits and appurtenant features, canals, creeks, catch basins, ditches, streams, gulches, gullies, flumes, culverts, siphons, streets, curbs, gutters, dams, floodwalls, levels, and pumping stations and including the USEPA definition of the Municipal Separate Storm Sewer System.

#### **916.06 FUNDING THE MUNICIPAL STORM WATER UTILITY DIVISION.**

Funding for the stormwater utility's activities may include, but is not limited to: stormwater service charges; stormwater permit and inspection fees, the City's General Fund, the City's Income Tax Capital Improvement Fund and other funds or income obtained from federal, state, local, and private grants, or loans.

#### **916.07 MUNICIPAL STORM WATER UTILITY ENTERPRISE FUND.**

All service charges and all sources of revenue generated by or on behalf of the stormwater utility shall be deposited in a stormwater utility enterprise fund and used exclusively for the purposes of the stormwater utility.

#### **916.08 MUNICIPAL STORM WATER UTILITY DIVISION RATE STRUCTURE AND FEES.**

For the services rendered as determined in the cost of service analysis and for use of the stormwater system, rates and service charges shall be collected from the owner of each and every lot, parcel of real estate or building that is situated within the corporate limits of the City of Oberlin, that is tributary, directly or indirectly to the stormwater system of the City. Such rates and charges include user service charges, debt service costs and other service charges, all of which can be separate or combined, in which rates shall be payable as hereinafter provided and shall be in an amount determinable as follows:

- (1) The stormwater rates and charges shall be based upon the quantity of impervious area situated on the subject parcel.
- (2) All properties having impervious area within the City of Oberlin will be assigned an Equivalent Residential Unit (ERU) or a whole multiple thereof, with all properties having impervious area receiving at least one (1) ERU.
- (3) Single-Family parcels. All single-family parcels will be assigned one (1) ERU. A flat rate will apply to all single-family properties.
- (4) Duplex parcels. All duplex (two units) parcels shall be assigned one (1) ERU. A flat rate will apply to all duplex parcels.
- (5) Condominium Single Story parcels. All condominium single-story parcels shall be assigned one (1) ERU.
- (6) Agricultural parcels. All agricultural parcels shall be assigned one (1) ERU. A flat rate will apply to all agricultural parcels
- (7) Non-Residential Parcels. Non-Residential parcels will be assigned an ERU whole multiple based upon the property's individual measured impervious area (in square feet) divided by 3,600 square feet (1 ERU). This division will be calculated to the second decimal place and rounded to the nearest whole ERU according to mathematical convention.
- (8) Base Rate. City Council shall, by Ordinance, establish the base rate for the municipal stormwater utility division service charge. The base rate shall be calculated to provide revenues to fund the expenditures of stormwater management and to provide for the operation, maintenance, and capital improvements of the stormwater system.

#### **916.09 NECESSITY FOR SERVICE CHARGES.**

It is hereby determined necessary for the protection of public health, safety, and welfare and to conform with Federal, State, and local laws and regulations that a system of charges for stormwater service be established which allocates the cost of providing stormwater service to each user in such a manner that the allocated costs are proportionate to the cost of providing stormwater service to that user, insofar as those costs can reasonably be determined.

#### **916.10 RIGHT TO APPEAL.**

A Non-residential property owner may challenge the ERU multiple assigned to his/her property by filing an appeal with the Director of Public Works for adjustment thereof, stating in writing the grounds for the appeal. The Director of Public Works, or the Director's designee, shall consider the appeal and determine whether an adjustment of the ERU multiple for any such lot or parcel is necessary, and adjust such ERU multiple if appropriate.

If the property owner disagrees with the decision of the Public Works Director, such person may appeal to the City Manager.

#### **916.11 COLLECTION AND PAYMENT OF SERVICE CHARGES.**

Each stormwater service charge rendered under or pursuant to this ordinance is hereby made a lien upon the corresponding lot, parcel of land, building or premises that are tributary directly or indirectly to the stormwater system of the City and shall be certified to the Lorain County Auditor, who shall place the same on the bi-annual tax duplicate of said Lorain County with the interest and penalties allowed by law. The stormwater service charges will be collected in the same manner Lorain County collects property assessments and property taxes. Charges shall be payable at the Lorain County Treasurer's office.

#### **916.12 ADJUSTMENTS TO STORM WATER SERVICE CHARGES.**

Increase adjustments will be made to non-residential service charges when the parcel owner has added additional impervious area. Decrease adjustments can be made to non-residential service charges when parcel owners perform qualifying activities that reduce the impact of stormwater runoff to the stormwater system.

#### **916.98 FALSIFYING INFORMATION.**

No person shall knowingly make any false statement, representation, record, report, plan, or other document and file such with the Department of Public Works.

