

CITY COUNCIL OF ERIE

INTRODUCED BY: Mr Keys

COUNCIL FILE NO. 16,379 OFFICIAL ORDINANCE NO. _____

AN ORDINANCE

AN ORDINANCE OF THE CITY ESTABLISHING STORMWATER
MANAGEMENT FEES WITHIN THE CITY OF ERIE

WHEREAS, the City of Erie, pursuant to authority conferred under the Pennsylvania Stormwater Management Act, Act of October 4, 1978, P.L. 864 (No. 167), *as amended*, and the Pennsylvania Municipalities Planning Code, Act 247 of 1968, enacted Ordinance No. 25-1998 on May 26, 1998, entitled Stormwater Management, as Article 945 of the Codified Ordinances; and

WHEREAS, pursuant to the Pennsylvania Stormwater Management Act, the County of Erie on February 11, 2011 adopted the Stormwater Management Plan; and

WHEREAS, the Stormwater Management Plan was approved by the Pennsylvania Department of Environmental Protection on March 25, 2011; and

WHEREAS, The City of Erie desires to establish fair and equitable user charges to assure that each developed parcel receiving or benefiting from stormwater management services within the City of Erie will pay its proportionate share of the costs of operation, maintenance, repair, regulatory compliance, administration, replacement and improvement related to the stormwater management system and stormwater services provided or paid for by the City of Erie; and

NOW THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY OF ERIE, PENNSYLVANIA:

STORMWATER MANAGEMENT PROGRAM AND USER FEE ORDINANCE

Sections:

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- 01 Title.

This chapter shall be known and may be cited as the “City of Erie stormwater management system user fee ordinance.”

02 Statement of findings.

A. The City of Erie incurs costs to maintain an extensive public stormwater system. The city’s stormwater system includes underground pipes, conduits, inlets, outfalls, culverts, catch basins, flood control structures, gutters, ditches, channels, detention ponds, public best management practices, public streets, curbs, conveyances, appurtenances and drains (collectively, the “stormwater management system”). The City of Erie stormwater system collectively outfalls into Lake Erie and Presque Isle Bay.

B. A comprehensive program of stormwater management is fundamental to the public health, safety, welfare and the protection of the residents of the City of Erie, their property, resources and the environment in order to control items such as flooding, erosion and pollution. Comprehensive stormwater management is also a core functionality of business development.

C. Federal and state regulations (including those found 40 CFR Part 126) require the City of Erie to implement and properly maintain a program of stormwater controls. The City of Erie is required to obtain a permit for stormwater discharges from their separate storm sewer system under the National Pollutant Discharge Elimination System (NPDES) permit. In compliance with such federal and state regulations, the city submits its Annual Municipal Separate Storm Sewer System (MS4) Status Report under the NPDES Permit No. PAG138321 and enacted its Stormwater Management Ordinance (Ordinance No. 20-2004) on March 20, 2004.

D. In an urban environment such as the City of Erie, each property uses or is in some fashion connected with, serviced by or benefited by the public stormwater management system.

E. Impervious surface is a primary characteristic of a property’s generation of stormwater and usage of the stormwater management system.

F. The City of Erie desires to establish fair and equitable user charges to assure that each developed parcel receiving or benefiting from stormwater management services within the City of Erie will pay its proportionate share of the costs of operation, maintenance, repair, regulatory compliance, administration, replacement and improvement related to the stormwater management system and stormwater services provided or paid for by the City of Erie.

G. The charges as determined herein are fair and equitable and are based upon the following facts: a minimum fee per residential unit is reasonable; the basis for the equivalent single-family detached residential unit of 2,136 square feet of impervious surface based on an analysis of single family parcels, as defined in parcel data for the City of Erie; the requirement that a property have a minimum 500 square feet of impervious surface to be assessed a fee is

reasonable based on the use of aerial photography to determine impervious surface; the use of existing geographic information systems (GIS) datasets provides an effective measurement for impervious surface; for single-family detached parcels the rate structure is tiered to address variability in impervious area of the dwelling unit; and on larger commercial and institutional properties (non-single-family detached properties), the opportunity to control runoff in a meaningful way does exist and should be encouraged and acknowledged.

03 Definitions.

A. Words and terms used in this article and not given specific definition shall be defined as set forth in applicable statutes of the Commonwealth of Pennsylvania or ordinances of the City of Erie, if any, and shall otherwise be given their ordinary and common meaning.

B. For purposes of this article, the following words and terms shall be defined as set forth below:

a. “Developed parcel” means a parcel altered from a natural state that contains impervious surface equal to or greater than 500 square feet.

b. “Equivalent residential unit (ERU)” means the median impervious area value for all single-family detached residential property and is used in assessing the fees for each developed non-single-family detached property, and which has been determined to be 2,136 square feet.

c. “Impervious surface” means a surface that prevents the infiltration of water into the ground. Impervious surface (or area) includes, but is not limited to: roofs, additional outdoor living spaces, patios, garages, storage sheds and similar structures, parking or driveway areas, and any private streets and sidewalks. Any travel areas proposed to initially be gravel or crushed stone shall be assumed to be impervious surfaces.

d. “Non-single-family detached (NSFD)” means any developed parcel not fitting the definition of single-family detached. NSFD shall include, but not be limited to, townhouse and condominium developments, apartments with more than three dwelling units, boarding houses, hotels and motels, churches, industrial properties, commercial properties, manufactured or mobile home parks, commercial and office buildings, storage areas, parking lots and other impervious areas, parks, recreation properties, public and private schools and universities, hospitals and convalescent centers, office buildings, government properties, and mixed-use properties.

e. “Operation and maintenance” means the associated costs of equipment and facilities, energy, manpower, materials, transportation and services required to collect, convey, detain, pump and transport **stormwater**, keep equipment, infrastructure, and facilities functioning satisfactorily and economically, and administer the **stormwater** management system and shall include sums paid to defray costs of the City of Erie’s improvements to the **stormwater** management system.

f. “Owner” means any person, firm, corporation, individual, partnership, trust, company, association, government agency, society or group owning real property in the City of Erie.

g. “User fee” means sums assessed, imposed and to be collected from each developed parcel which uses, benefits from or is serviced by the **stormwater** management system or which discharges **stormwater**, directly or indirectly, into the public **stormwater** management system, for the use of and the service rendered and improvement of such system.

h. “Replacement” means the associated costs of obtaining and installing equipment, infrastructure, accessories or appurtenances which are necessary during the service life of the **stormwater** management system so as to maintain the capacity and performance for which said system was designed and constructed and shall include costs associated with improvements to the **stormwater** management system.

i. “Single-family Detached (SFD)” means a developed parcel containing one structure which contains one or more rooms with a bathroom and kitchen facilities designed for occupancy by one family and shall include duplex, triplex, single-family houses, houses subdivided into less than four apartment dwellings within, manufactured homes, and mobile homes located on individual parcels. Developed parcels may be classified as “single-family detached” despite the presence of incidental structures associated with residential uses such as garages, carports or

small storage buildings. "Single-family detached" shall not include developed land containing: structures used primarily for nonresidential purposes; manufactured homes and mobile homes located within manufactured or mobile parks; or other multiple-unit residential properties such as those with greater than three apartments, condominiums and town homes.

j. "Stormwater management system" means the system of collection and conveyance, including underground pipes, conduits, mains, inlets, culverts, catch basins, gutters, ditches, manholes, outfalls, dams, flood control structures, **stormwater** best management practices, channels, detention ponds, public streets, curbs, drains and all devices, appliances, appurtenances and facilities appurtenant thereto used for collecting, conducting, pumping, conveying, detaining, discharging and/or treating **stormwater**.

k. "**Stormwater**" means water from a rain or snowfall event that flows across the land and eventually into rivers, creeks, lakes, ditches and canals resulting in debris, sediment, pollutants, bacteria and nutrients from sidewalks, streets, parking lots, and other impervious surfaces washing into gutters, through storm drains, and eventually flowing into creeks and rivers.

l. "Undeveloped parcel" means a parcel that does not meet the definition of developed parcel.

m. "User" means any person, firm, corporation, individual, partnership, company, association, government agency, society or group using, benefiting from or being served by the public **stormwater** management system.

04 Statutory authority.

A. Primary Authority. The City of Erie is empowered to regulate these activities by the authority of the Act of October 4, 1978, 32 P.S., P.L. 864 (Act 167), 32 P.S. Section 680.1 *et seq.*, *as amended*, the "Storm Water Management Act," and the Third Class City Code, 11 Pa.C.S.A. Section 10101, *et seq.*

B. Secondary Authority. The City of Erie is also empowered to regulate land use activities that affect **stormwater** runoff and **stormwater** management systems by the authority of the Act of July 31, 1968, P.L. 805, No. 247, the Pennsylvania Municipalities Planning Code, as amended. See also Environmental Protection Agency, Region III, Funding Storm Water Programs, January 2008, EPA 833-F-07-012. (Ord. 3707 § 4, 2021)

05 Imposition of user fees.

For the use of, benefit by and the services rendered by the **stormwater** management system, including its operation, maintenance, repair, replacement and improvement of said system and all other expenses, user fees are hereby imposed upon each and every developed lot, parcel of land, building or portion thereof that is connected with, uses, is serviced by or is benefited by the City of Erie's **stormwater** management system, either directly or indirectly, and upon the owner(s) of such developed lots, parcels of land or buildings. Such user fees shall be payable to the City of Erie by and collected from the owners of such developed lots, parcels of land or buildings as hereinafter provided, and shall be determined as set forth below.

A. Single-family detached residential dwellings (SFDR) shall be charged on a Tiered Residential Rate Basis. The billing unit (BU) charge per SFDR will be as followed:

Tier 1 = Impervious Area of 500 square feet to 1,200 square feet of the dwelling unit; 0.5 BU; \$3 per quarter; \$12 per calendar year.

Tier 2 = Impervious Area less than 1,201 square feet to 1,550 square feet of the dwelling unit; 1 BU; \$6 per quarter; and \$24 per calendar year.

Tier 3 = Impervious Area greater than 1,551 square feet of the dwelling unit; 1.5 BU; \$9 per quarter; \$36 per calendar year.

B. The charge for all other developed non-single-family detached parcels within the City of Erie shall be based upon the number of square feet of measured impervious surface, as determined through aerial photography and surface feature evaluation processes, divided by the ERU value of 2,136 sf and, using natural rounding, expressed in whole billing units. The charge for said properties shall be computed by multiplying the number of BUs for a given parcel by the unit

rate established by the City of Erie as set forth in subsection (A) of this section. In no event shall any such parcel be charged less than one BU.

BU charge shall be set at \$24 per program year from January 1, 2022, through December 31, 2022. Beginning January 1, 2023, and each January 1st thereafter, the charge per BU will be adjusted annually as determined by city council.

C. Notwithstanding the foregoing, public streets shall be exempt from user fees under this article. (Ord. 3722 § A, 2021; Ord. 3707 § 5, 2021)

06 Uniform application of user fees.

User fees shall be assessed, imposed, liened and collected as charged to all owners of developed parcels.

07 “User” and “owner” distinguished.

References in this article to “use,” “user,” “uni” or portion of a lot, parcel or building with respect to the calculation and assessment of user fees shall not be construed to modify or alter the fact that the fees imposed by this article are assessed to the owner of each developed lot, parcel, and building and such owner shall be and remain liable for payment of the same, whether or not such owner occupies the property or directly uses the **stormwater** management system. Nothing in this article shall be construed to prohibit or limit an owner’s ability to collect by lease or contract sums due by a tenant or other occupier of the owner’s property, but such lease or contract shall not bind the City of Erie or limit in any way the City of Erie’s authority to impose, assess, lien and collect **stormwater** user fees.

08 Billing and collection of user fees.

The user fees fixed and established by this article shall be effective as to all lots, parcels, buildings or portions thereof that use, are served or are benefited by the **stormwater** management system existing as of the effective date of the ordinance codified in this article, and shall be effective to all other lots, parcels, buildings or portions thereof that use or are so served or benefit subsequent to the effective date of the ordinance codified in this article. For calendar year 2022, the first assessment effective date shall be January 2, 2022, and the first billing shall occur in the first quarter of calendar year 2022. Thereafter, for all subsequent calendar years, user fees imposed by this article shall be assessed and billed by the City of Erie (or its designee) effective as of January 1st each calendar year. Property owners shall have the option to pay the fee in full within 30 days following the date on which said assessment bill was mailed and receive a discount of two percent of the fee.

09 Late payment penalty.

A penalty of 10 percent of the user fees assessed and not paid within the applicable time period shall be added for nonpayment within the time allowed. Payment terms will be denoted on yearly City of Erie Property Tax notices.

10 Interest on unpaid user fees

Interest at the rate of 1.5 percent per every 30 days after the initial late fee charge shall accrue and be added to all original amounts of user fees remaining unpaid at the end of the quarter in which the same were first imposed and assessed and shall continue to accrue until the full amount of such user fees is paid in full. Payment terms will be denoted on yearly City of Erie Property Tax notices.

11 User fees constitute lien on property.

In accordance with the Municipal Claims Act, 53 P.S. Section 7101 et seq. (as amended), all rates, charges, penalties, interest, collection fees, lien filing and satisfaction fees and other charges imposed for failure to pay promptly shall constitute a lien upon and against the subject property and its owner from the date of their imposition and assessment.

12 Credits applicable to stormwater charges.

The city shall establish a credit policy and develop a manual documenting the credit process. Credits against user fees are an appropriate means of adjusting user fees and, under some circumstances, to account for applicable mitigation measures. Upon adoption by council, credit mechanisms shall be incorporated herein as the City of Erie **stormwater** user fee credit manual, which may be updated or revised as needed in council's discretion. No exception, credit, offset, or other reduction in user fees shall be granted based on age, race, tax status, economic status or religion of the customer, or other condition unrelated to the demand for and cost of services provided by the City of Erie.

13 Appeal procedures.

A. Any owner who believes the provisions of this article have been applied in error may appeal in the following manner and sequence:

- a. An appeal of the rate and charge must be filed in writing with the City of Erie Public Works Director's Office on or before May 15 of the calendar year the charge is mailed or delivered to the property owner. Any appeal must state the reasons for the appeal.
- b. Using information provided by the appellant, the City of Erie Public Works Director's Office shall conduct a technical review of the conditions on the property and respond to the appeal in writing within 30 days. In response to an appeal, the City of Erie Public Works Director's Office may adjust the user fees applicable to the property in accordance with the provisions of this article and related policies and procedures.
- c. Any person aggrieved by any decision of the City of Erie Public Works Director's Office, relevant to the provisions of this article, may appeal to the Erie County court of common pleas within 30 days of receipt of such written decision. (Ord. 3722 § A, 2013)

14 Policies and procedures authorized.

- A. The City of Erie may by resolution adopt such policies and procedures as it deems appropriate to ensure collection of rates and charges assessed and imposed pursuant to this article. Without limitation, collection procedures may include referral of delinquent accounts to a collection agency; filing of liens; scire facias sur municipal lien proceedings to collect filed liens; and any and all other measures or combination thereof which the city may deem appropriate.
- B. All costs of such collection procedures, including but not limited to fees for filing, perpetuation and satisfaction of liens, collection fees, attorney's fees, court costs, litigation expense, and charges for service of documents, shall upon being incurred by the City of Erie be imposed as a charge for nonpayment and added to the balance due on said owner's account.
- C. No lien shall be satisfied, nor shall any collection proceeding be discontinued, until all amounts due on an account, including user fees, penalties, interest, collection fees, attorney's fees, court costs and other charges are first paid in full to the City of Erie in the discretion of the city.

15 Stormwater management system fund.

The funds received from the collection of the user fees authorized by this article shall be deposited into the City of Erie **stormwater** management system fund, a fund and account dedicated to the operation, administration, maintenance, repair and improvement of the **stormwater** management system.

16 No warranty or action.

Nothing in this article or in the design, operation or maintenance of the **stormwater** management system shall be deemed to constitute a warranty, express or implied, nor shall it afford the basis for any action seeking the imposition of money damages against the City of Erie, its officers, employees, or agents. The City of Erie expressly reserves the right to assert all available immunities and defenses in any action seeking to impose monetary damages upon the City of Erie, its officers, employees and agents arising out of any alleged failure or breach of duty or relationship as may now exist or hereafter be created.

We do hereby certify that the above ordinance was finally passed by the City Council on _____, 2021.

SIGNED

Attest:

City Clerk

President of Council

THIS ORDINANCE APPROVED THIS ____ DAY OF _____, 2021.

Mayor

