

ORDINANCE NO: 2015-13

AN ORDINANCE TO AMEND TITLE 18, CHAPTER 4 OF THE CLEVELAND MUNICIPAL CODE, TO ESTABLISH A UTILITY FOR STORMWATER MANAGEMENT; TO ESTABLISH THE FUNCTION OF THE UTILITY; TO CREATE AN ENTERPRISE FUND AND METHOD OF FUNDING FOR THE UTILITY; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

WHEREAS, the City of Cleveland has previously adopted a Stormwater Utility which is currently codified in the Cleveland Municipal Code in Title 18, Chapter 4, Sections 18-401 through 18-414; and

WHEREAS, The Federal Clean Water Act, 33 U.S.C. 1251 et seq., requires the entities such as the city to implement a stormwater management program within prescribed time frames, and the Environmental Protection Agency, pursuant to the Federal Clean Water Act, 33 U.S.C. 1251 et seq., has published rules for stormwater outfall permits; and

WHEREAS, Tennessee Code Annotated, Section 68-221-1101 provides that the purpose of the stormwater management statute is to facilitate municipal compliance with the Water Quality Act of 1977, and applicable EPA regulations, particularly those arising from § 405 of the Water Quality Act of 1987, and § 402(p) of the Clean Water Act of 1977, and to enable municipalities to regulate stormwater discharges, establish a system of drainage facilities, construct and operate a system of stormwater management and flood control facilities, and to "fix and require payment of fees for the privilege of discharging stormwater," and

WHEREAS, Tennessee Code Annotated, Section 68-221-1105 provides that among powers municipalities have with respect to stormwater facilities, is the power by ordinance or resolution to:

- (1) Exercise general regulation over the planning, location, construction, and operation and maintenance of stormwater facilities in the municipality, whether owned and operated by the municipality or not;
- (2) Adopt any rules and regulations deemed necessary to accomplish the purposes of Tennessee Code Annotated, Section 68-221-1101 et seq., including the adoption of a system of fees for services and permits;
- (3) Establish standards to regulate the quantity of stormwater discharged and to regulate stormwater contaminants as may be necessary to protect water quality;
- (4) Review and approve plans and plats for stormwater management in proposed developed property;
- (5) Issue permits for stormwater discharges, or for the construction, alteration, extension, or repair of stormwater facilities;

- (6) Suspend or revoke permits when it is determined that the permittee has violated any applicable ordinance, resolution, or condition of the permit;
- (7) Regulate and prohibit discharges into stormwater facilities of sanitary, industrial, or commercial sewage or waters that have otherwise been contaminated; and
- (8) Expend funds to remediate or mitigate the detrimental effects of contaminated land or other sources of stormwater contamination, whether public or private; and

WHEREAS, it is advisable to create a stormwater utility to be responsible for the operation, construction, maintenance and rehabilitation of stormwater facilities; for stormwater system planning, property acquisition related to stormwater management and for review of stormwater development plans for compliance with stormwater management ordinances, policies, procedures and manuals.

Now therefore, BE IT ORDAINED BY THE CITY OF CLEVELAND, AS FOLLOWS:

SECTION I. NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Cleveland, in regular session assembled, that Title 18, Chapter 4, Sections 18-401 through 18-414 of the Cleveland Municipal Code are hereby deleted in their entirety, and replaced with the attached sections which will be codified at Title 18, Chapter 4, Sections 18-401 through 18-413 of the Cleveland Municipal Code:

Section 18-401. Legislative findings and policy. 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 developed property within the incorporated 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 and surface water system and its receiving waters.

Section 18-402. Creation of stormwater utility and stormwater management fund. To achieve the purposes of the Federal Clean Water Act and T.C.A. § 68-221-1101 et seq., there is created a stormwater utility and a stormwater enterprise fund known as the Cleveland Stormwater Management Fund to fund the stormwater utility in and for the city within Development and Engineering Services. The stormwater utility, pursuant to the policy that may be established by the City Council and under the general supervision and control of the city manager, through the department of Development and Engineering Services, with the participation and assistance of other city departments, may:

- (1) Administer the acquisition of property for and the design, construction, maintenance and operation of the stormwater utility system, including capital improvements designated in the capital improvement program;
- (2) Administer and enforce this ordinance and all regulations and procedures adopted relating to the design, construction, maintenance, rehabilitation, operation and alteration of the utility stormwater system, including, but not limited to, the quantity, quality and/or velocity of the stormwater conveyed thereby;
- (3) Advise the City Council and other city departments on matters relating to the utility;
- (4) Prepare and revise a comprehensive drainage plan for adoption by the City Council;
- (5) Review plans and approve or deny, inspect and accept extensions and connections to the system;
- (6) Enforce regulations to protect and maintain water quality and quantity within the system in compliance with water quality standards established by state, regional and/or federal agencies as now adopted or hereafter amended; or
- (7) Annually analyze the cost of services and benefits provided, and the system and structure of fees, charges, civil penalties and other revenues of the utility.

Section 18-403. Definitions. For the purpose of this ordinance, the following definitions will apply: Words used in the singular will include the plural, and the plural will include the singular; words used in the present tense will include the future tense. Words not defined in this section will be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary.

"Base rate" means the stormwater user's fee for a single-family unit in the city.

"Bonds" means revenue bonds, notes, loans or any other debt obligations issued or incurred to finance the costs of construction.

"Construction" means the erection, building, acquisition, alteration, reconstruction, improvement or extension of stormwater facilities; preliminary planning to determine the economic and engineering feasibility of stormwater facilities; the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary in the construction of stormwater facilities; and the inspection and supervision of the construction of stormwater facilities.

"Costs of construction" means costs reasonably incurred in connection with providing capital improvements related to stormwater facilities 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 therefor, (2) physical construction, installation and testing, including the costs of labor, services, materials, supplies and utility 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 of Cleveland or on its behalf with its approval in seeking to enforce any remedy against any contractor or sub-contractor in respect of any default under a contract relating to construction, (7) principal of and interest of any bonds, and (8) miscellaneous expenses incidental thereto.

"Debt Service" means, with respect to any particular fiscal year and any particular series of bonds, an amount equal to the sum of (1) all interest payable on such bonds during such fiscal year, plus (2) any principal installments of such bonds during such fiscal year.

"Developed property" means real property which has been altered from its natural state by the creation or addition of an impervious surface area, by the addition of any buildings, structures, pavement or other improvements.

"Dwelling" or "dwelling unit" means a building or a portion thereof occupied for residential purposes.

"Fee(s)" or "Stormwater user's fee(s)" means the charge established by ordinance, and levied on owners or users of parcels or pieces of real property to fund the costs of stormwater management and of operating, maintaining, and improving the stormwater system in the city. The stormwater user's fees are in addition to any other fee that the city has the right to charge under any other rule or regulation of the city.

"Fiscal year" means July 1 of a calendar year to June 30 of the next calendar year, both inclusive.

"Impervious surface" means any material which substantially reduces and/or prevents absorption of stormwater into the ground.

"Impervious surface area" means the number of square feet of horizontal surface covered by buildings, and other impervious surfaces. All building measurements will be made between exterior faces of walls, foundations, columns or other means of support or enclosure.

“Non-single-family residential property” means land that is zoned, developed or used solely as residential land, including, but not limited to, duplexes, townhouses, apartments, condominiums, mobile homes, mobile home parks, mixed use buildings and other multi-unit residential developments, or any other lands upon which there are residential structures that contain more than one (1) dwelling unit.

“Other developed property” means developed property other than single-family or non-single-family residential property. Such property includes, but not be limited to, commercial properties, industrial properties, parking lots, hospitals, schools, recreational and cultural facilities, hotels, offices, churches, and mixed use property.

“Property” means real property.

“Property owner” means the property owner of record as listed in the county’s assessment roll. A property owner includes any individual, corporation, firm, partnership, or group of individuals acting as a unit, and any trustee, receiver, or personal representative.

“Single-family residential property” means a developed property which serves the primary purpose of providing one detached dwelling unit for one family or housekeeping unit, but this does include single wide mobile homes, even if attached to the land or there is only one unit on the property.

“Single-family Unit” or “SFU” means the average square footage of the impervious surface area for a single-family residential property determined pursuant to this ordinance.

“Stormwater” means stormwater runoff, snow melt runoff, surface runoff, street wash waters related to street cleaning or maintenance, infiltration, and drainage.

“Stormwater facilities” or “Stormwater flood control facilities” means all natural and manmade conveyances and structures for which the partial or full purpose or use is to convey surface water within the jurisdictional boundaries of the city. This includes all natural conveyances for which the city has assumed a level of maintenance responsibility, to which the city has made improvements, against the flooding of which the city must make provision to protect public and private property, or for which the city is accountable under federal or state regulations for protecting the water quality within its jurisdictional boundaries.

"Stormwater management" means the planning, acquisition, design, construction, regulation, improvement, repair, rehabilitation, maintenance, and operation of property, facilities and programs relating to water, flood plains, flood control, grading, erosion, conservation, riparian buffers and sediment control.

"Stormwater management fund" or "fund" means the fund created by this ordinance to operate, maintain, and improve the city's stormwater system.

"Surface water" includes waters upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other water courses, lakes and reservoirs.

"User(s)" means for developed non-exempt property the person listed as receiving utility service or, if there is no such service or person listed, the property owner. It may also mean the property owner of property with multiple utility service accounts on such property.

Section 18-404. Funding of stormwater utility. Revenue sources for the stormwater utility's activities may include, but are not limited to, the following:

- (1) Stormwater user's fees.
- (2) Civil penalties and damage assessments imposed for or arising from the violation of the city's stormwater management ordinance.
- (3) Stormwater permit and inspection fees.
- (4) Bonds or other debt services.
- (5) Other funds or income obtained from federal, state, local, and private grants, or revolving funds, and from the Local Government Public Obligations Act of 1986 (Tennessee Code Annotated, title 9, chapter 21).

To the extent that the stormwater user fees collected are insufficient to fund the stormwater management program and its components, the cost of the same may be paid from such city funds as may be determined by the City Council.

Section 18-405. Stormwater management fund. All revenues generated by or on behalf of the stormwater utility will be deposited in the stormwater management fund and used exclusively for the stormwater utility.

Section 18-406. Operating budget. The City Council will adopt an operating budget for the stormwater utility each fiscal year. The operating budget will set forth for such fiscal year the estimated revenues and the estimated costs for the management, acquisition, operations and maintenance, extension and replacement and debt service of the

stormwater utility.

Section 18-407. Stormwater user's fees established. There will be imposed on each and every developed property in the city, except exempt property, stormwater user's fees, which will be set from time to time by ordinance. Prior to establishing or amending the fees, the city will advertise its intent to do so by publishing notice in a newspaper of general circulation in the city at least thirty (30) days in advance of the meeting of the City Council at which the fees are considered for adoption or amendment.

Section 18-408. Single-family Unit (SFU).

(a) There is established, for purposes of calculating the stormwater user's fees, the single-family unit (SFU).

(b) The SFU is the average square footage of the impervious surface area of a single-family residential property, measured as 3,830 square feet.

(c) The SFU may be changed by the City Council from time to time by amending its ordinance.

(d) The City Council will have the discretion to determine the source of the data from which the SFU is established, taking into consideration the general acceptance and use of such source on the part of other stormwater systems, and the reliability and general accuracy of the source. The City Council will have the discretion to determine the impervious surface area of other developed property through property tax assessor's rolls or site examination, mapping information, aerial photographs, and other reliable information.

Section 18-409. Base rate. The City Council shall, by ordinance, establish the base rate for the stormwater user's fees. The base rate will be calculated to insure adequate revenues to fund the costs of stormwater management and to provide for the acquisition, operation, maintenance, rehabilitation and capital improvements of the stormwater utility in the city. The base rate is set forth in this Ordinance as \$3.25 per SFU per month.

Section 18-410. Property classification for stormwater user's fee.

(a) For purposes of determining the stormwater user's fee, all property in the city is classified into one of the following classes:

(1) Single-family residential property fee. The City Council finds that the monthly stormwater management fees for single-family residential property will be based on the mean amount of impervious surface on a single-family residential lot in the city, which is known as an SFU. There will be a tier system for single-family residential properties based on the

amount of impervious surface of single-family residential property. Each property will be placed into one of the following tiers and charged according to the values in the table below:

Description	Monthly Fee
Rate - Single Family Residential Property	Charge per Dwelling Unit
<u>Tier (square foot)</u>	
0 to 1,775	50% of base rate or \$1.65 per month
1,776 to 5,900	100% of base rate or \$3.25 per month
5,901 and beyond	150% of base rate or \$4.90 per month

(2) Non-single-family residential property fee. For non-single-family residential property, each property will be classified into four sub-classifications to determine the monthly stormwater management fees. The charge for each dwelling unit for these property types are defined in the table below:

Description	Monthly Fee
Rate – Non-Single-Family Residential Property	Charge per Dwelling Unit
<u>Subcategory</u>	
Duplex/Triplex/Quadplex	50% of base rate or \$1.65 per month
Apartments (5+ units)	40% of base rate or \$1.30 per month
Town Homes	40% of base rate or \$1.30 per month
Mobile Homes	70% of base rate or \$2.30 per month

(3) Other developed property fee. The fee for developed property that is not single-family residential or non-single-family residential property in the city will be the base rate multiplied by the numerical factor obtained by dividing the total impervious area (square feet) of the property by one SFU, rounded to the nearest tenth. But the minimum value shall not be less than one single-family unit unless otherwise designated.

(4) Exempt property. The following property is exempt from the stormwater user's fee:

- a. Property which stormwater runoff is not discharged into or through the stormwater flood control facilities, or both, of the city;
- b. Owners and/or operators of agricultural property, in the city, upon which the owner and/or operator conducts activities that enable the owner and/or operator to satisfy the requirements of a qualified farmer or nurseryman, as defined in Tennessee Code Annotated, Section 67-6-207.
- c. Undeveloped property that is not altered from its natural state.
- d. Developed property with less than five hundred (500) total square feet of impervious surface area per individual lot.

e. Improved public transportation ways, including public streets, roads, sidewalks, mobility paths, greenways and trails, airport runways, and internal roads within public facilities which have been conveyed to the city and are used by the general public for motor vehicle transportation.

f. Railroad tracks, provided, however, railroad stations, maintenance buildings or other developed land will not be exempt from stormwater user fees.

Section 18-411. Payment of stormwater user's fees. Except as otherwise provided in this section, stormwater user's fees for a non-exempt property that receives utility service will be sent to the person named on the account, who shall be responsible for the payment of such fees. For developed property having no utility service the stormwater user's fees will be sent to the property owner, who shall be responsible for the payment of such fees. Where multiple utility service accounts exist on a single property, the stormwater user's fees may, for good cause shown at the discretion of the city, be sent to the property owner, who shall be responsible for the payment of such fees.

Section 18-412. Billing procedures, delinquent bills and penalties for late payment.

(a) The stormwater user's fee must be set at a rate, and collected on a schedule, established by ordinance.

(b) Stormwater user's fees will be paid to Cleveland Utilities (acting as the collection agency for the City) by any method allowed by Cleveland Utilities and shall become delinquent after the due date shown on the bill. If a customer does not have water service or sewer service with Cleveland Utilities, the City may bill the owner of such property directly through a separate billing process. Such bills are subject to the same delinquency policy established herein.

(c) Stormwater user's fees shall be subject to a late payment penalty. The late payment penalty shall be applied in the same manner as Cleveland Utilities' rules and regulations as it relates to utility bills. The City shall be entitled to recover attorney's fees incurred in collecting delinquent stormwater user's fees. Any charge due under this ordinance which shall not be paid may be recovered at law by the City.

(d) Pursuant to Tennessee Code Annotated, Section 68-221-1107(b), the city, through its agent Cleveland Utilities, may provide for the discontinuance of water utility service to stormwater users who fail or refuse to pay stormwater user fees, including the right not to accept payment of the water utility bill from any user without receiving at the

same time payment of any stormwater fees owed by such user and not to re-establish utility services until such time as all past due stormwater fees owed by such user have been paid and/or the user has performed all acts and discharged all obligations required by this ordinance.

(e) Pursuant to Tennessee Code Annotated, Section 68-221-1112, each bill for stormwater user's fees will contain the following statement in bold:

THIS FEE HAS BEEN MANDATED BY CONGRESS.

Section 18-413. Stormwater fee adjustments and credits.

(a) Adjustments may be requested for errors or omissions on the customer's stormwater user fee. Request for adjustment due to error or oversight of the stormwater user's fee must be submitted to the city within thirty (30) days from the date of the last bill containing the customer's stormwater user fee. Any appeal for adjustment shall be filed in writing and shall state the grounds for the appeal. The Director of Development and Engineering Services may request additional information from the appealing party. Adjustments will be determined on the basis of the number of dwelling units or amount of impervious surface area on the property. The Director of Development and Engineering Services shall notify the appealing party in writing of his decision. Adjustments can also be made by the city should the city identify an error or oversight, provided the city notifies the customer in advance of the adjustment.

(b) The city will provide a system of credits to reduce stormwater user fees for properties on which stormwater control measures substantially mitigates the peak discharge, runoff volume and/or runoff pollution flowing from such properties or substantially decreases the city's cost of maintaining the stormwater management system. The Development and Engineering Services department will develop written procedures to implement the credit system. No credit will be authorized until the City Council approves such written policies to implement the system of credits; a copy of the approved procedures will be on file with the Development and Engineering Services department. The procedures may allow credits retroactively for no more than one (1) past year. Any reimbursement granted due to a credit will be reimbursed through the utility billing system. Credits cannot exceed the stormwater utility charge for the customer. Nothing herein will prevent the City Council from modifying the adopted system of credits, and such modifications may apply to holders of existing credits.

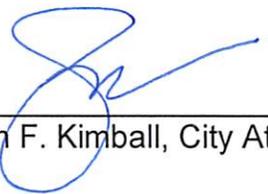
(c) Notwithstanding any other provision of law to the contrary, a municipality shall not refund an overpayment or collect amounts owed to

the municipality as a result of an underpayment of any charge or fee imposed for stormwater if such overpayment, or underpayment is more than thirty six (36) months past the date payment was first due.

SECTION II SEVERABILITY: BE IT FURTHER ORDAINED that if any section, subsection, sentence, clause, phrase, or portion of the Ordinance is for any reason held invalid or unenforceable or unconstitutional by any court of competent jurisdiction, such portion shall be deemed separate, distinct, and an independent provision, and shall not affect the validity of the remaining portions hereof.

SECTION III EFFECTIVE DATE: BE IT FURTHER ORDAINED that this ordinance shall become effective January 1, 2016, the public welfare requiring it. The current provisions of Section 18-401 through 18-414 shall remain in effect until December 31, 2015, including the current fees set forth in Section 18-409. This ordinance will be reviewed annually by the Cleveland City Council.

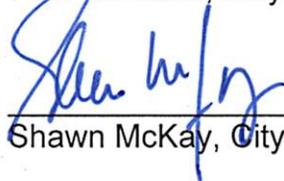
APPROVED AS TO FORM:



John F. Kimball, City Attorney



Tom Rowland, Mayor



Shawn McKay, City Clerk