

ORDINANCE NO. _____

FILE OF CITY COUNCIL

BILL NO. 82- 2017

November 6, 2017

AN ORDINANCE

Amending the Streets, Utilities, and Public Services Code, creating Article 951 – Stormwater Utility Fee, by imposing a stormwater utility fee on developed parcels in the City for the sole purpose of covering the cost of the City's stormwater management program and creating the mechanisms necessary to implement the fee, including calculation of the fee, adoption of a credit policy, enforcement, appeals, and adoption of administrative policies and procedures.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ALLENTOWN:

SECTION ONE: That Article 951, Stormwater Utility Fee of the Codified Ordinances of the City of Allentown be read as follows:

ARTICLE 951
Stormwater Utility Fee

- 951.01 Purpose and Policy
- 951.02 Definitions
- 951.03 Imposition of Stormwater Utility Fee
- 951.04 Stormwater Management Fund
- 951.05 Stormwater Utility Fee Calculation
- 951.06 Stormwater Utility Fee Credits
- 951.07 Billing, Interest, and Enforcement
- 951.08 Appeal Procedures
- 951.09 Administrative Regulations and Procedures
- 951.99 Fines and Penalties

951.01 PURPOSE AND POLICY

The City Council finds that an adequate, sustainable source of revenue for stormwater management is necessary to protect the general health, safety, and welfare of the residents of the City. Further, the City Council finds that higher amounts of impervious area contribute greater amounts of stormwater and associated pollutants to the stormwater management system. Therefore the City Council determines that it is in the best interest of the public to enact a stormwater utility fee that allocates stormwater management program costs to property owners based on impervious area.

951.02 DEFINITIONS

Unless a provision explicitly states otherwise, the following terms and phrases used in this Article shall have the following meanings:

- A. Billing unit means 500 square feet of impervious area.
- B. Developed parcel means a parcel that contains impervious area equal to or greater than 250 square feet.
- C. Director means the Director of Public Works or the Director's authorized representative.
- D. Impervious area means a surface that prevents the downward infiltration of water into the underlying soil. The use of stone and gravel will be considered an impervious area for the purposes of this Article only and this definition shall not be considered to be in contradiction with other applicable City ordinances. The Director may develop specifications for the mapping of impervious area for the purpose of this Article, including the establishment of a uniform threshold under which a contiguous unit of impervious area is considered *de minimis* and not subject to mapping.
- E. Owner means any person, firm, corporation, partnership, trust, company, association, government agency, society, or group owning real property in the City.
- F. Stormwater means drainage runoff from the surface of the land resulting from precipitation or snow or ice melt.
- G. Stormwater management program means the activities of the City necessary to operate, maintain, enhance, and expand the stormwater management system and the activities necessary to carry out the City's municipal separate storm system (MS4) permit and the stormwater-related provisions of the Land Development and Subdivision Ordinance, the Land Development Controls Ordinance, the Flood Control Ordinance, and the Storm Water Management Ordinance.
- H. Stormwater management system means the system of runoff avoidance, infiltration, collection, and conveyance, including storm sewers, pipes, conduits, mains, inlets, culvers, catch basins, gutters, ditches, channels, detention ponds, streets, drains, and all devices, appliances, and stormwater management practices and facilities used for collecting, conducting, pumping, conveying, detaining, infiltrating, reducing, managing, avoiding generation of, and treating stormwater.

951.03 IMPOSITION OF STORMWATER UTILITY FEE

- A. A stormwater utility fee is hereby imposed on every developed parcel in the City that appears in the Lehigh County parcel database as of December 31 of each year. All stormwater utility fees shall be deposited into the Stormwater Management Fund of the City described in Section 951.04.
- B. The rate per billing unit to be used for calculating the stormwater utility fee shall be established by the City Council through ordinance and reviewed annually.
- C. Notwithstanding Section 951.03.A above, the following impervious area shall be exempt from the imposition of the stormwater utility fee:

1. Public streets as defined in Section 901.01.
2. Rail and associated rail ballast.

951.04 STORMWATER MANAGEMENT FUND

The Stormwater Management Fund is established as a separate enterprise fund of the City, which shall be used solely to cover the cost of the City's stormwater management program. The fund shall consist of revenue generated by the stormwater utility fee and other deposits that may be made from time to time by the City Council, including but not limited to federal or state grants and revenue from the sale of bonds. All interest or other income derived from stormwater utility fees shall remain or otherwise be deposited into the fund.

951.05 STORMWATER UTILITY FEE CALCULATION

A. Unless otherwise specified in this Article, the stormwater utility fee for each parcel shall be calculated in the following manner:

1. Determine the impervious area of the parcel in square feet.
2. Divide the impervious area of the parcel by the billing unit.
3. Round the resulting calculation using natural rounding to determine the number of billing units.
4. Multiply the number of billing units by the rate established in Section 951.03.B to obtain the stormwater utility fee for the parcel.

B. Impervious area held in common ownership shall be calculated using the methodology in Section 951.05.A above. The resulting stormwater utility fee will then be divided equally among parcels sharing common ownership. The Director may, on a case by case basis and at the request of an association representing the owners of the property in common ownership, implement alternative methodology for dividing the stormwater utility fee, including but not limited to an established par value.

951.06 STORMWATER UTILITY FEE CREDITS

A. The City Council shall adopt by ordinance a system of credits that provides for reductions in the stormwater utility fee in recognition of practices that reduce the cost of stormwater management program. The types and amounts of credits is at the sole discretion of the City Council. The credit shall be applied after determination of the stormwater utility fee in accordance with Section 951.05.

B. The Director shall develop written policies and procedures necessary to implement the system of credits. These policies and procedures shall include, but not be limited to, provisions to reduce or eliminate the amount of credit if the Director determines that the practice is not functioning as intended.

C. Nothing shall prevent the City Council from modifying the adopted system of credits, and such modifications may apply to holders of existing credits.

951.07 BILLING, INTEREST, AND ENFORCEMENT

A. The stormwater utility fee shall be billed each year on or before February 1 to the record owner of each parcel subject to the fee in combination with bill for real estate taxes. If the property owner is making real estate tax payments on an installment basis as authorized in Section 353.01.B, then the stormwater utility fee will be collected

on the same schedule. Any portion of a stormwater utility fee that is unpaid as of the subsequent July 16 shall be considered delinquent except if the unpaid stormwater utility fee is subject to an appeal in accordance with Section 951.08.

B. A penalty of ten percent (10%) shall be added to bills not paid within the period described above. In addition thereto, any costs or fees incurred in conjunction with the collection of any such delinquencies shall be the responsibility of, and paid by, the owner(s) or operator of the subject parcel.

C. The delinquent fee, along with any and all penalties, collection costs, and reasonable attorney's fees, shall constitute a lien on the parcel by virtue of the provisions of the Municipal Claims and Tax Lien Act of May 16, 1923 P.L. 207 No. 153, 53 P.S. §7101 et seq. (the "MCTLA"), and shall be collectible via the remedies provided for therein.

951.08 APPEAL PROCEDURES

A. Any owner of a parcel who believes the provisions of this Article have been applied in error may appeal in accordance with this Section, provided, however, that grounds for appeal are limited to the following:

1. An error was made regarding the square footage of the impervious area attributed to the parcel.
2. The property is exempt under Section 951.03.C.
3. There is a mathematical error in calculating the stormwater utility fee.
4. The identification of the parcel owner invoiced is in error.
5. An approved credit was incorrectly applied.

B. The parcel owner shall complete and submit to the Director a stormwater utility fee appeal form in a format approved by the Director within 30 days of the charge being mailed or otherwise issued to the owner ("appeal date"). A Hearing Officer, designated by the Director, shall review the appeal for completeness and make a determination within 15 calendar days. In the event that the Hearing Officer finds that the appeal is incomplete, the Hearing Officer shall offer the owner 30 calendar days from the determination that the appeal is incomplete to supply the missing information. If all information requested is not provided within the 30 calendar days, the petition will be deemed to have been withdrawn.

C. Once the appeal has been determined to be complete, the Hearing Officer shall conduct a technical review of the alleged error and respond to the owner in writing within 30 calendar days. The Hearing Officer may deny the appeal or adjust the stormwater utility fee if it is found to be in error.

D. A decision by the Hearing Officer that is adverse to the appellant may be further appealed to the Director within 30 days of the determination being mailed or otherwise issued to the owner. The Director shall review the determination of denial made by the Hearing Officer and either affirm, reject, or modify the determination. The Director's determination will be provided to the owner in writing by certified or registered mail within 30 calendar days of receiving the denial appeal request.

E. Any person aggrieved by a decision of the Director may appeal to the Court of Common Pleas of Lehigh County within 30 days of the date the final decision is entered.

G. If payment is not made within 15 calendar days after the expiration of the owner's right to appeal in accordance with this Section or a decision that is adverse to the owner made by the court of Common Pleas of Lehigh County, the unpaid fee shall be considered delinquent and subject to the provisions of 951.07.B through D.

951.09 ADMINISTRATIVE REGULATIONS AND PROCEDURES

The Director may implement such administrative regulations and/or procedures necessary to implement the requirements set forth in this Article.

951.99 FINES AND PENALTIES

Whoever fails, neglects, or refuses to make payment of the stormwater utility fee assessed under Section 951.03 of this Article shall, upon summary conviction by a magisterial district judge, be sentenced to pay a fine of not more than One Thousand (\$1,000.00) Dollars and costs and restitution, and, in default of such fines and costs, be imprisoned not more than ninety (90) days, or both.

SECTION TWO: That all Ordinances inconsistent with the above provisions are repealed to the extent of their inconsistency.

SECTION THREE: The provisions of this legislation are severable and if any provisions are held unconstitutional or illegal, the remaining provisions shall in no way be affected or impaired.

SECTION FOUR: That this Ordinance will take effect on January 1, 2018.