

ORDINANCE NO. 2010-6

**AN ORDINANCE OF THE COMMON COUNCIL OF
THE CITY OF MADISON, INDIANA ADOPTING
STORMWATER REGULATION FEES**

WHEREAS, the Indiana Department of Environmental Management has mandated communities throughout the State of Indiana to adopt stormwater regulations; and

WHEREAS, it will be beneficial to the health, safety and general welfare of the City of Madison, that it regulate stormwater runoff.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MADISON, INDIANA, that:

DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BOARD. The Board of Public Works and Safety of the City, or any duly authorized officials acting in its behalf.

ERU (EQUIVALENT RESIDENTIAL UNIT). The estimated average square footage of impervious area of a single-family residential property inside the City, equal to 3,300 square feet. This is the unit to which the base rate is applied and may periodically be adjusted based on changing conditions in the City.

IDEM. Indiana Department of Environmental Management.

IMPERVIOUS AREA. Surface areas of residential and non-residential properties which water will not penetrate and from which stormwater runoff will be produced. This includes, but is not limited to, rooftops, sidewalks, parking lots, pavements, concrete, and asphalt.

NON-RESIDENTIAL DEVELOPED PROPERTY. All tracts of real property either zoned or developed for (i) residential use intended for occupancy by more than two families per residential structure (e.g., apartment houses with three or more units under a single roof), (ii) commercial uses, (iii) non-profit non-residential uses (e.g., governmental organizations, churches, and fraternal organizations), and (iv) industrial uses.

NPDES. National Pollutant Discharge Elimination System.

RESIDENTIALLY DEVELOPED PROPERTY. All tracts of real property either zoned or developed for residential use in structures designed and permitted for habitation by one or two families (i.e., single-family homes or two-family homes (duplex units)).

SFR (SINGLE-FAMILY RESIDENTIAL). All tracts of real property with improvements intended for occupancy by one or two families for residential purposes (i.e., single-family homes or duplex units), regardless of the number of sewer taps and fees it incurs.

STORMWATER SYSTEM. A system of constructed and naturally occurring above ground and below ground facilities or infrastructure intended to collect, treat, convey, and otherwise manage runoff from rain, snow, and other precipitation including, but not limited to: drains, inlets, conduits, culverts, storm sewers, manholes, channels, ditches, swales drainage easements, retention and detention basins, infiltration facilities, lakes, ponds, streams, creeks, rivers and other related components.

VACANT/UNIMPROVED PROPERTY. All tracts of real property that are wholly vacant and unimproved, regardless of the zoning classification assigned to the property or the uses permitted thereon by applicable law, rules, and regulations.

PURPOSE.

This chapter establishes a stormwater management user fee to fund and support the City's efforts to address the issues presented in the recital provisions of the National Pollutant Discharge Elimination System (NPDES) Indiana 327 IAC 15-13. The user fees include general public (institutional, agency, federal, state and local government and the like) and/or property owner user fees.

USER FEE.

(A) All owners of real property in the City shall be charged for the use of the stormwater system based on an estimate of the amount of stormwater and rate of flow of stormwater that is projected to discharge into the stormwater system from the property.

(B) By this chapter, which may be amended from time to time by resolution of the Council, the City hereby sets and establishes a system of fees that is intended to assess users their fair and equitable share of the costs for use of the stormwater system for each property within the City. These fees shall be established in an amount sufficient to defray the reasonable costs for operation, maintenance, and construction of necessary improvements or additions to the stormwater system. The subsequent amendments or adjustments shall take into consideration the amount of funds reasonably necessary to meet the level and cost of service essential to manage and operate the stormwater system, including any previously unforeseen inflationary pressures, system expansion, increases in state and federal program mandates, or related issues that may call for management program expansion.

PROPERTY AFFECTED.

Except as provided in this chapter, all residentially developed property and non-residential developed property located within the limits of the city shall be subject to the stormwater service charges established by this chapter regardless of whether the properties are privately or publicly owned. Vacant/unimproved property shall not be subject to the stormwater service charges.

FEES ESTABLISHED.

(A) Subject to the provisions of this chapter, each and every owner and/or operator of residentially developed property and non-residential developed property shall have imposed upon them a stormwater user fee. The stormwater user fee shall be a monthly service charge and shall be determined by the provisions of this chapter and the applicable equivalent residential unit (ERU) and ERU rate established hereunder, which provisions may be amended from time to time in accordance with the provisions of this chapter or by resolution of the Council.

(B) The City Engineer shall make recommendations to the Council to adjust this definition of ERU from time to time by resolution to reflect development trends within the city or further equitably divide the costs of supporting the operation and maintenance of the stormwater system. In adjusting this definition, the Council shall take into consideration the source of the data from which the subject ERU is to be established, the general acceptance and use of the source on the part of other stormwater systems, and the reliability and general accuracy of the source. The Council may also utilize information obtained from property tax assessor's rolls or site examination, mapping information, aerial photographs, and other reliable information in order to determine impervious surface areas.

(1) Residentially developed properties and unimproved properties shall be billed on a per unit basis at a flat fee of \$ 1.33 per month, established for an equivalent residential unit (ERU), effective upon passage of this ordinance.

(2) The fee for non-residential developed properties shall be calculated based on the total impervious area of the property divided by the then-effective average impervious area for an ERU multiplied by a rate of \$1.33 per month established for an ERU, effective upon passage of this ordinance. The impervious area estimate shall be based on orthorectified aerial photography and/or construction plans as approved through the building permit process, or other sources at the discretion of the City Engineer.

(3) Notwithstanding any other provision of this chapter, the Board shall assess the need for rate increases and report findings to the Council.

(C) Rates and charges incurred under this section shall be administered and collected by the City consistent with other city services. The monies collected under this section shall be used expressly for the benefit of the stormwater system and may not be distributed to the general fund or other unrelated funds.

COLLECTION.

The billing and collection of stormwater user fees shall be administered by the City Utilities Billing Office. The stormwater user fees for residentially developed properties and non-residential developed properties shall be billed as frequently as monthly with payment due as of the date stated in the billing.

In the event a partial payment is received, the payment shall be applied pro-rata to each account billed on a consolidated statement by City services in the proportion that the account bears to the total consolidated statement of all current charges for all accounts. All bills for stormwater user fees shall become due and payable in accordance with the rules and regulations in effect, or subsequently adopted by, the Council.

The Board shall have authority to annually place tax liens on properties in default of fees required by this chapter. The Board shall provide notice of any intended tax liens subject to the provisions of applicable Indiana law. Removal of the property tax lien will only occur upon full payment of the stormwater user fees or other payment arrangements approved by the Council. In the alternative, the City may take appropriate legal action to collect unpaid charges.

The threshold for retroactive billing shall be six months. Omitted or previously unidentified property containing impervious surface that has not been charged stormwater user fees may be billed retroactively up to six (6) months.

CREDITS AND/OR ADJUSTMENTS.

In order to recognize property owners' efforts to reduce stormwater impacts and the resulting decrease in the city's level of service, the city may develop a policy for credits and adjustments to lessen the stormwater user fee for certain properties. This policy for credits and adjustments shall be adopted by the Council.

REVENUE ADMINISTRATION.

(A) All revenues generated by or on behalf of the stormwater management program shall be deposited in a non-reverting stormwater revenue fund and used exclusively for the stormwater management program.

(B) Revenues generated by or on behalf of the stormwater management program pursuant to this chapter shall not exceed the estimated cost of service required to implement the City's identified stormwater quantity and quality level of service. While contingency planning and budgeting is permissible, revenues cannot exceed long-term program cost of service estimates.

(C) To the extent that the stormwater user fees collected are insufficient to construct needed stormwater drainage facilities, the cost of the same may be paid from such City funds as may be determined by the Council. However, revenues from the City's stormwater utility shall not be utilized for non-stormwater drainage expenses.

(D) The Stormwater Utility Fund shall be used for the following purposes:

1. Acquisition of property by gift, purchase, or condemnation necessary to construct, operate, and maintain stormwater management facilities.
2. Costs of administration and implementation of the stormwater management program.
3. Engineering and design; debt service and related financing expenses; planning and construction costs for new stormwater facilities; and inspection, enlargement, or improvement of existing facilities.
4. Operation and maintenance of the stormwater system, including the monitoring and inspection of stormwater control devices and facilities.
5. Water quality monitoring and water quality programs.
6. Inspection and enforcement activities.
7. Elected official, appointed official, stakeholder, and general public education and outreach relating to stormwater.
8. Billing, revenue collection, and associated administrative costs.
9. Other activities that are reasonably required to manage and operate the stormwater system.

(E) Funding for the system and other stormwater activities connected therewith shall include, but not be limited to:

1. Funds appropriated by the City;
2. Stormwater user fee;
3. Permit and inspection fees;
4. Direct Charges. This charge will be collected from owners and developers for the cost of designing and constructing stormwater facilities and administrative costs and related expenses where the City designs and constructs or contracts for the construction of the facilities;
5. Other income obtained from federal, state, local, and private grants, loans, or revolving funds.

POLICY ON FAIRNESS AND EQUITABILITY.

The City Engineer, with approval by the Council, shall develop, periodically update, and make available to the public a document that expresses in the necessary detail the City's policies governing the stormwater user fee rate structure, billing administration, and other related issues.

ENFORCEMENT.

The Board is authorized to take appropriate legal action to require compliance with this chapter.

APPEALS.

(A) Any person, firm, corporation, or organization notified of non-compliance with this chapter who or that is required to perform monitoring, analyses, reporting and/or corrective actions that is aggrieved by a decision of a City employee or contractor issuing such decision, may appeal the decision in writing to the City Engineer within ten (10) days following the effective date of the decision.

(B) Upon receipt of the request, the City Engineer shall request a report and recommendation from the subject City employee or contractor and shall set the matter for administrative hearing at the earliest practicable date.

(C) At the hearing, the Board may hear additional evidence, and may revoke, affirm, or modify the earlier decision. Such decision shall be final, subject to appeal to a court of competent jurisdiction.

(D) The threshold for retroactive credits and adjustments shall be six months and shall not be applied to properties in the interim user fee rate structure billing period with exception to vacant or unidentified property that has not been charged stormwater user fees.

NO LIABILITY.

Floods and stormwater runoff may occasionally occur which exceeds the capacity of the system. This ordinance does not imply nor create a duty on the City to insure that property subject to fees and charges established herein will always be free from flooding or flood damage, or that stormwater systems capable of handling all storm events can be cost effectively constructed, operated, or maintained. Nor shall this ordinance create a liability on the part of, or cause of action against, the City, or any of their elected officials, officers, or employees for any flood damage or any damage that may result from storms or runoff thereof.

This ordinance shall become immediately effective upon its adoption by the Common Council, signature by the Mayor, enrollment in the Book of Ordinances, and publication of notice as required by law.