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**EDINBURGH TOWN COUNCIL**

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**ORDINANCE NO. 2014-3**

**AN ORDINANCE AMENDING EDINBURGH MUNICIPAL CODE**  
**(1993), CHAPTER 9 UTILITIES, ARTICLE 4 STORM WATER**  
**MANAGEMENT, TO ADOPT FINAL RATE STRUCTURE AND**  
**RELATED MATTERS**

WHEREAS, pursuant to Ind. Code § 8-1.5-5 the Edinburgh Town Council previously adopted Ordinance No. 2013-9 establishing a Department of Storm Water Management to meet the Town of Edinburgh's obligations regarding storm water management, which ordinance included an interim rate structure;

WHEREAS, the Board of Directors of the Department of Storm Water Management (the "Board") employed accounting consultant H.J. Umbaugh and Associates to perform a Storm Water Rate Analysis ("Analysis"), the engineers of Ladd Engineering ("LADD"), and Strand Associates, Inc. to prepare a Stormwater Program Study, a supplemental engineering summary for the determination of the Stormwater Utility Rate ("Summary");

WHEREAS, the Board reviewed the Analysis and the Summary and heard LADD, Strand, and Storm Water Management Department Director Glen Giles ("Director") presentations explaining said Summary and Analysis and had opportunities at public meetings to question LADD, Strand, and the Director thereon;

WHEREAS, the Town Council has reviewed the Analysis and the Summary and had an opportunity at a public meeting to question LADD, Strand, and the Director thereon;

WHEREAS, the Board conducted three (3) Town Hall meetings to present the proposed Storm Water Utility Rate to the public and conducted a public hearing regarding the proposed Storm Water Utility Rate in accordance with Ind. Code § 8-1.5-5-7, and has considered public comment;

WHEREAS, based upon the Analysis, the Summary, the Director's, Strand's, LADD's presentations, and public comment, the Board has determined a Storm Water

Utility Rate in a minimum amount necessary for the operation and maintenance of the

Storm Water Utility;

WHEREAS, Ind. Code § 8-1.5-5-7 requires the approval of the fiscal body of the Town of Edinburgh, the Town Council, for the Board to assess and collect user fees from customers of the Storm Water Utility;

WHEREAS, Ind. Code § 8-1.5-5-7(b) provides that the amount of the user fees must be the minimum amount necessary for the operation and maintenance of the storm water system;

WHEREAS, Ind. Code § 8-1.5-5-7(c) states that the rate may be effectuated through a periodic billing system;

WHEREAS, Ind. Code § 8-1.5-5-7(d) requires the use of certain factors to establish the fee, including, but not limited to, the amount of impervious surface area on the property;

WHEREAS, Ind. Code § 8-1.5-5-7(e)(3) allows the exercise of reasonable discretion in adopting different schedules of fees based upon whether a property is used primarily for residential or commercial purposes;

WHEREAS, the Board has made certain findings and recommendations regarding the Storm Water Utility rate to the Town Council and has approved the same at their open public meetings; and

WHEREAS, the Town Council, having reviewed the Analysis, the Study, and Considering the Board's approval of the same, and having heard presentations on the matter, finds that it is the best interest of the Town to adopt the Board's recommendations and amend the Edinburgh Municipal Code accordingly.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF EDINBURGH, INDIANA, THAT:

**I. SECTION 1. AMENDING MUNICIPAL CODE.**

- a. Town Council Ordinance 2013-9, titles "An Ordinance Establishing Department of Stormwater Management" is hereby amended in part by deleting only the sections referenced below and inserting the following language in its place:

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**Sec. 53.22 Storm Water Rate and Fee Establishment Procedures.**

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- a. Each parcel of property assigned a separate tax identification number shall be individually subject to a stormwater service charge, unless a parcel is determined to be exempt from such a charge pursuant to the terms and conditions of this Article.
- b. For each parcel that directly or indirectly contributes to the stormwater system of the District, the stormwater service charge shall be based on the presence of and/or measure of impervious surface area on the parcel or property.
- c. Each parcel of property shall be classified as Residential or Non-residential. The Director is authorized to establish the classification of an individual parcel or property based upon its primary use. If, in the opinion of any user, the classification of an individual parcel or property is incorrect, the individual may appeal using the provisions of Sec. 53.25.
- d. The stormwater rate is designed to recover the cost of rendering stormwater service to the users of the stormwater system and shall be the basis for assessment of the District's stormwater service charge. The rate is further designed to maintain adequate reserves to provide for reasonably expected variations in the cost of providing services, as well as variations in the demand for services.
- e. The rate shall be evaluated annually by qualified professionals as to its sufficiency to satisfy the needs of the DSM and an evaluation report shall be provided to the Board no later than December 31 of each year.

**Sec. 53.23 Rate Structure and Calculation.**

- a. For the purposes stated in Sections 53.10 and 53.11, there is hereby assessed a stormwater service charge to each user in the District who contributes directly or indirectly to the stormwater system of the District, in an amount defined below.

b. The DSM hereby establishes that an Equivalent Residential Unit ("ERU") shall be

based upon 3,225 square feet of impervious surface area.

c. All properties having impervious surface area within the District shall be assigned an ERU, or multiple thereof, with all properties having impervious area assigned at least one (1) ERU excepting contiguous residential properties as defined in this Section.

d. The Stormwater Service Charge for one (1) ERU is hereby established at \$3.00 per month. The total service charge for a particular property shall be determined by taking the number of ERUs assigned to a particular property and multiplying it by \$3.00.

e. *Residential Properties.* A monthly flat rate charge for stormwater service rendered to residential properties shall be charged to each account within the District. All residential properties are assigned one (1) ERU. This flat fee shall apply to all residential properties as defined herein.

1. Contiguous residential properties having common ownership and sharing a single structure containing four (4) or less dwelling units may be assigned one (1) ERU.

2. Contiguous residential properties having common ownership, one of which contains a dwelling building, and the remainder of which contain impervious surface area but serve an accessory or incidental use, may be assigned one (1) ERU.

f. *Non-Residential Properties.* The impervious surface area of each non-residential property shall be individually calculated. Non-residential properties shall be assessed a monthly rate for stormwater service based upon the total number of ERUs that encompasses the measured impervious surface area on the individual property. The calculation to determine the total number of ERUs for a Non-Residential property shall be completed by dividing the total square footage of measured impervious surface area

for a property by 3,225 square feet. The division shall be calculated to the first decimal

place. Total ERUs shall not be less than one (1) for any Non-Residential property

containing measurable surface area.

g. Only whole ERUs shall be used in determining the assignment of gross ERUs to a property. All rounding necessary to reach the appropriate whole ERU shall be done according to mathematical convention (0 – 0.4 rounded down to the nearest whole ERU; 0.5 -0.9 rounded up to the nearest whole ERU).

**Sec. 53.24 Billings; Terms of Payment.**

*a. Billings.* All stormwater service fees shall be calculated monthly. Any bill for services for partial month service shall be assessed on a per diem basis. The Board, in its discretion, may set the billing period as either monthly or quarterly.

*b. Terms of Payment.* The stormwater service charges shall be due on the payment date set out on the bill. It shall be a violation of this Article to fail to pay a stormwater service bill when due. All bills for stormwater services not paid on or before the due date, which due date shall be approximately fifteen (15) days after the bill is rendered, shall be subject to a collection or deferred payment charge of 10% on the outstanding balance. Payments returned for nonsufficient funds ("NSF") shall be subject to a NSF fee of \$20.00 plus an amount equal to the actual charge by the depository institution for negotiable instruments returned for insufficient funds. When an NSF fee is imposed, the Town shall notify the maker or drawer, or the person for whose benefit the instrument was given, to inform him or her that the instrument was dishonored or returned unpaid and that the person has ten (10) days after the date the notice is mailed to pay the total amount due, including the NSF fee, in cash, certified check, or other guaranteed payment. If the person fails to make payment within the ten (10) day period, the Town may file a civil action for the amount due, including the NSF fee, court costs, reasonable attorneys' fees, and treble damages. If payment is not received with respect to dishonored checks within ninety (90) days after the check is initially received, the matter will be referred to the corresponding County Prosecutor in accordance with Ind. Code § 36-1-8-13.

c. *Payment Priority.* Partial payments shall be applied in this order: 1) any NSF fee on the

account; 2) any late fees on the account; 3) past due balances; 4) current balances. In the event the Town should elect to combine stormwater service bills with any other Town utility bills, partial payments shall be applied in this order as between utilities: 1) waste management fees; 2) stormwater service fees; and 3) sanitary sewer fees. This provision only applies to utility bills appearing on the same bill.

d. *Collection.* Delinquent stormwater service charges and applied penalties, recording fees, and service charges may be made a lien upon property and may be collected in accordance with the provisions of Ind. Code § 8-1.5-5-29, Ind. Code § 8-1.5-5-30, and Ind. Code § 8-1.5-5-31. Delinquent stormwater service charges may also be collected in a civil action along with reasonable attorneys' fees and court costs.

#### **Sec.53.25 Appeals of Rate Determination.**

If, in the opinion of any user, the ERU multiple assigned to his or her property is inaccurate in light of the amount of impervious surface area found on the property or the property classification assigned to his or her property is inaccurate, the user shall have the right to contest the ERU determination and thus the rate assessed in the following manner:

- a. User shall obtain and complete a petition to appeal stormwater rate and return it to the DSM with verifiable documentation supporting the user's claim.
- b. The DSM shall investigate the user's claim and, upon review thereof, shall render a written determination within thirty (30) days that either the original ERU determination and assessed rate shall be affirmed or the user's rate should be adjusted.
- c. If the user's petition is denied, said opinion shall be forwarded to the user by certified mail, return receipt requested. A determination of amount of adjustment

shall be forwarded to the user by certified mail, return receipt requested, in cases

~~where an adjustment is given. User shall then have fourteen (14) days from the~~

receipt of the opinion or determination to request reconsideration by the Board.

d. If a request for reconsideration by the Board is received, it shall be placed on the Board's agenda for formal consideration within thirty (30) days. The user and the DSM shall have the opportunity to submit additional written documentation in support of each position prior to the meeting. The Board shall conduct a hearing on the disputed issue and issue a determination which shall be binding on the DSM. The hearing shall be electronically recorded and a transcript of the hearing provided upon request at a cost per page as determined by the Town Clerk-Treasurer as amended from time to time.

e. A party or person aggrieved by the final Board determination shall have the right to judicial review of the determination in accordance with state law.

f. If the DSM recommends that the user's rate be reduced, or reduction is ordered by the Board or court of law, user shall be credited accordingly for any overpayment made from the date of the petition.

g. Dispute or appeal of an ERU determination for stormwater service rate or credit application shall not be a valid reason for non-payment of the originally assessed stormwater service charge by the user.

#### **Sec. 53.26 Discount and Credits Policies and Procedure.**

Stormwater service charge credits may be available to eligible Non-Residential property owners.

a. Non-Residential property owners may qualify for one or more of the following types of credits:

1. Stormwater Quality Credits
2. Stormwater Quantity Credits

### 3. Retrofit Credits

### 4. Education Credits

b. Credit requests shall be reviewed by the DSM and recommended for approval or denial to the Board. The Board shall render the final approval or denial of all credit requests. Specific policies and procedures for submission of a credit request by a Non-Residential property owner shall be consistent with the most recent version of the "Town of Edinburgh Stormwater Credit Manual" approved by the Board. An approved credit or combination of credits shall not exceed 40% of the total service charge assessment for a parcel of property.

c. Approved credits shall be applied to the monthly stormwater service charge as approved by the Board for a period of five (5) years (60 months) following the date of Board approval at which time the credit shall expire unless otherwise terminated. A credit shall be terminated as described below:

1. Property transfer or new ownership
2. Failure to maintain facilities as required/indicated in Operations & Maintenance Manual
3. Failure to report on Education Credit
4. Property alteration

d. Expired or terminated credits require the submission of a new Credit Request.

e. Application for a credit or appeal determination thereon shall not constitute a valid reason for non-payment of assessed stormwater service charges by the property owner.

#### **Sec. 53.27 Storm Water Management Fund.**

All rates and fees collected for stormwater service, including but not limited to, drainage service charges, direct charges and interest earnings on any unused funds shall be deposited in an account entitled "Stormwater Management Account." Disbursements from this account shall be authorized by the Board. Such disbursements shall be used for the operation, maintenance and improvement of the District's stormwater management system and for reimbursement to the Town for past and future stormwater management system maintenance and administration.



## II. SECTION 2. ADDING TO MUNICIPAL CODE

a. Town Council Ordinance 2013-9, titled "An Ordinance Establishing

Department of Stormwater Management" is hereby amended to add Section

53.28 -- Exemptions by inserting the following language:

### **Sec. 53.28 Exemptions**

The following areas shall not be considered impervious surface area for the purpose of calculating stormwater service charges:

1. Public roadways (including Federal, State, County and Town);
2. Public sidewalks and/or trails located within the right-of-way or sidewalk easement;
3. Public airport runways and taxiways;
4. Railway beds, ties and rails; and
5. Open water.

## III. SECTION 3. REPEALER

- a. All ordinances or parts of ordinances in conflict with provisions of this ordinance are hereby repealed.
- b. This Ordinance does not affect any other sections of the Edinburgh Municipal Code, or other ordinances except as herein provided and all other sections of the Edinburgh Municipal Code, and other ordinances shall remain the same.

## IV. SECTION 4. SEVERABILITY

- a. The sections, paragraphs, sentences, clauses, phrases and words of this Ordinance are separable, and if any word, phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional, invalid or unenforceable by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality, invalidity or unenforceability shall not