

ORDINANCE NO. 1518

CITY OF WESTFIELD

IN CITY COUNCIL

APRIL 15, 2010

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF WESTFIELD, ADOPTED JUNE 17, 1993.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WESTFIELD AS FOLLOWS:

That Chapter 18 of the Code of Ordinances be and is hereby amended by adding Division 1A, Stormwater Utility Ordinance, Sections, 18-193 through 18-204

Section 18-193. Established.

There is hereby established within the department of public works (DPW), a division known as the stormwater management division under the day-to-day supervision of the deputy superintendent of public works and the general supervision of the superintendent of public works.

Section 18-194. Purpose.

The stormwater management division shall administer the stormwater management program of the city. It shall be funded by revenue collected through the stormwater utility fee and such other revenue as may, from time to time, be appropriated. The stormwater management program is designed to promote the health and safety of the public, to protect property from flooding and the damage caused by stormwater runoff, and to protect and manage water quality by controlling the level of pollutants in stormwater runoff and the flow of water as conveyed by manmade and by natural stormwater management systems and facilities whether publicly or privately owned.

Section 18-195. Authority.

This article is adopted in accordance with the authority granted, inter alia, by Amendment Article 89 to Article II of the Massachusetts Constitution, Chapter 294 of the Acts of 1920, as amended, Sections one through twenty-four of Chapter 83 of the General Laws of the Commonwealth of Massachusetts and such other powers as granted to cities in the said General Laws.

Section 18-196. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Credit means a reduction in the amount of a Stormwater Utility Fee charge to the owner of a particular property for the existence and use of privately owned, maintained and operated on-site or off-site stormwater management systems or facilities, or continuing provision of services or activities that reduce or mitigate the City's cost of providing stormwater management services for that particular property.

Developed land shall mean a parcel of land in single and separate ownership altered from its natural state to include impervious surface area greater than four hundred (400) square feet.

Drainage system shall mean natural and manmade channels, swales, ditches, swamps, rivers, streams, creeks, wetlands, branches, reservoirs, ponds, drainage ways, inlets, catch basins, gutters, pipes, culverts, bridges, head walls, storm sewers, lakes, and other physical works, properties, and improvements that transfer, control, convey or otherwise influence the movement of stormwater runoff.

Dwelling unit means the individual, private premises contained in any building intended, whether occupied or not, as the residence for one household, regardless of the number of individuals in the household. A building may contain more than one dwelling unit.

General Laws means the General Laws of the Commonwealth of Massachusetts.

Improved property means property altered from its natural state by construction or installation of greater than four hundred (400) square feet of impervious surfaces.

Impervious surface means those areas which prevent or impede the infiltration of stormwater into the soil in the manner in which it entered the soil, in natural conditions, prior to development. Common impervious surfaces include, but are not limited to, rooftops, buildings or structures, sidewalks, walkways, patio areas, driveways, parking lots, storage areas, compacted gravel and soil surfaces, awnings and other fabric or plastic coverings, and other surfaces which prevent or impede the natural infiltration of stormwater runoff which existed prior to development.

Non-residential property means improved property that is not residential property as defined herein including, but not limited to such property as commercial and office buildings, public buildings and structures, industrial and manufacturing buildings, storage buildings and storage areas, parking lots, parks, recreation properties, tennis courts, swimming pools, public and private schools and universities, research facilities and stations, hospitals and convalescent centers, airports, agricultural uses, water and wastewater treatment plants, and any other form of use not otherwise mentioned which is not a residential property, and which has private parking lots and private drives or roads.

Residential property means improved property, without regard to form of ownership, containing three or fewer dwelling units except as may be modified from time-to-time herein by the term “single family”. Residential properties shall not include improved property containing structures used primarily for nonresidential purposes (i.e. hotels, motels, retirement centers, nursing homes or assisted living homes or properties designated as “mixed use” properties by the Board of Assessors.

Stormwater shall mean the runoff from precipitation that travels over natural state or developed land surfaces and enters a drainage system.

Stormwater management services mean all services provided by the City which relate to the:

- (a) Transfer, control, conveyance or movement of stormwater runoff through the City;
- (b) Maintenance, repair and replacement of existing stormwater management systems and facilities;
- (c) Planning, development, design and construction of additional stormwater management systems and facilities to meet current and anticipated needs;
- (d) Regulation of the use of stormwater management services, systems and facilities; and
- (e) Compliance with applicable State and Federal stormwater management regulations and permit requirements. Stormwater management services may address the quality of stormwater runoff as well as the quantity thereof.

Stormwater management systems and facilities mean those natural and manmade channels, swales, ditches, rivers, streams, creeks, branches, reservoirs, ponds, drainage ways, inlets, catch basins, pipes, headwalls, storm sewers, lakes and other physical works, properties and improvements which transfer, control, convey, detain, retain, treat or otherwise influence the movement of stormwater runoff.

Stormwater Utility Fee means the periodic user fee imposed pursuant to this article by the City of Westfield for providing stormwater management services.

Undeveloped land shall mean all land that is not altered from its natural state to an extent that results in greater than four hundred (400) square feet of impervious surface area.

Section 18-197. Stormwater Utility Fee Established; Quarterly Billing; Deposit To Special Revenue Account.

- (a) Pursuant to section 16 of Chapter 83 of the General Laws, the city hereby establishes a charge for the use of the stormwater management services of the city to be known as the stormwater utility fee.
- (b) The stormwater utility fee is imposed on each parcel of residential property and each parcel of nonresidential property, whether occupied or not. The fee shall be billed in advance on a quarterly basis to the record title owner of the property. The quarterly billing shall be consolidated in the same bill as is sent to the said property owner for other services provided by the city supported by fees, including water service, solid waste management and sanitary sewer use.
- (c) Receipts generated from the stormwater utility fee shall be deposited to a special revenue account to be known as the stormwater management account set up in accordance with the authority granted by Section 53E of Chapter 44 of the General Laws. The funds deposited to this account shall be used to fund the stormwater management program of the city.
- (d) The deputy superintendent of public works, under the general supervision of the superintendent of public works, shall within forty-five (45) days after the close of each fiscal year, prepare an annual report of the change in cash balances which shall detail the cash receipts and disbursements for the year and which shall be submitted to the mayor, city council and city auditor.

Section 18-198. Rates.

- (a) The City Council shall establish reasonable rates to defray the cost of administering and implementing the stormwater management program of the city. The initial rates, and any later modifications, shall be based upon recommendation of the board of public works and shall be set by the adoption of a written Resolution by vote of the City Council. A schedule of said rates shall be on file in the office of the City Clerk of the City of Westfield.
- (b) There shall be two classifications for the rates, Residential and Non-residential. Residential rates will be billed at a flat rate per the fee structure adopted by the City Council as provided in Exhibit A.
- (c) Non-residential rates shall be based upon the total area of impervious surface on a parcel of land in single and separate ownership as determined by the City of Westfield Engineering Department by identifying such parcels from the records of the City Board of Assessors and utilizing available GIS data layers including building footprints, building structures, driveways, pathways, pools, sport courts, and parking areas. Any impervious areas within the city-owned right-of-way will not be attributed to the parcel and will not be considered as part of the total impervious area of the parcel.

Section 18-199. Scope of Responsibility for Stormwater Management Systems and Facilities.

- (a) The City owns or otherwise has rights which allow it to operate, maintain, improve and access those stormwater management systems and facilities which are located:
 - (1) Within public road rights-of-way;
 - (2) On private property but within easements granted to, and accepted by, the City of Westfield, or are otherwise permitted to be located on such private property by written agreements for rights-of-entry, rights-of-access, rights-of-use or such other lawful means to allow for operation, maintenance, improvement and access to the stormwater management system facilities located thereon;
 - (3) On public land which is owned by the City and/or land of another governmental entity upon which the City has agreements providing for the operation, maintenance, improvement and access to the stormwater management systems and facilities located thereon.
- (b) Operation, maintenance and/or improvement of stormwater management systems and facilities which are located on private or public property not owned by the City, and for which the City lacks a lawful right of entry, maintenance and repair shall be and remain the legal responsibility of the property owner, except as otherwise provided for by state and federal laws and regulations.

Section 18-200. Purposes of the Fund.

Receipts from the stormwater utility fee shall be used for the following purposes:

- (a) The acquisition by gift, purchase or condemnation of real and personal property, and interests therein, necessary to construct, operate, and maintain stormwater management systems and facilities.
- (b) All costs of administration and implementation of the stormwater management program, including the cost of labor attributable to the stormwater management program and the establishment of reasonable operating and capital reserves to meet unanticipated or emergency stormwater management requirements.
- (c) Engineering and design, debt service and related financing expenses, construction costs for new facilities, and enlargement or improvement of existing facilities.
- (d) Operation and maintenance of the stormwater system, including catch basin cleaning, ditch maintenance and street sweeping.

- (e) Capital projects for stormwater management.
- (f) Illicit discharge detection and elimination.
- (g) Monitoring , surveillance, and inspection of stormwater control devices.
- (h) Water quality monitoring and water quality programs.
- (i) Retrofitting developed areas for pollution control.
- (j) Inspection and enforcement activities.
- (k) Billing and related administrative costs.
- (l) Other activities which are reasonably necessary including costs related to regulatory compliance.

Section 18-201. Stormwater Utility Fee Exemptions.

- (a) The City finds that all real property in the City contributes to runoff and either uses or benefits from the maintenance of the stormwater system. Therefore, except as provided in this section or otherwise provided by law, no public or private property located in the City of Westfield shall be exempt from the stormwater utility fee charges. No exception, credit, offset, or other reduction in stormwater utility fee charges shall be granted based on age, tax status, economic status, race, religion or other condition unrelated to the cost of providing stormwater management services and facilities.
- (b) Notwithstanding the foregoing, the city establishes exemptions to the Stormwater Utility Fee as follows:
 - (1) Undeveloped land.
 - (2) City-owned property.
 - (3) Railroad rights-of-way (tracks). However, railroad stations, maintenance buildings, and/or other improved property used for railroad purposes shall not be exempt from Stormwater Utility Fee charges.
 - (4) Public streets, highways and rights-of-way. However, maintenance buildings and/or other improved property used for road maintenance purposes shall not be exempt from Stormwater Utility Fee charges. All other State, Federal, and County properties are subject to the user fee charges on the same basis as private properties.

Section 118-202. Stormwater Utility Fee Credits.

- (a) The superintendent of public works is hereby authorized to grant credits to property owners to be applied against the stormwater utility fee based on the technical and procedural criteria set forth in the Stormwater Utility Credit Policy (Credit Policy) as developed, maintained and, from time to time, amended by the DPW. The Credit Policy shall be available for inspection by the public at the DPW.
- (b) Any credit allowed against the stormwater utility fee charge is conditioned on continuing compliance with the City's design and performance standards as stated in the Credit Policy and/or upon continuing provision of the controls, systems, facilities, services, and activities provided, operated, and maintained by the property owner or owners upon which the credit is based. The DPW may revoke a credit at any time for noncompliance with applicable standards and criteria as established in the Credit Policy or this article.
- (c) In order to obtain a credit, the property owner must make application to the City on forms provided by the DPW for such purpose, the forms to be fully completed in accordance with the procedures outlined in the Credit Policy.
- (d) When an application for a credit is deemed complete by the DPW, the superintendent of public works shall have thirty (30) days from the date the complete application is accepted to either grant the credit in whole, grant the credit in part, or deny the credit. Credits applied for by the property owner and granted in whole or in part, shall apply to all stormwater utility fee charges in accordance with the terms defined in the Credit Policy.

Section 18-203. Stormwater Utility Fee Billing, Delinquencies, Collections, Abatements.

- (a) Failure to receive a stormwater utility bill is not justification for non-payment. The property owner, as identified from public land records of the City of Westfield, shall be obligated to pay the appropriate stormwater utility fee for that property. If a property is unbilled, or if no bill is sent for a particular parcel of developed land, the city may back bill for the fees as applicable for a period not to exceed one year of charges, but no late fees or delinquency charges of any kind shall be charged or recovered from any property owner so back billed.
- (b) Stormwater utility bills shall be committed to the city collector for collection. The city collector shall notify the superintendent of public works monthly of the amounts collected, and shall keep records of all paid and unpaid stormwater utility bills.
- (c) In any case of nonpayment of a stormwater utility bill for sixty (60) days after the same is due, the city collector shall send a notice to the delinquent, and shall inform the superintendent of public works in writing that such notice has been sent.

- (d) In accordance with the authority granted by Sections 16A through 16F of Chapter 83 of the General Laws, charges for the stormwater utility fee, together with interest thereon and costs relative thereto, shall be a lien upon the real estate for which the charge was billed. Such lien shall take effect by operation of law on the day immediately following the due date of such charge and, unless dissolved by payment or abatement, shall continue until such charge has been added to or committed as a tax in accordance with the requirements of Section 16C of Chapter 83 of the General Laws, and thereafter, unless so dissolved, shall continue as provided in Section 37 of Chapter 60 of the said General Laws.
- (e) In addition to the method of collection specified in Sections 16A through 16F of the General Laws, the overdue charge may be collected through any other lawful means.
- (f) In the event that a property owner believes the stormwater utility fee is improperly calculated or is otherwise incorrect, the property owner may, within thirty (30) days from the date of issuance of the stormwater utility bill, and after payment of the bill in full, apply to the DPW for an abatement. The application for abatement shall be supported by such information as is necessary for a reasonable person to conclude that it is more likely than not that the billing is in error. The DPW shall have sixty (60) days to consider the request for abatement and render a written decision which may deny the abatement, grant the abatement in full or grant the abatement in part.

Section 18-204. Appeals, Hearings.

- (a) In the event that a property owner is aggrieved by a written decision from the DPW denying an application for abatement in whole or in part, or denying an application for a credit, in whole or in part, the property owner shall have thirty (30) days from the date of the written decision to file an appeal to the board of public works. The appeal shall be in writing and shall specify the grounds thereof. Upon the filing of the notice of appeal with the DPW, the department shall forthwith transmit to the board of public works all documents constituting the record upon which the particular decision was made. The board of public works shall set a date for hearing which shall be within ninety (90) days of the date of the filing of the appeal and notice thereof setting forth the place, date and time of hearing shall be sent to the property owner no less than ten (10) days prior to the hearing date. The board of public works shall render a written decision within ten (10) days of the conclusion of the hearing affirming the action of the department or reversing the action. If reversing the denial of an abatement, the decision shall specify the sum to be abated, which shall not exceed the amounts paid. If reversing the denial of a credit, the decision shall specify the credit to be applied prospectively against future charges unless the property owner has paid the full amount of the stormwater utility fee as charged and has also requested an abatement.

(b) In the event that a property owner fails to pay the stormwater utility fee as charged and the city utilizes the process set forth in sections 16A through 16F of Chapter 83 of the General Laws to collect the unpaid charges, the property owner shall have the right to seek an abatement by filing an application for abatement with the board of public works in accordance with the remedy specified in Section 16E of Chapter 83 of the said General Laws with a copy delivered to the board of assessors. The application for abatement shall conform to the requirements for a notice of appeal as set forth in subsection “a”, above, and the process for a hearing before the board of public works, including the applicable time limits, shall be as set forth therein. In the event that the board of public works denies the abatement, in whole or in part, it shall, in its written decision, include a statement notifying the property owner of the right to seek a review of the decision by the filing of an appeal with the appellate tax board of the Commonwealth of Massachusetts within three months of the date of the decision of the board of public works. As the right to appellate tax board review under this subsection “b” is derived from applicable sections of the General Laws as contained in Chapters 59 and 83 thereof, to the extent that the terms of this ordinance conflict with the terms specified therein, the terms specified in the General Laws control.

Presented to the Mayor
For approval May 10, 2010
Karen M. Fanion, City Clerk

Approved by the Mayor
May 10, 2010
Daniel M. Knapik, Mayor

EXHIBIT A

Stormwater Utility Fee Structure

Residential Rates	\$20 annually; \$5/quarter
Non-Residential Rates	\$0.045 per square foot impervious surface; \$100 minimum annually, \$640 maximum annually