

File of the Council of the City of Easton, Pa.

Ordinance No. 5657

SESSION 2018

Bill No. 39

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Introduced by: Roger Ruggles – October 10, 2018

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Enacted by Council: October 24, 2018

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AN ORDINANCE: ESTABLISHING A STORMWATER COLLECTION AND MANAGEMENT ORDINANCE

THE CITY OF EASTON HEREBY ORDAINS:

WHEREAS the City of Easton has constructed and maintains a system of sewers, drains, basins, and other infrastructure to collect and manage storm water; and

WHEREAS the existing storm water management system requires maintenance, repair and replacement to meet existing and future needs, including flooding concerns and water quality management; and

WHEREAS the requirements of the Pennsylvania Department of Environmental Protection (PADEP) demand a comprehensive approach to improving water quality and Easton wishes to take a proactive approach to these requirements; and

WHEREAS PADEP reports that local water bodies have impaired water quality which can threaten public health, safety and welfare; and

WHEREAS a professional engineering and financial analysis of the storm water management needs for Easton has been performed concluding that substantial storm water management needs exist; and

WHEREAS under the City of Easton Home Rule Charter, Easton is authorized to enact ordinances to protect the health, safety and welfare of its residents.

NOW THEREFORE be it ENACTED and ORDAINED by the Easton City Council, as follows:

SECTION 1. TITLE

This Ordinance shall be known and may be cited as the “City of Easton Storm water Management User Fee Ordinance.”

SECTION 2. STATEMENT OF FINDINGS.

The City of Easton makes the following findings:

- A. The storm water management needs of Easton have been identified. More effective storm water management in Easton contributes to the health, safety and welfare of the residents.
- B. The City's storm water facilities, infrastructure, and management activities provide services and benefits to all users of the City's storm water management system, including properties, property owners, residents and citizens of Easton.
- C. Inadequate management of accelerated storm water runoff throughout a watershed increases flood flows and velocities, contributes to erosion and sedimentation, overtaxes the carrying capacity of existing streams and storm sewers, increases the cost of public facilities to convey and manage storm water, reduces groundwater recharge, and threatens public health and safety.
- D. Inadequate planning and management of storm water runoff throughout a watershed can harm surface water resources by changing the natural hydrologic patterns, accelerating stream flows (which increased scour and erosion of stream beds and streambanks, thereby elevating sedimentation), destroying aquatic habitat, and elevating aquatic pollutant concentrations and loadings such as sediment, nutrients, heavy metals, and pathogens.
- E. Accelerated runoff of storm water impacts groundwater resources through loss of recharge. Storm water is an important water resource which provides groundwater recharge for water supplies and base flow of streams, which also protects and maintains surface water quality.
- F. A comprehensive program of storm water management is fundamental to the public health, safety, welfare and the protection of the residents of Easton, private property, public infrastructure, and the environment.
- G. In order to establish, operate and maintain the storm water infrastructure of Easton, to insure the future usefulness of the existing system through additions and improvements, and provide other services associated with storm water and watershed management, sufficient and stable funding is required for system operation and capital investments.
- H. Federal and State regulations, including those found at 40 CFR Part 122, require Easton to implement a program of storm water controls. Easton is required to maintain compliance with a permit for storm water discharges from their separate storm sewer system under the National Pollutant Discharge Elimination System (NPDES). PADEP has added to this program a standard that permittees implement a Pollutant Reduction Plan focused on reducing the discharge of sediment from the City to surface water.

- I. Easton desires to establish fair and equitable user charges to assure that each developed property and recipient of services within Easton will pay its proportionate share of the costs of operation, maintenance, repair, administration, replacement and improvement of all storm water services provided or paid for by Easton.
- J. The charges as determined herein are fair and equitable and are based upon the following facts:
 - a. A minimum fee per residential unit is reasonable;
 - b. The equivalent residential billing unit of 1,797 square feet of impervious surface was based on a statistical sampling of SFR properties in Easton;
 - c. A developed parcel is defined as having at least 500 square feet of impervious surface based on the measurement using geographical information tools including aerial photography;
 - d. The aerial photography used for the measurement of imperious surfaces in Easton is of sufficient detail and resolution as the basis for calculating billing units for parcels within the City;
 - e. The standard charge for single family dwellings is based on minimal variation in amount of impervious area from parcel to parcel; and
 - f. For non-residential properties, the opportunity to control runoff in a meaningful way typically does exist and should be encouraged and acknowledged.

SECTION 3. WORD USAGE; TERMS AND WORDS DEFINED.

- A. Words used in the present tense include the future; words in the masculine gender include the feminine and the neuter; the singular number includes the plural, and the plural the singular.
- B. The word "shall" or "must" is always mandatory; the word "may" is permissive; the words "used for" includes "designed for," "arranged for," "intended for," "maintained for," or "occupied for." The word "building" includes "structure" and shall be construed as if followed by the phrase "or part thereof." The word "person" includes "individual," "profit or nonprofit organization," "partnership," "company," "unincorporated association," "corporation" or other similar entities.
- C. When terms, phrases or words are not defined, they shall have their ordinarily accepted meanings or such as the context may imply.
- D. As used in this chapter, except where the context clearly indicates otherwise, the following words or phrases shall have the meanings indicated as follows:

Developed parcel – a parcel that contains impervious surface equal to or greater than 500 square feet.

Equivalent Residential Unit (ERU) – the measure of the median impervious area on a single-family residential (SFR) property, and which has been determined by statistical analysis to be 1,797 square feet. An ERU is one billing unit and serves as the billing unit for all parcels.

ERU rate – The storm water fee applied to each billing unit, or 1,797 square feet of impervious surface. As stated in this resolution, the ERU rate can be changed by resolution by City Council.

Group parcel – A parcel that includes a building or group of buildings in which dwelling units, offices or floor area are owned individually and the structure, common areas, and facilities are owned in common by all the owners on a proportional, undivided basis.

Impervious Surface – Any material which prevents absorption of storm water into the ground, including but not limited to buildings, covered decks, patios, driveways, walkways, swimming pools and other similar ground cover.

Non-Single Family Residential (NSFR) Parcel – properties such as apartment complexes and common areas associated with condominiums, commercial, institutional, governmental and industrial parcels. Includes all developed parcels that are not single family residential.

Owner - any person, firm, corporation, individual, partnership, company, association, society or group owning real property in Easton.

Single Family Residential (SFR) Parcel – includes detached homes, semi-attached homes, and townhomes.

Storm water - Runoff from the surface of the land resulting from precipitation or snow or ice melt.

Storm water Management Program – the activities of the City necessary to operate, maintain, enhance, and expand the storm water management system and the activities necessary to carry out the City municipal separate storm system (MS4) permit and the storm water-related provisions of the City code.

Storm water Management System – the system of collection and conveyance, including pipes, conduits, mains, inlets, culverts, catch basins, gutters, ditches, channels, detention ponds, streets, curbs, drains and all devices, appliances and facilities appurtenant thereto used for collecting, conducting, pumping, conveying, detaining, infiltrating, avoiding generation of, and/or treating storm water.

Undeveloped parcel – A parcel that has not been altered from a natural state that contains impervious surface less than 500 square feet.

User – Any person, firm, corporation, individual, partnership, company, association, society, or group using, benefitting from, or being served by the Easton Storm water Management System.

SECTION 4. IMPOSITION OF USER FEES.

It is hereby imposed upon each and every property that is connected with, uses, or is benefited by Easton's storm water management system, either directly or indirectly, a user fee for the use, benefit, operation, maintenance, repair, replacement and improvement of the Easton storm water management system. Such user fees are imposed on a monthly basis.

- A. Each SFR parcel shall be charged for one ERU at a billing rate as contained in Chapter 285 – Fees.
- B. The charge for each NSFR parcel shall be based upon the number of square feet of measured impervious surface, as determined through aerial photography and surface feature evaluation processes, divided by the billing unit of 1,797 square feet (one ERU), expressed in whole ERUs by natural rounding. The charge for each NSFR parcel shall be computed by multiplying the number of ERUs for a given parcel by the ERU rate established by Easton as forth above in subsection A. In no event shall any developed parcel pay a charge of less than one ERU.
- C. Initial impervious surface measurements are based on 2015 aerial photography from Northampton County. Claims regarding reductions in impervious surface on NSFR parcels will be reviewed and processed by the City consistent with the City's Appeal Manual for Storm water Fees. Any additions of impervious surface on NSFR parcels will result in a recalculation of ERU's and an update to the billing file for that parcel.
- D. The City may update ERUs on NSFR parcels by measuring impervious surface using more recent aerial photography, by data obtained from documentation submitted to the City such as permit applications and as-built drawing signed by a PA Registered Engineer or equivalent professional, and by visual observation and measurement.
- E. Notwithstanding the foregoing, public streets shall be exempt from user fees under this Ordinance.

SECTION 5. UNIFORM APPLICATION OF USER FEES.

User fees shall be assessed, liened and collected for all property, owners, lots, parcels, building units, and users.

SECTION 6. “USER” AND “ OWNER” DISTINGUISED.

Reference in this Ordinance to “use”, “user”, or portion of a property, lot, parcel or building with respect to the calculation and assessment of storm sewer user fees shall not be construed to modify or alter the fact that user fees shall be assessed and imposed upon the property pursuant to 53 P.S. § 7106 et. seq., as amended, and the owner of each property against which storm water user fees are imposed and assessed under this Ordinance shall remain liable for payment whether or not such owner occupies the property. Nothing in this Ordinance shall be construed to prohibit or limit an owner's ability to collect by lease or contract sums due by a tenant or other occupier of the owner's property, but such lease or contract shall not bind Easton or limit in any way Easton's authority to impose, assess, lien and collect storm user fees.

SECTION 7. BILLING AND COLLECTION OF USER FEES.

The user fees fixed and established by this Ordinance shall be effective as to all properties that use, are served, or are benefited by the Easton storm water management system existing as of the effective date of this Ordinance, and shall be effective to all other properties thereof that use, are served or benefitted by the storm water management system subsequent to the effective date of this Ordinance. User fees imposed by this Ordinance shall be assessed and billed by Easton on a monthly basis. Such assessments shall be payable at their face amount during the 30 days next following the date on which said assessment bill was mailed. The user fees assessed and collection will not be subject to proration or refund by Easton in the event a property is sold; provided, however, that this sentence shall not bind a buyer and seller from making their own proration of any user fees assessed hereunder.

SECTION 8. COLLECTION OF DELINQUENT FEES.

A. All payment of storm water user fees as hereinafter provided which are considered delinquent shall be subject to interest and collection fees. All bills to users are payable immediately upon receipt. An account shall be considered delinquent when payment in full has not been received within 25 days of the initial date of the bill. If not paid within 25 days after the date of the bill, a late charge equivalent to 10% of the face amount of the bill shall attach and interest/penalties equivalent to .833% per annum of the face amount of the bill shall attach. In addition, delinquent accounts shall be subject to collection fees consisting of reasonable attorney's fees and other costs incurred by the City. In the event of continued non-payment or failure to take steps to make payments on the delinquency in accordance with 8(B) below, the City shall take additional measures to collect the delinquency including termination of water service subject to 8(C) below. A \$50 fee will be assessed if the City initiates a termination notice even if the termination does not ultimately occur. Prior to the reinstatement of water service, all delinquent City accounts, including amounts for sewer and refuse, must be paid in full.

(1) Payment on delinquent account(s) shall be credited as follows:

- (a) Collection fees and costs;
- (b) Interest;
- (c) Past due usage; and
- (d) Current usage.

(2) Within a category, payments shall be credited in the following manner:

- (a) Refuse
- (b) Sewer

B. The City may enter into reasonable payment plans, at the discretion of the Office of Finance, with owners of property unable to pay their bills for reasons of financial hardship. Each payment plan should be in writing, setting forth all terms and conditions of the agreement and signed by the parties or their representatives

C. Service to persons or premises for which the account is delinquent shall be subject to suspension or termination of water. Termination of water service for delinquent accounts shall be subject to and in accordance with Easton Suburban Water Authority Rules and

Regulations.

SECTION 9. CREDITS FOR ONSITE MANAGEMENT.

A. Credits against rates and charges may be an appropriate means of adjusting user fees to account for applicable storm water management measures. The process to apply for and receive a determination for a storm water credit will be in accordance with the City of Easton Appeal and Credit Manual for Storm water Fees

B. No exception, credit, offset, or other reduction in rates and charges shall be granted based on age, race, tax status, economic status or religion of the property owner, or any other conditions unrelated to the demand for and cost of services provided by the City as may be amended by the City Administrator from time to time.

SECTION 10. APPEAL PROCEDURES.

A. Any user who believes the provisions of this Ordinance have been applied in error may appeal the storm water fee. The process to apply for and receive a determination for a storm water fee appeal will be in accordance with the City of Easton Appeal and Credit Manual for Storm water Fees as may be amended by the City Administrator from time to time.

SECTION 11. POLICIES AND PROCEDURES AUTHORIZED.

A. City Council may by resolution adopt such policies and procedures as it deems appropriate to ensure collection of user fees assessed and imposed pursuant to this Ordinance. Without limitation, collection procedures may include referral of delinquent accounts to a collection agency, filing of liens, scire facias sur municipal lien proceedings to collect filed liens, and all other measures or combination thereof which the Board may deem appropriate.

B. All costs of such collection procedures, including, but not limited to, fees for filing, perpetuation and satisfaction of liens, collection fees, attorneys' fees, court costs, litigation expenses, and charges for service of documents shall, upon being incurred by Easton, be imposed as a charge for nonpayment and added to the balance due on said owner's account. C. No lien shall be satisfied nor shall any collection proceeding be discontinued until all amounts due on an account, including user fees, interest, collection fees, attorneys' fees, court costs and other charges are first paid in full to Easton.

C. The Public Works Director is authorized to adopt any administrative policies or procedures deemed necessary or convenient to interpret or implement this Ordinance.

SECTION 12. STORMWATER MANAGEMENT FUND.

It is hereby created a Storm water Management Fund, a fund and account created and dedicated to the operation, administration, maintenance, repair and improvement of the storm water management system, and all related capital costs.

SECTION 13. NO WARRANTY OR ACTION.

Nothing whatsoever in this Ordinance or in the design, operation, or maintenance of the Storm water Management System shall be deemed to constitute a warranty, express or implied, nor shall it afford the basis for any action seeking the imposition of money damages against the City, its officers, employees, or agents. Easton expressly reserves the right to assert all available immunities and defenses in any action seeking to impose monetary damages upon Easton, its officers, employees and agents arising out of any alleged failure or breach of duty with respect to Easton's Storm water Management System.

SECTION 14. REPEALER.

All ordinances or parts of ordinances which are inconsistent herewith are hereby repealed.

SECTION 15. SEVERABILITY.

If any section, paragraph, subsection, clause or provision of this Ordinance shall be declared invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of this Ordinance as a whole or any part thereof other than that portion specifically declared invalid.

SECTION 16. This ordinance shall take effect 30 days following adoption by Council.