

ORDINANCE NO. 10-2008

**TITLE: AMENDING ORD. NO. 67-2007
STORM WATER MANAGEMENT UTILITY**

AN ORDINANCE AMENDING ORD. NO. 67-2007, "ESTABLISH STORM WATER MANAGEMENT UTILITY AND CREATE THE STORM WATER MANAGEMENT ENTERPRISE FUND," BY DELETING "HOMESTEAD EXEMPTION" AND ADDING "BARBERTON RESIDENTIAL SERVICES RELIEF PROGRAM," TO SECTION 6(F), AND DECLARING AN EMERGENCY.

WHEREAS, the Ohio Revised Code authorizes the City of Barberton to acquire, construct, establish, enlarge, improve, maintain, own, operate and contract for the operation of a public enterprise, including storm water management programs and structural and natural storm water drainage systems of all types, to furnish service to the City and its citizens; and

WHEREAS, in 2000, the Ohio Environmental Protection Agency notified the City that the United States Environmental Protection Agency (US EPA) had mandated, and not funded, the preparation and implementation of a Storm Water Management Program that would require submission of an application for a permit by March 10, 2003; and

WHEREAS, the City adopted a Storm Water Management Program as required by the US EPA requiring storm water discharges to be controlled through permits; and

WHEREAS, a public hearing was held on January 17, 2006, for the Storm Water Management Program and its implementation; and

WHEREAS, additional funding is required in order to pay the costs of complying with the requirements of the Phase II Storm Water Management Program of the National Pollutant Discharge Elimination System established in 40 C.F.R part 122; and for planning, constructing, reconstructing, repairing and maintaining drainage facilities.

NOW, THEREFORE BE IT ORDAINED by the Council of the City of Barberton, County of Summit and State of Ohio that:

SECTION 1: Council hereby amends Ordinance No. 67-2007, "Establish Storm Water Management Utility and Create the Storm Water Management Fund," by deleting "~~Homestead Exemption~~" and adding "**Barberton Residential Services Relief Program**" to Section 6(f).

SECTION 2: Purpose.

This ordinance establishes a Storm Water Management Utility as an identified fiscal and accounting fund for the purpose of comprehensively addressing the storm water management needs of the City through programs designed to protect and manage water quality by controlling the level of pollutants in storm water runoff, and the quantity and rate of storm water received and conveyed by structural and natural storm water and drainage systems of all types. It sets forth a schedule of charges and defines the control, collection, and disbursement of funds including penalties, appeals, exemptions and credits.

SECTION 3: Definitions.

For purposes of this chapter, the following words, terms and phrases shall have the meanings given to them in this section, except where the context clearly indicates a different meaning:

(a) “Agricultural Property” means real property that contains no impervious area except for a Dwelling Unit and agricultural accessory structures and is utilized for active crop production unless returned to Undisturbed Property.

(b) “Commercial/Industrial Runoff Rate” the fraction of rain falling on commercial, industrial, and institutional properties that becomes runoff as determined by Ohio EPA and is established by this ordinance to be 0.80. This rate shall apply to the developed and impervious areas of the property.

(c) “Credits” shall mean on-going reductions in the storm water management service charge applicable to a given zoning lot or tract in recognition of on-site or off-site quantity or quality control systems.

(d) “Developed land” shall mean a zoning lot or tract altered from its natural state with an improved value greater than \$5,000.

(e) “Drainage system” shall mean natural and structural 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 storm water runoff.

(f) “Equivalent Residential Unit” or ERU means the amount of storm water runoff from an average single family Residential Developed Property (established by this ordinance to be 0.199 acre) located within the City multiplied by the Residential Runoff Rate.

(g) “Natural state” shall describe existing land, water, soil, and vegetation characteristics that have not been substantially modified or disturbed by development activities and the hydrologic function is in an unaltered or natural condition.

(h) “Nonresidential Developed Property” means developed property that is not utilized for dwelling units within the City.

(i) “Property under Construction” means real property that is being converted from undisturbed Property to Developed Property.

(j) “Residential Developed Property” means developed property that is utilized for dwelling units within the District.

(k) “Residential Runoff Rate” means the fraction of rain falling on residential properties that becomes runoff as determined by Ohio EPA and is established by this ordinance to be 0.40. This fraction shall also apply to governmental, institutional, and other properties with relatively small amounts of impervious area.

(l) “Service area” shall mean all land within the corporate limits of the City, including all land areas legally annexed thereto.

(m) “Service charge” shall mean a storm water management service charge that generally reflects the impact on or demand for storm water management services provided by the City to properly control and manage storm water runoff quantity and/or quality associated with the zoning lot or tract.

(n) “Storm water” shall mean the runoff from precipitation that travels over natural state or developed land surfaces and enters a drainage system.

(o) “Storm Water Management program” shall mean an identified set of measures and activities designed to protect, restore and/or manage storm water quality by controlling and/or reducing pollutants and to reduce and/or manage storm water quantity by controlling velocity, volume and rate.

(p) “Storm Water Management Utility” shall mean an organizational structure that is responsible for funding, administering and operating the City’s storm water management program, and that is supported through a rate structure based on equivalent residential units.

(q) “Tract” shall mean a parcel of land not previously recorded as a zoning lot.

(r) “Undisturbed Property” means real property that has not been altered from its natural state by dredging, filling, or removal of trees.

(s) “Zoning lot” shall mean a legally subdivided lot (not a tract) shown on a legally recorded plat or deed, or a combination of such legally subdivided and recorded adjacent lots.

SECTION 4: Establishment of a Storm Water Management Utility and Storm Water Management Enterprise Fund

(a) There is hereby established a City Storm Water Management Utility that shall be responsible for implementing, operating and administering the City’s Storm Water Management program as defined herein.

(b) There is hereby established a City Storm Water Management Enterprise Fund for the purpose of dedicating and protecting funding applicable to the responsibilities of the Storm Water Management Utility including but not limited to rents, rates, fees, charges and penalties as may be established after due notice and a public hearing by the City Council. All revenues and receipts of the Storm Water Management Utility shall be placed in the Storm Water Management Enterprise Fund and all expenses of the utility shall be paid from the Storm Water Management Enterprise Fund, except that other revenues, receipts and resources not accounted for in the Storm Water Management Enterprise Fund may be applied to storm water management activities as deemed appropriate by the City Council.

(c) Storm Water Management Enterprise Fund breakdown:

- (1) Storm Water Capital Improvement Fund 42%
 - All expenses not used annually in the Street Department Salary, Storm Water Management Best Practices, Storm Water Utility Expenses, Engineering Department Salary and Billing Department Expenses will credit the Storm Water Capital Improvement Fund.
- (2) Storm Water Operations to include: 25%
 - Street Dept. Operations, Equipment and Maintenance
 - Storm Water Best Management Practices
 - Storm Water Utility Expenses
 - Finance Dept. Billing Expenses
- (3) Storm Water Personnel 33%
 - Street Dept. Salary and Overhead
 - Engineering Department Salary and Overhead

SECTION 5: Jurisdiction

The jurisdiction (service area) of the Storm Water Management Utility shall extend to the corporate limits of the City, including all areas legally annexed thereto.

SECTION 6: Schedule of fees and charges

The schedule of fees and charges set out in this section is hereby adopted and will be effective 30 days after the ordinance is approved and shall apply to all zoning lots and tracts within the corporate limits of the City, except as may be altered by credits or exemptions approved by the Utility Billing Review Board.

- (a) For Each Dwelling Unit: One (1) ERU per month
- (b) For Each Agricultural Property: One (1) ERU per month
- (c) For Nonresidential Property: Number of ERUs to be calculated by dividing the area of the property in acres by 0.199 and multiplying the result by the property's runoff rate divided by the residential runoff rate.
 - (1) The minimum number of ERUs shall be one (1).
 - (2) The maximum number of ERUs shall be the average number of ERUs for each land use code as established by the County Auditor.
- (d) There will be no service charge for parcels of land with improved values less than \$5,000 and no service charge for public road rights-of-way that have been conveyed to and accepted for maintenance by the City or the Ohio Department of Transportation, and that are available for use by the general public for transportation purposes. In addition, there will be no service charge for City owned parcels.
- (e) The service charge per Equivalent Residential Unit shall be \$5.00 per month, subject to revision by the City Council in accordance with this ordinance.
- (f) Residents participating in the "~~Homestead Exemption~~" "**Barberton Residential Services Relief Program**" are eligible for a reduced fee of twenty percent (20%) per month. The fees provided by this section shall be included in monthly utility bills.

SECTION 7: Billing and Collection

- (a) Method of Billing. The charges established in this chapter shall be billed, on a monthly basis and shall appear on the utility bill rendered by the City for water and sewer as a separate item and shall be considered an integral part of such bill. The charges shall be payable by the due date specified on the billing statement. Failure to remit the entire amount of the charges for all services shall constitute a delinquency. A collection service fee of up to 33 1/3 % of the balance shall be assessed to unpaid Utility bills and/or the Storm Water Management Utility, which shall be turned over to a collection agency. All checks returned from financial institutions for non-sufficient funds shall subject the customer to a charge of ten dollars (\$10.00) for the returned check.
- (b) Delinquencies. Delinquent charges may be certified to the County Auditor and placed on the real property tax list and duplicate against the property. All accounts certified to the County Auditor for collection shall be subject to a certification charge of ten percent (10%) of the delinquent amount which shall be added to the amount certified. The total charge shall be a lien on the property from the date it is placed on the real estate tax list and duplicate by the Auditor and shall be collected in the same manner as other taxes.
- (c) Billing of Owners of Property not Served by Other Barberton Utilities. Owners of all property not served by any other Barberton utility shall be billed on a monthly basis as a Storm Water Management Utility fee. All bills for fees established under this chapter shall become due and payable in accordance with the rules and regulations of the City, which shall include the billing charge for users supplied with City water and/or sewer service in accordance with Section 1040.13.

SECTION 8: Disposition of service charges and fees

Storm Water Management Utility service charge and fee revenues shall be assigned and dedicated solely to the Storm Water Management Enterprise Fund in the City budget and accounting system, which shall be and remain separate from other funds, and shall be used only to fund identified storm water management program activities. The services charges and fees paid to and collected by virtue of the provision of this ordinance shall not be used for general or other governmental or proprietary purposes of the City, except to pay for costs incurred by the City in rendering services associated with the Storm Water Management Utility.

SECTION 9: Credits

(a) The calculated rate may be reduced for properties where runoff control measures have been implemented. Review and analysis of these measures shall be calculated on an individual case basis by the City Engineer, according to established policies and standards, and the decision of the City Engineer shall be provided to the property owner in writing. The maximum rate reduction shall be fifty percent (50%) of the calculated rate.

(b) Any person aggrieved by a decision of the City Engineer as provided herein may file an appeal in writing to the Utility Billing Review Board within fifteen (15) days of the decision of the City Engineer.

(c) The Utility Billing Review Board is authorized to hear appeals regarding disputes and complaints brought by owners and non-owners concerning the application of the Storm Water Management Utility fees, including the authority to make adjustments as appropriate which may included but shall not be limited to:

(1) Calculation of the total number of billing units assigned to a property that are claimed to be incurred due to alleged inaccuracies in data utilized.

(2) Adjustments arising from a break in billing units due to change in property ownership, account responsibility or similar matters.

(d) Any appeal must be filed in writing, must describe the specific error alleged, and contain reasoning from the appealing party that justifies the appealed issue. The Utility Billing Review Board may request additional information from the appealing party and decision of the Utility Billing Review Board shall be final.

SECTION 10. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were meetings open to the public in compliance with the law.

SECTION 11. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, convenience and welfare of the City of Barberton and the inhabitants thereof, for the reason that the City comply with the mandates of the USEPA, and provided it receives the necessary votes required by the City Charter, shall be in full force and effect from and after its passage and approval; otherwise to be in full force and effect from and after the earliest period allowed by law.

Passed _____ 2008

Clerk of Council

President of Council

Approved _____ 2008

Mayor