

ORDINANCE 4624

APPROVING THE ESTABLISHMENT OF STORM WATER USER FEES FOR THE CITY OF GOSHEN, INDIANA

WHEREAS the Goshen Common Council, by Ordinance 4295 adopted May 17, 2005, established the City of Goshen Department of Storm Water Management;

WHEREAS the City of Goshen Department of Storm Water Management is a utility pursuant to the provisions of Indiana Code § 8-1.5-5 et seq.;

WHEREAS all of the territory located in the corporate boundaries of the City of Goshen is subject to the jurisdiction of the City of Goshen Department of Storm Water Management and constitutes a special taxing district for the purpose of providing for the collection and disposal of storm water of the district in a manner that protects the public health and welfare;

WHEREAS all of the territory in the district is considered to have received a special benefit from the storm water collection and disposal facilities of the district equal to or greater than the special taxes imposed on the territory under Indiana Code § 8-1.5-5 et seq. in order to pay all or part of the costs of such facilities;

WHEREAS the Advisory Board for the Interlocal Agreement between the County of Elkhart, City of Elkhart, City of Goshen, and Town of Bristol has reviewed the anticipated costs of operating and maintaining a storm water system and complying with the Phase II Storm Water NPDES Permit Regulations and has recommended the user fee rate structure contained in the Resolution adopted by the Board of the City of Goshen Department of Storm Water Management;

WHEREAS the Board of the City of Goshen Department of Storm Water Management has advertised a public hearing in accordance with the provisions of Indiana Code §5-3-1 with publication in *The Goshen News* and has conducted a public hearing on December 6, 2010 with respect to the storm water user fees to be assessed and collected pursuant to the terms and provisions of the Board's Resolution;

WHEREAS the Board of the City of Goshen Department of Storm Water Management has found and determined that the user fees to be assessed and collected pursuant to the Board's Resolution are the minimum amount necessary for the operation and maintenance of the storm water system within the City of Goshen, Indiana, and therefore has adopted the Resolution on December 6, 2010; and

WHEREAS pursuant to Indiana Code § 8-1.5-5-7(b), the Goshen Common Council is required to approve the storm water user fees to be assessed and collected pursuant to the Board's Resolution.

NOW, THEREFORE, BE IT ORDERED, ESTABLISHED, AND ORDAINED that the Goshen Common Council approves the storm water user fees to be assessed and collected as follows:

SECTION 1. Storm Water User Fee.

A storm water user fee shall be imposed on each and every tax parcel of real estate within the City of Goshen, Indiana which directly or indirectly contributes to the storm water system of the City of Goshen which charge shall be assessed against the owner who shall be considered the user for purposes of the Resolution of the Board of the City of Goshen Department of Storm Water Management and this Ordinance. This charge is deemed to be reasonable and necessary to pay for the regulation, planning, operation, maintenance, repair, replacement, and improvement of the existing and future City of Goshen storm water system.

SECTION 2. Storm Water Rates.

Until later revised or amended, the storm water user fee shall be at the rate of Fifteen Dollars (\$15.00) per year per ERU. This storm water rate is designed to cover the cost of rendering storm water service to the users of the City of Goshen storm water system and shall be the basis for the assessment of the storm water user fee. This rate is established so as to maintain adequate fund reserves to provide for reasonably expected variations in the cost of providing services, variations in the requirements for providing such services, as well as future improvements and capital needs. This rate may be evaluated and adjusted annually, as necessary, with regard to its sufficiency to

satisfy the needs of the City of Goshen Department of Storm Water Management; otherwise, this rate shall remain in effect.

SECTION 3. Fee Structure and Calculation.

- (a) There is assessed a storm water user fee to each owner of residential real estate and non-residential real estate located within the City of Goshen, Indiana which contain impervious area. The fee is based upon the assigned ERU as determined below. Such user fee shall be calculated and assessed each year on a tax parcel basis.
- (b) All real estate having impervious area within the corporate boundaries of the City of Goshen, Indiana will be assigned an ERU in accordance with the following provisions:
 - i. Residential Real Estate. A residential tax parcel containing three (3) or less dwelling units shall be assigned one (1) ERU. Residential tax parcels containing more than three (3) dwelling units shall be assigned an ERU based upon the parcel's individually measured impervious area in square feet divided by three thousands six hundred (3,600) square feet. This division will be calculated and rounded to the first decimal place.
 - ii. Non-Residential Real Estate. Each tax parcel of non-residential real estate shall be assigned an ERU based upon the parcel's individually measured impervious area in square feet divided by three thousand six hundred (3,600) square feet. This division will be calculated and rounded to the first decimal place.
 - iii. The identification of real estate tax parcels and key numbers, the classification of primary use, the determination of whether a tax parcel contains a dwelling unit, the number of dwelling units a tax parcel contains, the classification of the type of dwelling unit and type of real estate, and the measurement and calculation of the impervious area on a tax parcel shall be based upon the existing data in the Elkhart County computer assisted mass appraisal system database for the respective determination date used for making the storm water user fee assessments.
 - iv. For each current year storm water user fee assessment, the determination date shall be March 1st of the prior year.

- (c) The assessment for any tax parcel with a calculated storm water user fee equal to or less than Two and 25/100 Dollars (\$2.25) will be waived. There shall be no other exceptions or exemptions from the assignment of ERUs and the assessment of a storm water user fee for a particular type or classification of real estate tax parcel within the City of Goshen, Indiana.

SECTION 4. Collection of User Fees.

- (a) The collection of the storm water user fees authorized by the Resolution of the Board of the City of Goshen Department of Storm Water Management and this Ordinance shall be effectuated through a charge appearing each year on the property tax statements of the affected property owner. One-half (½) of the storm water user fee charged each year for a real estate tax parcel shall be billed on each of the spring and fall property tax statements for that parcel. The user fee shall be due and payable at the same time as the property taxes appearing on the spring and fall property tax statements are due and payable. In the event only one (1) property tax statement is billed for a real estate tax parcel, the entire annual storm water user fee for that parcel authorized by the Board's Resolution and this Ordinance shall be billed on that property tax statement which shall be due and payable at the same time as the property taxes appearing on the property tax statement are due and payable.
- (b) If the user fee is not paid when due, the user shall be charged and assessed a late payment penalty by the Elkhart County Treasurer in the same way and in the same manner that delinquent property taxes are charged and assessed.
- (c) If the user fee and penalty is not paid when due, they shall be collected by the Elkhart County Treasurer in the same way that delinquent property taxes are collected.

SECTION 5. Appeals of ERU Determination.

- (a) If, in the opinion of any user, the ERU assigned to the user's real estate tax parcel is inaccurate in light of the number of dwellings or amount of impervious area on the property, the user shall have the right to contest the ERU determination and thus the storm water user fee assessed in accordance with the provisions contained in this section.

- (b) The user shall obtain and complete a Petition to Appeal Storm Water Assessment Form which shall be filed with the Greater Elkhart County MS4 Operator with verifiable documentation supporting the user's claim. To be timely for any current year storm water user fee assessment, a Petition to Appeal must be filed no later than the date on which the spring installment of the user fee shall be due and payable. The Greater Elkhart County MS4 Operator shall refer the petition to the Advisory Board for the Greater Elkhart County MS4.
- (c) The Advisory Board for the Greater Elkhart County MS4 shall investigate the user's claim and, upon review, shall render a written determination that either the original ERU determination and assessment should be affirmed or that the user's rate should be adjusted and how much the adjustment should be.
- (d) The determination made by the Advisory Board for the Greater Elkhart County MS4 shall be forwarded to the user by certified mail, return receipt requested. The user shall have fifteen (15) days from date of receipt to request reconsideration if dissatisfied with the decision from the Advisory Board. Any additional facts concerning the dispute shall be reduced to writing and submitted, along with a copy of the original petition and supporting documents, to the Greater Elkhart County MS4 Operator. The Greater Elkhart County MS4 Operator shall refer the matter to the Board of the City of Goshen Department of Storm Water Management. The Advisory Board for the Greater Elkhart County MS4 shall submit a written report of the determination in the case, along with any documents used, in denying the user's claim or in recommending an adjustment.
- (e) Thereafter, the Board of the City of Goshen Department of Storm Water Management shall review all documentation and conduct an informal hearing to determine and resolve the dispute based upon the documentation submitted and any oral testimony. The Board shall issue a determination which shall be binding upon the City of Goshen Department of Storm Water Management and the user. The hearing shall be recorded and the minutes of the hearing provided upon request at a cost per page as determined by the Secretary for the Board which rate shall be amended from time to time.
- (f) Any user aggrieved by the final Board determination shall have the right to judicial review of such determination in accordance with Indiana law.

- (g) If a user's storm water user fee assessment is reduced or eliminated by the Advisory Board for the Greater Elkhart County MS4, the Board of the City of Goshen Department of Storm Water Management, or court of law, the user shall be refunded accordingly for any overpayment made from the earlier of the date the storm water user fee assessment was paid or was due and payable.
- (h) A dispute or appeal of an ERU determination for storm water user fee assessment shall not be a valid reason for non-payment of the originally assessed storm water user fee.

SECTION 6. Storm Water Utility Fund.

All storm water user fees and penalties collected and interest earned thereon shall be deposited in the MS4 Storm Water Utility Fund.

SECTION 7. Definitions.

For purposes of the Resolution of the Board of the City of Goshen Department of Storm Water Management and this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

- (a) Equivalent Residential Unit (ERU). The number of units, equal to the assumed average amount of impervious area of a single family residential parcel of real estate within the City of Goshen, Indiana, which is established at three thousand six hundred (3,600) square feet of impervious area. The unit value, which will be carried out and rounded off to one (1) decimal place, being the equivalent of one-tenth (0.1) of an ERU, is also the basis for calculating the assessment of storm water user fees for the City of Goshen storm water system.
- (b) Impervious Area. Those areas which prevent or impede the infiltration of storm water into the soil as it enters under natural conditions prior to development. Common impervious areas include, but are not limited to roof tops, sidewalks, walkways, patio areas, driveways, parking lots, storage areas, gravel surfaces, awnings and other fabric or plastic coverings, and other surfaces which prevent or impede the natural infiltration of storm water run-off which existed prior to development.

- (c) Non-Residential Real Estate. All real estate tax parcels which are not described by the definition of residential real estate shall be defined as non-residential. Non-residential real estate will include:
- i. Agricultural real estate;
 - ii. Commercial real estate;
 - iii. Industrial real estate;
 - iv. Institutional real estate;
 - v. Church real estate;
 - vi. School real estate;
 - vii. Federal, state, and local government real estate;
 - viii. Utility real estate; and
 - ix. Any other real estate not mentioned in this list and which is not described by the definition of residential real estate.
- (d) Residential Real Estate. A separate tax parcel of real estate which is primarily used for dwelling purposes on which a building is situated which building contains one (1) or more dwelling units which dwelling units are each used or are intended to be used primarily for living, sleeping, cooking, and eating. Residential real estate shall include all types of dwelling units including single-family homes, duplexes, triplexes, quadplexes, and row type homes. Residential real estate shall also include condominium dwellings, apartment dwellings, and mobile home parks.

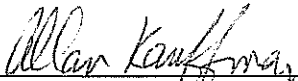
SECTION 8. Severability.

The terms and provisions of the Resolution of the Board of the City of Goshen Department of Storm Water Management and this Ordinance are determined to be severable; the invalidity or unenforceability of any section, sentence, clause, term, or provision of the Board's Resolution or this Ordinance shall not affect the validity of any other section, sentence, clause, term, or provision of the Board's Resolution or this Ordinance which can be given meaning without such invalid part or parts.

SECTION 9. Effective Date.

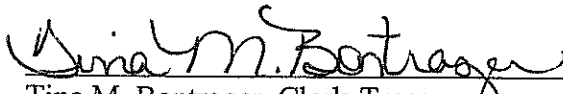
The Resolution of the Board of the City of Goshen Department of Storm Water Management and this Ordinance shall be in full force and effect from and after its passage, approval and adoption according to the laws of the State of Indiana.

PASSED by the Common Council of the City of Goshen on December 7, 2010.




Allan Kauffman, Presiding Officer

Attest:



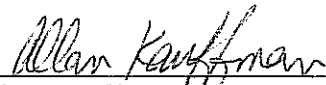
Tina M. Bontrager, Clerk-Treasurer

PRESENTED to the Mayor of the City of Goshen on December 10th, 2010 at 5:00 a.m./p.m.,



Tina M. Bontrager, Clerk-Treasurer

APPROVED and ADOPTED on December 13, 2010.



Allan Kauffman, Mayor