

ORDINANCE NO. 1066

**AN ORDINANCE OF THE TOWNSHIP OF FERGUSON, CENTRE COUNTY, PENNSYLVANIA
ESTABLISHING A UTILITY FEE FOR STORMWATER COLLECTION AND MANAGEMENT.**

WHEREAS, The Ferguson Township Board of Supervisors is authorized under the Second-Class Township Code, and otherwise authorized and obligated under laws of the Commonwealth of Pennsylvania to regulate stormwater through its Municipal Separate Storm Sewer System (MS4) Permit; and

WHEREAS, the existing stormwater management system and infrastructure requires maintenance, repair, improvements, and replacement to meet current and future needs, including addressing increased precipitation and flooding events; and

WHEREAS, the Township, through its obligations under its Stormwater Management Ordinance and MS4 Permit requirements, maintains significant public-owned (either in fee or by easement) capital and operational infrastructure necessary to provide for water quality and rate control; and

WHEREAS, a comprehensive multi-phased analysis was completed to evaluate the feasibility, need, and structure of a proposed Stormwater Management Utility Fee; and

WHEREAS, the analysis included a sustained public input and community engagement campaign; the engagement of a stormwater advisory committee consisting of multiple stakeholders and interests; a multi-year needs assessment and alternatives analysis; and

WHEREAS, the Board of Supervisors hereby determines that a Stormwater Management Utility Fee is necessary to equitably and proportionately assess property owners in the Township for stormwater runoff contributed to the public system as a result of the impact of land development.

NOW, THEREFORE, BE IT ORDAINED that the Ferguson Township Board of Supervisors hereby enacts and implements a Stormwater Management Utility Fee for the purposes of meeting the needs described herein and in accordance with the following provisions:

Section 1 – Purpose and Policy.

The Board of Supervisors finds that an adequate, sustainable source of revenue for stormwater management is necessary to protect the general health, safety, and welfare of the residents of the Township. Further, the Board of Supervisors finds that higher amounts of impervious area contribute greater amounts of stormwater runoff and associated pollutants to the stormwater management system. Therefore, the Board of Supervisors determines that it is in the best interest of the public to enact a stormwater utility fee that allocates stormwater management program costs to property owners based on impervious area.

Section 2 – Definitions.

- A. Agricultural Properties – Properties that meet the definition of “agricultural use” as defined in Section 2 of the Act of December 19, 1974, known as the "Pennsylvania Farmland and Forest Land Assessment Act of 1974," regardless of whether the area is comprised of more than one deeded tract.
- B. Developed Parcel – A parcel that contains an impervious area equal to or greater than five hundred (500) square feet.
- C. Director – Refers to the Director of Public Works or his/her designee.
- D. Equivalent Residential Unit ("ERU") - The basic unit for the computation of Stormwater Program Fees. An ERU is based on the analysis of all single-family-detached-residential properties within the Township and is the value of impervious area found on the median. It is 3,097 square feet of impervious area. The ERU billing unit of 3,097 square feet is used to calculate the Stormwater Utility Fee for each parcel of developed property within the Township.
- E. Impervious Area - A surface that prevents the percolation of water into the ground. Impervious surfaces (or areas) shall include, but not be limited to: roofs; additional indoor living spaces, patios, garages, storage sheds and similar structures; and any new streets or sidewalks. Decks, parking areas, and driveway areas are not counted as impervious areas if they do not prevent infiltration. Gravel or crushed stone shall be considered impervious area when designed or primarily utilized to support vehicular traffic. The Director may develop specifications for the mapping of impervious area for the purpose of this Article, including the establishment of a uniform threshold under which a contiguous unit of impervious area is considered de minimis and not subject to mapping.
- F. Owner - any person, individual, firm, corporation, entity, institution, partnership, trust, company, association, government agency, society, or group owning real property in the Township.
- G. Single-Family-Detached-Residential ("SFDR") - Property which has been assigned a Residential Land Use designation by the County of Centre Assessment and Tax Claim Office as "R" [Residential] except those properties, or portions thereof, which are being used for non-single-family-detached residential purposes which include, but are not limited to, apartments, boarding houses, hotels and motels, churches, industrial properties, commercial and retail properties, manufactured home or mobile home parks, commercial and office buildings, storage areas, parking lots, private roadways, common areas as part of a condominium and/or planned community, and other impervious areas, parks, recreation properties, public and private schools and universities, hospitals and convalescent centers, office buildings, government properties, and mixed-use properties.
- H. Stormwater - Drainage runoff from the surface of the land resulting from precipitation or snow or ice melt.

- I. Stormwater Management Program - The activities of the Township necessary to operate, maintain, enhance, and expand the stormwater management system and the activities necessary to carry out the Township's municipal separate storm sewer system (MS4) permit and the stormwater-related provisions of the Stormwater Management Ordinance.
- J. Stormwater Management System - The system of runoff avoidance, infiltration, collection, and conveyance, including storm sewers, curbs, pipes, conduits, mains, inlets, culverts, catch basins, gutters, ditches, channels, detention ponds, streets, drains, and all devices, appliances, and stormwater management practices and facilities used for collecting, conducting, pumping, conveying, detaining, infiltrating, reducing, managing, avoiding generation of, and treating stormwater.
- K. Township Manager – Refers to the Township Manager or his/her designee.

Section 3 – Stormwater Utility Fee Established.

- A. A stormwater utility fee shall be imposed on every developed parcel in the Township that appears in the Centre County parcel database as of October 31st of each year. All stormwater utility fees shall be deposited into the Stormwater Management Fund of the Township described in Section 4.
- B. The rate per billing unit to be used for calculating the stormwater utility fee shall be established by Resolution of the Board of Supervisors and shall be reviewed annually.

Section 4 – Stormwater Management Fund.

The Stormwater Management Fund is established as a separate enterprise fund of the Township, which shall be used solely to cover the cost of the Township's stormwater management program and maintaining the Stormwater Management System in the Township. The fund shall consist of revenue generated by the stormwater utility fee and other deposits that may be made from time to time by the Board of Supervisors, including but not limited to federal or state grants and revenue from the sale of bonds. All interest or other income derived from stormwater utility fees shall remain or otherwise be deposited into the fund.

Section 5 – Stormwater Utility Fee Calculation.

- A. Unless otherwise specified in this Article, the stormwater utility fee for each SFDR parcel shall be calculated in the following manner:
 - a. Determine the location of the parcel as either within or outside of the Regional Growth Boundary;
 - b. Determine the product of one (1) ERU and the appropriate rate established by Resolution of the Board of Supervisors for parcels within or outside the Regional Growth Boundary; and
 - c. Deduct any credits or exemptions for which the parcel qualifies.
- B. Unless otherwise specified in this Article, the stormwater utility fee for each non-SFDR parcel shall be calculated in the following manner:

- a. Determine the location of the parcel as either within or outside of the Regional Growth Boundary;
 - b. Determine the impervious area of the parcel in square feet;
 - c. Divide the impervious area of the parcel by 3,097 square feet to determine the number of ERUs assigned to the parcel;
 - d. Round the resulting calculation using natural rounding to determine the whole number of ERUs;
 - e. Multiply the number of ERUs by the rate established by Resolution of the Board of Supervisors for parcels within or outside the Regional Growth Boundary, to obtain the stormwater utility fee for the parcel; and
 - f. Deduct any credits or exemptions for which the parcel qualifies.
- C. Impervious area held in common ownership shall be calculated using the methodology in Section 5(B), above. The resulting stormwater utility fee will then be divided equally among parcels sharing common ownership. The Township Manager may, on a case by case basis and at the request of an association representing the owners of the property under common ownership or the recommendation of the Director, implement alternative methodology for dividing the stormwater utility fee, including but not limited to an established par value.
- D. Stormwater Fee Calculation for Exempt Properties. Properties which are deemed eligible for a full or partial exemption as provided for in Section 7 shall have their fees calculated as described in the appropriate exemption policy. Unless otherwise noted, it shall be the responsibility of the property owner to request an exemption and demonstrate eligibility.

Section 6 – Stormwater Utility Fee Credits.

- A. The Board of Supervisors shall adopt by Resolution a Stormwater Management Program Credit Policy Manual for reductions in the stormwater utility fee in recognition of practices that are targeted to reduce the cost of the Township's stormwater management program. The types and amounts of credits are at the sole discretion of the Board of Supervisors. The credits shall be applied after determination of the stormwater utility fee in accordance with Section 5, above.
- B. The Director shall develop written policies and procedures necessary to implement the system of credits. These policies and procedures shall include, but not be limited to, provisions to reduce or eliminate the amount of credit to a property owner if the Director determines that the BMP or credit feature or practice is not functioning as intended.
- C. The revenue source for the implementation of any credits established by the Board of Supervisors shall be separate and distinct from the stormwater management utility fee and shall be deposited by the Township from the General Fund into the Stormwater Fund. Nothing shall prevent the Board of Supervisors from modifying or eliminating any established credits. Any such modification or elimination may apply to beneficiaries of existing credit(s) at the discretion of the Board of Supervisors.

Section 7 – Exemptions.

- A. The Board of Supervisors may adopt by Resolution as part of the Stormwater Management Utility Fee policies and procedures a hardship policy that reduces or eliminates the stormwater management utility fee for a property owner who demonstrates financial hardship as a result of the imposition of the stormwater management utility fee.
- B. The Board of Supervisors may adopt by Resolution as part of the Stormwater Management Utility Fee policies and procedures a policy to reduce the stormwater management utility assessed to Agricultural Properties whose total area of impervious surface does not exceed thirty percent (30%) of the property's total land area to a fee that does not exceed twice the median assessment fee imposed on all other properties in the township. Dwelling units on agricultural lots shall be assessed separately.
- C. Notwithstanding Section 3.A. above, the following impervious area shall be exempt from the imposition of the stormwater utility fee:
 - a. Streets, sidewalks and shared use paths contained in a Right-of-Way as defined in Chapter 22, Subdivision and Land Development; Section 202, Definitions and further referenced in Section 502, Streets; and
 - b. Rail and associated rail ballast.
- D. The revenue source for the implementation of any exemptions established by the Board of Supervisors shall be separate and distinct from the stormwater management utility fee and shall be deposited by the Township from the General Fund into the Stormwater Fund. Nothing shall prevent the Board of Supervisors from modifying or eliminating any established exemptions. Any such modification or elimination may apply to beneficiaries of an existing exemption at the discretion of the Board of Supervisors.

Section 8 – Billing, Interest, and Enforcement.

- A. The stormwater utility fee shall be billed each year on or before March 1 to the record owner of each parcel subject to the fee in combination with bill for real estate taxes. If the property owner is making real estate tax payments on an installment basis as authorized in this ordinance, then the stormwater utility fee will be collected on the same schedule. Any portion of a stormwater utility fee that is unpaid as of the subsequent December 31st of each year the property owner or agent was billed shall be considered delinquent except if the unpaid stormwater utility fee is subject to an appeal in accordance with Section 9.
- B. The penalty assessed for delinquent fees will be 1.5% per month.
- C. In addition to any penalty assessed in Section 8(B.) above, any cost or fee incurred by the Township in conjunction with the collection of a delinquent fee shall be the responsibility of and paid by the owner of the subject parcel.
- D. A delinquent fee, along with cumulative penalties and collection costs or fees, shall constitute a lien on the parcel ranking on a parity with liens for unpaid real estate taxes and shall be handled in the same manner as provided for the collection of municipal liens.

- E. For properties exempt from the assessment of municipal liens, the Township reserves all rights pursuant to law to collect any delinquent fees.

Section 9 – Appeal Process and Procedure.

- A. Any owner of a parcel who believes the provisions of this Article have been applied in error may appeal in accordance with this Section, provided, however, that grounds for appeal are limited to the following:
 - a. An error was made regarding the square footage of the impervious area attributed to the parcel;
 - b. The property is exempt under Section 7(C);
 - c. There is a mathematical error in calculating the stormwater utility fee;
 - d. The identification of the parcel owner invoiced is in error; and/or
 - e. Disputes over the application or qualification of credits.
- B. The parcel owner shall complete and submit to the Township Manager a Stormwater Utility Fee Appeal Form in a format approved by the Township within thirty (30) days of the charge being mailed or otherwise issued to the owner ("appeal date"). A Hearing Officer, designated by the Director, shall review the appeal for completeness and make a determination within fifteen (15) calendar days. In the event that the Hearing Officer finds that the appeal is incomplete, the Hearing Officer shall offer the owner thirty (30) calendar days from the determination that the appeal is incomplete to supply the missing information. If all information requested is not provided within the thirty (30) calendar days, the petition for appeal shall be deemed to have been withdrawn.
- C. Once the appeal has been determined to be complete, the Hearing Officer shall conduct a technical review of the alleged error and respond to the owner in writing within thirty (30) calendar days. The Hearing Officer may deny the appeal or adjust the stormwater utility fee if it is found to be in error.
- D. A decision by the Hearing Officer that is adverse to the appellant may be further appealed to the Township Manager within thirty (30) days of the determination being mailed or otherwise issued to the owner. The Township Manager shall review the determination of denial made by the Hearing Officer and either affirm, reject, or modify the determination. The Township Manager's determination will be provided to the owner in writing by certified or registered mail within thirty (30) calendar days of receiving the denial appeal request. The Township Manager's decision shall constitute the official municipal action subject to appeal as provided in Section E.
- E. Any person aggrieved by a decision of the Township Manager may further appeal to the Centre County Court of Common Pleas within thirty (30) days of receipt of such written final decision.
- F. If payment is not made within fifteen (15) calendar days after the expiration of the owner's right to appeal in accordance with this Section or December 31st of each year, whichever date is later, or a decision that is adverse to the owner made by the Centre County Court

of Common Pleas, the unpaid fee shall be considered delinquent and subject to the provisions of Section 8(B.) through Section 8(D.).

Section 10 – Policies and Procedures.

- A. The Board of Supervisors may by Resolution adopt such policies and procedures it deems appropriate to ensure collection of stormwater utility fees imposed pursuant to this article.
- B. The Director may implement such administrative procedures necessary to implement the requirements set forth in this Article.

Section 11 – Repealer.

Any and all previous Ordinance(s) or parts thereof which are inconsistent with the terms and provisions of this Ordinance are hereby repealed.

Section 12 – Severability.

If any section, subsection, sentence, clause, phrase, provision, or portion of this Ordinance is found to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision. Such decision shall not affect the validity of the remaining portions of this Ordinance.

Section 13 – Effective Date.

This Ordinance shall become effective on January 1, 2022.

ORDAINED and ENACTED this 16th day of February 2021.

TOWNSHIP OF FERGUSON

By:



Laura Dininni, Chair
Board of Supervisors

[S E A L]

ATTEST:



David G. Pribulka, Secretary