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AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF NEWARK, OHIO, DECEMBER 2005, BY ADDING A NEW CHAPTER 52.00 STORMWATER UTILITY, IN ORDER TO ESTABLISH A STORMWATER RATE STRUCTURE, WHICH WILL PROVIDE FOR THE FUNDING OF THE OPERATION, MAINTENANCE, AND IMPROVEMENT OF THE STORMWATER SYSTEM WITHIN THE CITY LIMITS.

WHEREAS, the City of Newark currently owns and operates a stormwater system for the collection and disposal of storm and other surface waters and for flood control; and,

WHEREAS, the constitution of the State of Ohio, Article XVIII, Section 4, authorizes municipalities to operate a public utility; and,

WHEREAS, the 1972 Federal Clean Water Act, amended by the Water Quality Act of 1987, U.S. EPA and Ohio EPA regulates the City's operation of this system, by which the City is required to obtain an NPDES Phase II permit for this system and will be required to implement programs to improve the quality of storm water; and

WHEREAS, the City of Newark is conducting a storm water utility program strategic plan, level of service analysis, cost of service analysis, organizational analysis and rate study analysis, cash flow analysis, identifying and analyzing problems, needs, missions, goals, and financing and management options, which is hereby incorporated by reference; and,

WHEREAS, the City of Newark is conducting a stormwater management program cost of service and rate study, identifying and analyzing problems, needs, goals, and financing and management options, which is hereby incorporated by reference; and,

WHEREAS, City Council finds that the repair, replacement, improvement and regulation of the stormwater system is necessary to prevent further deterioration of the existing system, prevent or reduce flooding and to prevent water pollution; and

WHEREAS, it is the intent of the City of Newark that the costs of the operation, maintenance, and improvements of the stormwater system be borne by the users of the system in relation to their individual contributions of stormwater to the system; and

WHEREAS, it is necessary and desirable and in the best interests of the City, its citizens, and the users of the stormwater system to establish a mechanism for the financing of facilities, systems, and services provided by the City of Newark and the stormwater management program charge, which shall be designated the stormwater service charge, and shall be imposed and collected as provided in this ordinance; and,

WHEREAS, the stormwater service charge should be fair, equitable, revenue sufficient, and reflect the relative contribution of stormwater runoff from a property, benefits enjoyed, and services received by each property as a result of the collection of surface water, and should consider the impervious area of the various properties within the City, because the extent of storm and surface water runoff from a particular lot or parcel is largely a function of its impervious area;

WHEREAS, the City will adopt rules and regulations to properly manage and maintain the stormwater system; and,

WHEREAS, the City of Newark will establish standards to

regulate the quantity of stormwater discharged and to regulate stormwater contaminants as necessary to protect the water quality; and,

WHEREAS, the City will review and approve plans and plats for stormwater management in proposed subdivision or commercial developments; and,

WHEREAS, the City may suspend or revoke permits when it is determined that the permittee has violated any applicable ordinance, resolution or condition of the permit; and,

WHEREAS, the City is responsible for the protection and preservation of the public health, safety, and welfare of the community, and the environment and finds that it is in the best interest of the health, safety, and welfare of the citizens of the city and the community at large and the environment to proceed with the development, implementation, and operation of a stormwater utility program; and,

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NEWARK, OHIO, THAT:

That Chapter 52 of the Municipal Code of Newark, Ohio be and the same is hereby amended by adding there to the following new chapter to be codified as Chapter 52.10 entitled "Stormwater Utility" as set forth hereafter:

Chapter 52.10
Stormwater Utility

Sections:

Section 1	Purpose and objective.
Section 2	Creation of a Stormwater Management Utility Program.
Section 3	Definitions.
Section 4	Funding the Stormwater Utility Program
Section 5	Stormwater Utility Program Fund
Section 6	Stormwater Utility Operating Budget
Section 7	Rate Structure and Stormwater Service Charge.
Section 8	Stormwater Only Accounts.
Section 9	Necessity for Charges
Section 10	Powers of Director of Public Works.
Section 11	Right to appeal.
Section 12	Collection.
Section 13	Adjustments to Stormwater Service Charges
Section 14	Billing and Collections

Section 1 Purpose and objective. The City Council finds, determines and declares that the stormwater system, which provides for the collection, treatment, storage, and disposal of stormwater provides benefits and services to all property within the city limits. Such benefits include, but are not limited to: the provision of adequate systems of collection, conveyance, detention, treatment and release of stormwater; the reduction of hazards to property and life resulting from stormwater runoff; improvements in general health and welfare through reduction of undesirable stormwater conditions; and improvements to the water quality in the stormwater and surface water system and its receiving waters.

Section 2 Creation of a Stormwater Utility Program. The function of the newly created Stormwater Utility Program Division within the Division of water and wastewater is to

provide for the safe and efficient capture of stormwater runoff, mitigate the damaging effects of stormwater runoff, correction of stormwater problems; to fund activities of stormwater management, and include design, planning, regulation, education, coordination, construction, operations, maintenance, inspection and enforcement activities.

It is the express intent of this newly created stormwater utility program, to protect the public health, safety and welfare of people, property and the environment, in general, but not to create any special duty or relationship with any individual person, or to any special parcel within or outside the boundaries of the city. The city expressly reserves the right to assert all available immunities and defenses in any action seeking to impose monetary damages or equitable remedies upon the city, its elected officials, officers, employees and agents arising out of any alleged failure or breach of duty or relationship.

Section 3 Definitions.

Whenever used in this section 3 the meaning of the following words and terms shall be defined in this section:

3.1 "Abatement" means any action taken to remedy, correct, or eliminate a condition within, associated with, or impacting a drainage system.

3.2 "Adjustment" means a modification in a non-residential customer's stormwater service fee for certain activities that impact stormwater runoff or impacts the City's costs of providing stormwater management.

3.3 "Developed Agricultural Property" is defined as a lot or parcel of real estate which may contain 1 or greater dwelling units and/or other building structures but does not include undeveloped properties.

3.4 "Apartment Property" is defined as a lot or parcel of real estate on which is situated a building containing 3 or greater single-family dwelling units.

3.5 "Condominium Property" is defined as a lot or parcel of real estate on which is situated a building containing 3 or greater individually owned single-family dwelling units.

3.6 "Approved plans" shall mean plans approved according to a permits and plan review which will govern all improvements made within the City that require stormwater facilities or changes or alterations to existing stormwater facilities.

3.7 "Code" means the Newark Municipal Code.

3.8 "Combined Sewer" is a sewer system that designed to convey sanitary sewage, industrial waste and stormwater.

3.9 "Detention" is described as the temporary storage of stormwater runoff in a basin, pond, or other structure to control the peak discharge rate by holding the stormwater for a lengthened period of time.

3.10 "Detention facility" means an area designed to store excess stormwater.

3.11 "Director" means the Director of Public Service, City of Newark, Ohio.

3.12 "Equivalent Residential Unit (ERU)" is a value, equal to 2,600 square feet of measured impervious area and is equal to the average amount of impervious area of residential properties within the City of Newark.

3.13 "Facilities" means various stormwater and drainage works that may include inlets, pipes, pumping stations, conduits, manholes, energy dissipation structures, channels,

outlets, retention/detention basins, and other structural components.

3.14 "Impervious area" means areas that have been paved and/or covered with buildings and materials, which include, but are not, limited to, concrete, asphalt, rooftop, and blacktop.

3.15 "Infiltration" is defined as a complex process of allowing runoff to penetrate the ground surface and flow through the upper soil surface.

3.16 "Non-residential properties" are all properties not encompassed by the definition of Residential shall be defined as Non-residential. Non-residential properties will include:

- Agricultural properties with CAUV designations;
- Apartment properties;
- Two Story or Greater Condominiums properties;
- Mobile Home Parks with Rented Spaces (parcel not owned);
- Commercial property;
- Industrial property;
- Institutional property;
- Governmental property;
- Churches;
- Schools;
- Federal, State, and Local properties; and
- any other property not mentioned in this or the list of residential properties below.

3.17 "NPDES" means National Pollutant Discharge Elimination System.

3.18 "NPDES Permit" means a permit issued to the City pursuant to 1972 the Clean Water Act.

3.19 "Peak Discharge" or the "Peak Flow" is the maximum rate of flow of water passing a given point during or after a rainfall event.

3.20 "Private stormwater facilities" are defined as various stormwater and drainage works not under the ownership of the City, County, State, and/or Federal government which may include inlets, conduits, pipes, pumping stations, manholes, structures, channels, outlets, catch basins, curb and gutter, ditches, retention or detention basins, other structural components and equipment designed to transport, move or regulate stormwater.

3.21 "Public stormwater facilities" are defined as various stormwater and drainage works under the ownership of the City, County, State, or Federal government which may include inlets, conduits, pipes, pumping stations, manholes, structures, channels, outlets, retention or detention basins, other structural components and equipment designed to transport, move or regulate stormwater.

3.22 "Public stormwater open channel" means all open channels, which convey, in part or in whole, stormwater, and are owned by the City, which have a permanent drainage / easement granted to the city does not include roadside ditches.

3.23 "Residential property" means all single-family, single story condominium dwelling units mobile home units with separate parcels and separate billing accounts and two-family duplex properties within the City of Newark.

3.24 "Retention" is defined as the holding of stormwater runoff in a constructed basin or pond or in a natural body of water without release except by means of evaporation, infiltration, or emergency bypass.

3.25 "Retention facility" means a facility, which provides storage of stormwater runoff and is, designed to eliminate subsequent surface discharges.

3.26 "Square footage of impervious area" means, for the

purpose of assigning an appropriate number of ERUs to a parcel of real property, the square footage of all impervious area using the outside boundary dimensions of the impervious area to include the total enclosed square footage, without regard for topographic features of the enclosed surface.

3.27 "Stormwater" means stormwater runoff, snowmelt runoff, and surface runoff and drainage.

3.28 "Storm sewer" means a sewer, piping or natural structure, which carries stormwater, surface runoff, street wash waters, and drainage, but which excludes sanitary sewage and industrial wastes, other than unpolluted cooling water.

3.29 "Stormwater service charge" is defined as a charge assessed to users and contributors of flow to the City's stormwater collection, impounding and transportation system.

3.30 "Stormwater system" means all man-made facilities, structures, and natural watercourses owned by the City of Newark, used for collection and conducting stormwater to, through, and from drainage areas to the points of final outlet including, but not limited to, any and all of the following: conduits and appurtenant features, canals, creeks, catch basins, ditches, streams, gulches, gullies, flumes, culverts, siphons, streets, curbs, gutters, dams, floodwalls, levees, and pumping stations.

3.31 "Excess Stormwater" means that portion of stormwater, which exceeds the transportation capacity of storm sewers or natural drainage channels serving a specific watershed.

3.32 "Dry bottom stormwater storage area," means a detention facility designed to be normally dry and contain water only when excess stormwater runoff occurs.

3.33 "Wet bottom stormwater storage area," means a detention facility designed to be maintained as a pond or free water surface, and which has the capacity to contain excess stormwater runoff.

Section 4 Funding the Stormwater Utility Program

Funding for the stormwater utility's activities may include, but are not limited to: Stormwater service charges; Stormwater permits and inspection fees; Other funds or income obtained from federal, state, locals, and private grants, or loans.

Section 5 Stormwater Utility Program Fund

All service charges and all sources of revenue generated by or on behalf of the stormwater utility shall be deposited in a stormwater utility enterprise fund and used exclusively for the stormwater utility.

Section 6 Stormwater Utility Operating Budget

City Council shall adopt an operating budget for the stormwater utility each fiscal year. The operating budget shall set forth for such fiscal year revenues and estimated expenditures for operations, maintenance, and extension and replacement and debt service.

Section 7 Rate Structure and Charges and Fees.

A stormwater service charge shall be assessed to each and every lot and parcel of land within corporate limits of the City of Newark, that is tributary directly or indirectly to the stormwater system of the City and the owner thereof that contains impervious area. This charge is not related to the water and/or sewer service and does not rely on occupancy of the premises to be in effect and is hereinbefore provided, and in the amount determinable as follows:

For any such property, lot, parcel of land, building or premises that is tributary directly or indirectly to the stormwater system of the City, such charge shall be based upon the quantity of impervious area situated thereon.

(a). All properties having impervious area within the City of Newark will be assigned an Equivalent Residential Unit (ERU) or a multiple thereof, with all properties of having impervious area receiving at least one (1) ERU.

(1). Residential properties. All residential will be assigned one (1) ERU. A flat rate service charge will apply to all residential properties.

(2). Non-residential properties. Non-residential properties will be assigned an ERU multiple based upon the properties' individually measured impervious area (in square feet) divided by 2,600 square feet (1 ERU). This division will be calculated to the first decimal place and rounded according to mathematical convention.

(3). Base Rate. City Council shall, by resolution, establish the base rate for the stormwater utility service charge. The base rate shall be calculated to insure adequate revenues to fund the expenditures of stormwater management and to provide for the operation, maintenance, and capital improvements of the stormwater system within the city limits.

Section 8 Stormwater Only Accounts.

Stormwater only accounts are properties that do not contain water and/or sanitary sewer but do contain impervious area or hard surface. New and additional stormwater only accounts will be determined by building and zoning departments and building permit system. The City of Newark building code department will make available all building permits for new construction to the Director of Public Service or his/her designee.

Section 9 Necessity for Charges

It is hereby determined necessary for the protection of public health, safety, and welfare and to conform with Federal, State, and local laws and regulations that a system of charges for stormwater service be established which allocates the cost of providing stormwater service to each user in such a manner that the allocated costs are proportionate to the cost of providing stormwater service to that user, insofar as those costs can reasonably be determined.

Section 10 Powers of Director of Public Service.

Stormwater service charges levied pursuant to this ordinance may be collected by Division of Stormwater within the Division of Public Service. Notwithstanding other provisions of the Newark City Code, the Director of Public Service or his/her Designee shall make and enforce such rules and regulations as deemed necessary for the safe, economical, and efficient management and protection of the City's stormwater system; for the construction and use of storm sewers and connections to the stormwater system consistent with policies established by the Newark City Council; and for the regulation collection, rebating and refunding of such stormwater charges.

Section 11 Right to appeal.

A Non-residential property owner may challenge the ERU multiple assigned to his/her property by filing an appeal with the Director of Public Service for adjustment thereof, stating

in writing the grounds for the appeal. The Director of Public Service, or the Director's designee, shall consider the appeal and determine whether an adjustment of the ERU multiple for any such lot or parcel is necessary, and adjust such ERU multiple if appropriate.

Section 12 Collection.

Each stormwater service charge rendered under or pursuant to this ordinance is hereby made a lien upon the corresponding lot, parcel of land, building or premises that are tributary directly or indirectly to the stormwater system of the City, and, if the same is not paid within ninety days after it shall be due and payable, it shall be certified to the Auditor of the county in which the property is located, who shall place the same on the tax duplicate of said County with the interest and penalties allowed by law and be collected as other taxes are collected.

Section 13 Adjustments to Stormwater Service Charges

Increase adjustments (debit) can be made to non-residential service charges by property owners adding additional impervious area such as rooftops, parking lots, driveways and walkways. Decrease (credit) adjustments can be made to non-residential service charges by property owners performing activities that reduce the impact of stormwater runoff to the stormwater system.

Section 14 Payment of Charges

Stormwater charges shall be assessed monthly. Payment shall be made within ten (10) days following the receipt of the statement of charges. Stormwater charges shall be billed on a joint statement with water and sewer charges and shall be payable at the Department of Public Service, Water Office.

If bill for stormwater service remains unpaid for a thirty (30) day period, the arrearage will be added to the next monthly billing. Notice shall be given with this bill that if all bills are left unpaid at the Water Office after the due date (two bills are past due constitute a double bill), current delinquent and additional charges shall be applied to the bill and water furnished by the Division shall be scheduled for shut off without further notice. If water service is scheduled for termination, additional service charges shall be applied.

If water service is terminated due to delinquent payment of charges, service shall not be restored until all stormwater, sewer and water delinquent and service charges are paid in full.

Each charge levied by or pursuant to this Chapter shall be made a lien upon the corresponding lot, land or premises served by a connection to the water or sanitary sewage system. If the charge is not paid, it shall be certified to the Auditor of Licking County, Ohio who shall place that amount on the tax duplicates of the county, with interested and penalties allowed by law, and collect it as other taxes are collected

The funds received from the collection of the stormwater service charges as defined in Section 5 shall be deposited in the stormwater enterprise fund.

Section 15 Falsifying Information

No person shall knowingly make any false statement, representation, record, report, plan, or other document and file such with the Division of water and wastewater.

SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason illegal or void, then the lawful provisions of this ordinance, which are separable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

EFFECTIVE DATE. This resolution shall be effective at the earliest time permitted by law.

Adopted this 19th day of December, 2005.

Marc Guthrie
PRESIDENT OF COUNCIL

ATTEST: /s/ DIANA L. HUFFORD
CLERK OF COUNCIL

DATE FILED WITH MAYOR: DEC 20 2005

DATE APPROVED BY MAYOR: DEC 20 2005

/s/ BRUCE BAIN
MAYOR

FORM APPROVED: /s/ JAMES W. HOSTETTER
DIRECTOR OF LAW

Prepared by the Office of the Director of Public Service