

**ORDINANCE NO. 2014-03**

**AN ORDINANCE OF THE TOWN OF PENDLETON ESTABLISHING A DEPARTMENT OF  
STORMWATER MANAGEMENT FOR THE PURPOSE OF MANAGING THE  
STORMWATER COLLECTION AND CONVEYANCE SYSTEMS AND ACTIVITIES IN THE  
TOWN, ESTABLISHING RATES AND CHARGES FOR THE USERS OF THE STORMWATER  
SYSTEM OF THE TOWN AND OTHER RELATED MATTERS**

**WHEREAS**, the Town of Pendleton desires to establish a Department of Stormwater Management (the "Department"), under the Indiana Code 8-1.5-5 for the purpose of providing uniform and centralized management of the stormwater collection and conveyance systems and activities in the Town, including, without limitation, stormwater quality, separate storm sewers, neighborhood drainage, flood control, flood pumping, stormwater conveyance, sewer separation, and other improvements to the existing and future storm sewers; and

**WHEREAS**, a portion of the stormwater works of the Town consists of a stormwater collection and conveyance system, including separate storm sewers, drainage structures, and flood control components; and

**WHEREAS**, the creation of a new stormwater management program could help address stormwater management problems; and

**WHEREAS**, all territory in the Town will receive a special benefit from the collection and disposal of stormwater in a manner that protects the public health and welfare; and

**WHEREAS**, the Town operating under IC 8-1.5-5 is authorized to consider the costs of collecting and treating stormwater drainage; and

**WHEREAS**, the Town has undertaken a Stormwater Management Feasibility Study for the purpose of setting rates and charges in a fair and reasonable manner; and

**WHEREAS**, new stormwater user fees could help the Town design, fund and construct the projects and run the programs necessary to provide the safe conveyance of stormwater, as well as identify additional projects that need to be funded, and begin an inspection and maintenance program of the Town's stormwater infrastructure; and

**WHEREAS**, new requirements for stormwater quality may affect the Town directly resulting from the United States Environmental Protection Agency (EPA) regulation entitled "National Pollutant Discharge Elimination System (NPDES) – Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges" (Federal Register, Volume 64, Number 235, pages 68722-68852) on December 8, 1999 as required by section 402(p) of the Clean Water Act (CWA); and

**WHEREAS**, the federal stormwater quality program is administered by the Indiana Department of Environmental Management with the adoption of 327 IAC 15-5 for Storm Water Run-off Associated with Construction Activity, and 327 IAC 15-13 for Storm Water Run-off Associated with Municipal Separate Storm Sewer System (MS4) conveyances; and

**WHEREAS**, in accordance with and pursuant to the CWA, the Town further desires to establish a distinct just and equitable schedule of user fees for the users of the System; and

**WHEREAS**, the Town will serve as the local agency to administer the federal and state stormwater quality programs within its jurisdiction and authority when it is required to do so; and

**WHEREAS**, the Town could provide technical and engineering assistance to local agencies when dealing with water quality, drainage, and floodplain issues; and

**WHEREAS**, the system of user fees shall allocate the cost of providing stormwater management service to each user so that the charges assessed are reasonably related to the costs of providing stormwater management service, insofar as those costs can reasonably be determined.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL:**

## **CHAPTER 1: DEPARTMENT OF STORMWATER MANAGEMENT**

- 1.1 Department of Stormwater Management to operate the stormwater system
- 1.2 Purpose and Objective
- 1.3 Definitions
- 1.4 Board
- 1.5 Stormwater user fee
- 1.6 Stormwater user fee establishment procedure
- 1.7 User fee structure and calculation
- 1.8 Billings; terms of payment
- 1.9 Appeals of ERU determinations
- 1.10 Stormwater Revenue Fund
- 1.11 Delinquent Fees
- 1.12 Violations and Enforcement
- 1.13 Severability

### **SECTION 1.1: DEPARTMENT OF STORMWATER MANAGEMENT TO OPERATE STORMWATER SYSTEM.**

(a) Establishment: The Department of Stormwater Management, a Department of the Town, is hereby established (the "Department"). The Department shall be headed by the Town Manager. The Town Manager, together with staff, will be responsible for the day-to-day operations of the Department.

(b) Applicable State Law: The Department of Stormwater Management shall be subject to IC 8-1.5-5, as amended and in effect from time to time.

(c) Board of Storm Water Management: The Department, through the Town Manager, shall report directly to the Board of Storm Water Management.

(d) Town Council: The Town Council shall fulfill the obligations of the Department as identified in IC 8-1.5-5. The Town Council shall perform all necessary administrative, employee relations and fiscal policy-making oversight of the Department.

(e) Special Taxing District: The Department of Stormwater Management is a Special Taxing District as defined by IC 8-1.5-5-5. The policies of the Board and Town Council shall determine the combination of taxes, user fees, and other revenue sources of the Department.

(f) General Powers of the Department: The Department shall have Departmental jurisdiction over stormwater within the Town and shall possess the following general powers:

- (1) Install, maintain and operate the stormwater system of the Town.
- (2) Make all necessary or desirable improvements to the stormwater collection and conveyance system of the Town (including all appropriate actions taken with respect to sewer separation), and, when determined to be in the best interests of the Town, to acquire or otherwise assume jurisdiction over any other improvements or facilities relating to the control of stormwater currently owned or under the jurisdiction of other parties.
- (3) Establish and enforce the rules, regulations, policies and procedures promulgated by the Department.
- (4) Hold hearings after proper public notice and make findings and determinations to carry out the policies and procedures of the Department with respect to the use of the stormwater system by the users thereof and the proper rates and charges imposed on such users.
- (5) Recommend to the Town reasonable and just user fees for services to the users of the stormwater collection and conveyance system of the Town.
- (6) Track revenues and expenses of the Department of Stormwater Management separately using Departmental policies, operational procedures and cost accounting methods to adequately determine the equitable allocation of funds to serve the Department's and Town's needs.
- (7) After approval of the Town Council, levy a special benefit tax upon all the property of the stormwater district to pay for the bonds issued and the interest on the bonds, in accordance with IC 8-1.5-5-22
- (8) Issue and sell bonds of the district in the name of the unit served by the department for the acquisition, construction, alteration, addition, or extension of the storm water collection and disposal system or for the refunding of any bonds issued by the Board.

## **SECTION 1.2: PURPOSE AND OBJECTIVE**

The mission of the stormwater management program is to develop, implement, operate and adequately and equitably fund the acquisition, construction, operation, maintenance and regulation of stormwater collection and drainage systems and activities in the Town including without limitation, stormwater quality, separate storm sewers, neighborhood drainage, flood control, flood pumping, stormwater conveyance, sewer separation, and other improvements to the existing and future storm sewers of the Town.

The program shall safely and efficiently control stormwater runoff, insure compliance with the National Pollutant Discharge Elimination System Stormwater Discharge permit, enhance public health and safety, protect lives and property, facilitate mobility and enable access to homes and businesses throughout the community during storms, complement and support other Town programs and objectives, control the discharge of pollutants in stormwater to receiving waters and enhance the natural resources of the community.

### **SECTION 1.3: DEFINITIONS**

For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

**ADMINISTRATOR:** The Town Manager.

**COMBINED SEWER:** Pipe or conduit primarily used to convey sanitary sewage and secondarily intended to convey stormwater.

**CUSTOMER (OR USER):** Shall mean a property owner benefiting from the stormwater system.

**DEPARTMENT:** The Department of Stormwater Management established in this Ordinance.

**DEVELOPED:** The condition of real property altered from its natural state by the addition to or construction on such property of impervious surfaces or physical improvements such that the hydrology of the property or a portion thereof is affected.

**DETENTION:** The temporary storage of storm runoff in a basin, pond or other structural or non-structural device to control the peak discharge rates by holding the stormwater for a lengthened period of time and which provides gravity-settling of pollutants.

**DITCH-OPEN:** A relatively deep drainage channel which may have a continuous water flow. Open ditches are outlets for both surface, subsurface, or storm sewer drainage systems.

**DITCH-LEGAL or REGULATED DRAIN:** Any drainage system under the jurisdiction of the Madison County Drainage Board as of the date of enactment of this Ordinance.

**DRAIN:** Relative to stormwater drainage, any sewer, tile, ditch, stream or other stormwater runoff conveyance channel or conduit.

**DRAINAGE EASEMENT:** The land required for the installation of stormwater sewers or drainage ditches, or required along a natural stream or water course for preserving the channel and providing for the flow of water therein to safeguard the public against flood damage.

**DRAINAGE FACILITIES:** All ditches, channels, conduits, retention-detention systems, tiles, drainage swales, sewers, and other natural or artificial means of draining stormwater from land.

**DRAINAGE REQUIREMENTS:** (1) minimum drainage standards as established by Ordinance; (2) regulations promulgated by the Town Council; (3) obligations and requirements relating to drainage established under the Subdivision Control Ordinances of the Town or Madison County; (4) requirements contained in the Zoning Ordinances of the Town or Madison County, including floodway zoning requirements; (5) obligations and requirements relating to drainage established under the Drainage Board

of Madison County, Indiana; and (6) conditions relating to drainage attached to a grant of variance by the Board of Zoning Appeals.

**DRAINAGE-SUBSURFACE:** A system of pipes, tile, conduit, or tubing installed beneath the ground used to collect underground water from individual parcels, lots, building footings, or pavements.

**DRAINAGE-SURFACE:** A system by which the stormwater runoff is conducted to an outlet. This would include the proper grading of parking lots, streets, driveways and yards so that storm runoff is removed without ponding and flows to a drainage swale, open ditch, or a storm sewer.

**DRAINAGE-SWALE:** A natural or constructed waterway, usually broad and shallow, covered with erosion-resistant grasses, used to conduct surface water from a field, diversion, or other site feature.

**DRAINAGE-SYSTEM:** Any combination of surface and/or subsurface drainage components fulfilling all applicable drainage requirements.

**EASEMENT:** A grant by the property owner of the use of a strip of land by the public, a corporation or other legal entity for specified purposes.

**ENGINEER:** Any Engineer retained by the Town.

**ERU:** Equivalent Residential Unit, equal to the average amount of impervious area found on a typical single-family residential parcel which is 3,842 square feet. Therefore, one ERU equals 3,842 square feet of impervious area.

**IMPERVIOUS AREA:** Area within developed land that prevents or significantly impedes the infiltration of stormwater into the soil. Included in this definition are areas that have been paved and/or covered with buildings and materials which include, but are not limited to, concrete, asphalt, rooftop and blacktop, such that the infiltration of water into the soil is prevented. Excluded from this definition are undisturbed land, lawns and fields.

**INFILTRATION:** A complex process of allowing runoff to penetrate the ground surface and flow through the upper soil surface.

**LAND ALTERATION:** Any action taken relative to land which either: (1) changes the contour; or (2) increases the runoff rate; or (3) changes the elevation; or (4) decreases the rate of which water is absorbed; or (5) changes the drainage pattern; or (6) creates or changes a drainage facility; or (7) involves construction, enlargement or location of any building on a permanent foundation; or (8) creates an impoundment. Land alteration includes (by way of example and not of limitation) terracing, grading, excavating, constructing earthwork, draining, installing drainage tile, filling and paving.

**MAINTENANCE:** The removal of obstructions, deposits, or other materials and making minor repairs in a drainage facility so that it will perform the function for which it was designed and constructed.

**NPDES:** The National Pollutant Discharge Elimination System, the EPA program initiated to reduce and eliminate pollutants reaching water bodies of all types.

**NPDES PERMIT:** Stormwater management permit required of municipalities and certain industries by the EPA pursuant to Section 402 of the Clean Water Act.

**PEAK DISCHARGE:** The maximum rate of flow of water passing a given point during or after a rainfall event, sometimes called peak flow.

**PRIVATE STORMWATER FACILITIES:** Various stormwater and drainage works not under the control or ownership of the Town, Madison County, the State of Indiana, or the 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.

**PROPERTY OWNER:** The individual, partnership, corporation or other legal entity holding the deed or record title to real property.

**PUBLIC DRAINAGE SYSTEM:** Various storm water and drainage works under the control and/or ownership of the Town, Madison County, the State of Indiana, or the 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 storm water.

**RESIDENTIAL PROPERTY:** A lot or parcel of real estate encompassing State Land Use Codes and 510 through 599 on which a building or house trailer is situated which building or house trailer contains a group of rooms forming an inhabitable dwelling unit with facilities which are used or are intended to be used primarily for living, sleeping, cooking and eating.

**RETENTION:** The holding of stormwater runoff in a constructed basin or pond or in a natural body of water with a controlled release rate.

**OTHER PROPERTY:** All properties not encompassed within the definition of Residential Property, including but not limited to: commercial, industrial, retail, multi-family, governmental, institutional, schools and churches, encompassing State Land Use Codes 310 – 399, 401 – 499, and 600 – 699.

**RIGHT-OF-WAY:** Any highway, street, avenue, boulevard, road, lane or alley and includes the entire right-of-way for public use thereof and all surface and subsurface improvements thereon including, without limitation, sidewalks, curbs, shoulders, utility lines and mains.

**SEWER SEPARATION:** A project intended to reduce the amount or rate of stormwater entering the wastewater treatment plant. Sewer separation projects include, but are not limited to, new sanitary sewer construction with conversion of combined sewer to storm sewer; new storm sewer construction with conversion of combined sewer to sanitary sewer, combined sewage holding tanks; and equalization tanks at the treatment plant.

**STATE LAND USE CODES:** The classification system used by Indiana counties for purposes of classification of the assessment of real property. The 2011 Real Property Assessment Manual, prepared by the Indiana Department of Local Government Finance, describes the codes. Appendix A of the manual defines the codes. The manual and codes may be adjusted from time to time.

**STORM SEWER:** A sewer designed or intended to convey only stormwater, surface runoff, street wash waters and drainage, and not intended for sanitary sewage and industrial wastes. A storm sewer begins at the grating or opening where water enters said sewer, through the sewer and any other conduits to the outlet structure where water enters a channel, natural watercourse or combined sewer.

**STORMWATER USER FEE:** A charge imposed on users of the stormwater system.

**STORMWATER SYSTEM:** All constructed facilities, including separate storm sewers and conveyances, combined sewers, structures and natural watercourses owned by or under the jurisdiction of the Town used for collecting and conveying stormwater to, through and from drainage areas to the point of final outlet, including, but not limited to, any and all of the following: inlets, conduits and appurtenant features, creeks, channels, catch basins, ditches, streams, culverts, retention or detention basins and pumping stations.

**STORMWATER CONVEYANCES:** Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

**TOWN:** The Town of Pendleton, Indiana.

#### **SECTION 1.4: BOARD**

The Board of Directors for the Department of Storm Water Management is hereby created and shall consist of three members to be appointed by the Town Council President. No more than two of the members shall be of the same political party. The initial terms of the Directors shall be as follows: Director One = 2 years; Director Two = 3 years; Director Three = 4 years. All subsequent terms shall be 4 years.

#### **SECTION 1.5: STORMWATER USER FEE**

A stormwater user fee shall be imposed on each and every lot and parcel of land within the Town, or served by the Town's stormwater system as identified in section 1.7, which directly or indirectly contributes to the stormwater system of the Town, which charge shall be assessed against the property owner thereof, who shall be considered the user for the purposes of this chapter. This charge is deemed reasonable and is necessary to pay for the repair, replacement, extension, planning, improvement, operation, regulation and maintenance of the existing and future stormwater system.

#### **SECTION 1.6: STORMWATER USER FEE ESTABLISHMENT PROCEDURES**

(a) Stormwater User fee Per ERU: The Stormwater User fee shall be \$4.00 per ERU per month. For the purpose of this chapter, a month shall be considered 25 through 35 days. Any billings for stormwater service outside this time shall be on a per diem basis.

(b) Basis for Charge: The stormwater user fee is designed to recover the cost of rendering stormwater service to the users of the stormwater system, and shall be the basis for assessment of the stormwater user fee. This user fee is established so as to maintain adequate fund reserves to provide for reasonably expected variations in the cost of providing services, as well as variations in the demand for services.

#### **SECTION 1.7: USER FEE STRUCTURE AND CALCULATION**

(a) Generally: For the purposes stated in Section 1.2 and 1.6, there is hereby assessed a stormwater user fee for each property owner owning land situated within the corporate limits of the Town, served by the Town's stormwater system, and also located within the corporate boundaries of the Town that contributes directly or indirectly to the stormwater system of the Town, in an amount as determined below.

(b) Impervious Area: For any such property, lot, parcel of land, building or premises which contribute directly or indirectly to the stormwater system of the Town, such charge shall be based upon the quantity of impervious area situated thereon as measured on the most recent aerial maps available from the best source, or as amended through the issuance of building permits by the Town. Impervious area of public rights-of-way and railroad lines (which shall not be deemed to include adjacent property, such as a rail yard, operated by a railroad), will not be included in the determination of a stormwater user fee. In addition, the Board shall establish policies and procedures to make determinations whether commonly owned, adjoining properties with separate plat or legal descriptions should be treated as a single parcel of land for purposes of calculating the stormwater user fees to be charged for such properties.

(c) Classification of Property: All properties within the Town, or served by the Town stormwater system, will be assessed a Stormwater User fee based on Equivalent Residential Unit (ERU), or a multiple thereof, with all properties having impervious area assigned at least one ERU (except as otherwise provided in Section (e) herein). Properties shall be classified as determined by the Indiana Department of Local Government Finance 2011 Real Property Assessment Manual, as may be updated periodically. The assessment of ERU shall be as follows:

(1) A monthly flat-rate charge for stormwater service rendered to Residential and Agricultural Homestead Properties shall be assessed to each Residential Property's parcel within the Town limits. This base unit shall apply to all parcels designated by State Property Class Codes 101, and 510 through 599. All Residential Properties are hereby assigned one ERU and a Stormwater User fee as described in this Ordinance and adjusted periodically.

(2) Other Properties: Properties with impervious area other than Residential Properties will be assigned an ERU multiple based on the total amount of impervious area on the property (measured in square feet and divided by 3,842 square feet. The ERU calculation shall apply to all parcels designated by State Property Class Codes 310 – 399, 401 – 499, 600 - 699. ERU multiples shall be rounded to the nearest whole integer.

(d) Land Alterations: The issuance of any building permit or other action which results in a land alteration of a property other than Residential Properties or a property that currently only contains Residential Properties but will no longer be used for such purpose shall be cause for an adjustment of the stormwater user fee determined under this section. The property owner shall have the obligation of informing the Board of any such changes.

(e) Exceptions/Exemptions: Agricultural properties with impervious area under State Land Use Codes 100-199, with the exception of those properties that qualify as Residential Property, shall be exempt from the assessment of Stormwater User fees. Except for public rights-of-way, railroad lines and agricultural properties as defined herein, there shall be no exceptions or exemptions from the assignment of gross stormwater ERUs for any property with impervious area except that properties other than single-family residential parcels with impervious area of less than five hundred (500) square feet shall be exempted from the assignment of an ERU.



## SECTION 1.8: BILLINGS; TERMS OF PAYMENT

(a) Billings: All stormwater service bills shall be rendered on a monthly basis unless additional or prorated billing is required to reflect customer changes, initial billings or is otherwise required to adjust billing cycles. Charges for miscellaneous services or work performed on behalf of a stormwater customer by the Department shall be assessed at the time the work is completed and shall be included in the customer's next stormwater service bill. Stormwater billing for a new property shall commence with the date the property is assessed for purposes of property taxes, or date of occupancy, whichever shall first occur. Additional stormwater charges for an established service address necessitated by a change in the amount of impervious area at the property shall commence on the date the new certificate of occupancy or compliance is issued. Billing adjustments required to correct impervious area measurements shall be applied retroactively to the date of the customer's initial protest.

(b) Rights and Responsibilities of Property Owner: Charges for stormwater service shall remain the ultimate responsibility of the property owner, including all penalties, recording fees, attorney's fees, interest and court costs. Other than the property owner, no other person shall be permitted to inspect, examine or otherwise obtain confidential information including the social security number of the property owner obtained by the Town for the sole purpose of billing for stormwater system service. Stormwater user fees attach to the property.

(c) Terms of Payment: The stormwater user fees prescribed in Section 1.6 shall be due on the payment date set out on the bill. It shall be a violation of this chapter to fail to pay a stormwater service bill when due. All bills for stormwater services not paid on or before the due date shall be subject to a collection or deferred payment charge of 10% on the outstanding balance. Moving from one location to another in no way absolves the customer from responsibility for any unpaid charges incurred at a previous location.

(d) Bad Check Charge: Checks returned for non-sufficient funds will be subject to reimbursement of the fee the banking institution charges the Town and an administrative charge to be established by the Department not in excess of the amount provided in Indiana Code. A customer submitting a bad check may be prohibited from making future stormwater user fee payments by check.

(e) Collection: The Board may collect delinquent stormwater user fees and penalties by placing a lien on the private property subject to the user fees and penalties. The delinquent fees and penalties shall be collected in the same manner as delinquent taxes and if the fees and penalties remain unpaid, the Board may foreclose on the lien to collect the fees and penalties including reasonable attorney's fees.

## SECTION 1.9: APPEALS OF ERU DETERMINATION

If, in the opinion of any non-single-family residential property owner, the ERU multiple assigned to the property of such owner is inaccurate in light of the amount of impervious area contained on said property, such property owner shall have the right to contest such ERU determination. The Board shall develop and promulgate policies and procedures to resolve any such contests, including, as determined necessary, the conducting of hearings and the making of determinations with respect to the measurement of impervious area contained on any property.

## **SECTION 1.10: STORMWATER REVENUE FUND**

All revenues earned and fees collected for stormwater service, including but not limited to, stormwater user fees, permit and inspection fees, direct charges and interest earnings on any unused funds shall be deposited in accounts permitted under IC 8-1.5-5-8, collectively entitled "Town Stormwater Revenue Funds." Disbursements from this account shall be authorized by the Town Council. Such disbursements shall be used for the operation, maintenance and improvement of the Town's stormwater system; to adequately fund depreciation accounts and for payments of principal and interest of authorized bonds for the Town's stormwater system.

## **SECTION 1.11: DELINQUENT FEES AND PENALTIES AS LIENS; DUPLICATES; COLLECTION**

Delinquent charges for stormwater services, and applied penalties, recording fees and user fees constitute a lien upon the property and may be collected in accordance with the provisions of IC 8-1.5-5-29, 8-1.5-5-30, and 8-1.5-5-31.

## **SECTION 1.12: VIOLATIONS AND ENFORCEMENT**

Failure to pay a stormwater user fee when due shall constitute a violation of this chapter, which shall be enforced by the Town Manager and such deputies as the Town Manager may appoint for such purposes.

## **SECTION 1.13: SEVERABILITY**

(a) If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

(b) All ordinances, resolutions and orders, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby superseded, and this Ordinance shall be in full force and effect from and upon compliance with all procedures required by law."

**PASSED AND ADOPTED** by the Town Council of the Town of Pendleton, Indiana this 1<sup>st</sup> day of MAY, 2014.

TOWN COUNCIL

Robert Jones  
Bob Jones, President

Chet W. Babb  
Chet Babb, Vice President

Jeanette Isbell  
Jeanette Isbell, Member

John Armington  
John Armington, Member

Chad Wolfe  
Chad Wolfe, Member

ATTEST:

Tim Ryan  
Tim Ryan, Clerk-Treasurer