

ORDINANCE

AN ORDINANCE PLACING A STORMWATER USER FEE INTO EFFECT, IN ACCORDANCE WITH THE AUTHORITY OF TITLE 33, CHAPTER 2, PART VII OF THE LOUISIANA REVISED STATUTES, THE LOCAL SERVICES LAW AND TITLE 33, CHAPTER 10, PART I OF THE LOUISIANA REVISED STATUTES WITH RESPECT TO STORMWATER PUBLIC UTILITY DISTRICT AND A JOINT COMMISSION TO ADMINISTER THE TERMS OF THE JOINT INTERGOVERNMENTAL AND LOCAL SERVICES AGREEMENT CREATED BY THE METROPOLITAN COUNCIL IN THE PARISH OF EAST BATON ROUGE; CONFIRMING THE LEVY, COLLECTION AND DEDICATION OF SAID STORMWATER UTILITY SERVICE USER FEE CHARGES.

WHEREAS, the City of Baton Rouge/Parish of East Baton Rouge, ("City-Parish") has constructed and maintains a separate stormwater sewer system to collect, convey and manage stormwater; and

WHEREAS, the existing Separate Stormwater Sewer System requires maintenance, repair, enhancements and replacement to meet existing and future needs, including flood mitigation and water quality protection; and

WHEREAS, the City-Parish is presently engaged in investments into its Separate Stormwater Sewer System to manage the volume, rate and quality of runoff and expects to continue so into the foreseeable future; and

WHEREAS, the City-Parish is subject to the requirements of the Federal Clean Water Act and is required to maintain and manage the Separate Stormwater Sewer System and all discharges from said system in accordance with the City-Parish's Louisiana Pollution Discharge Elimination System (LPDES) Phase II Municipal Separate Storm Sewer System (MS4) permit for large municipalities; and

WHEREAS, the Metropolitan Council of the City of Baton Rouge and Parish of East Baton Rouge ("Council") has created the MS4 Utility District to maintain and manage the Separate

Stormwater Sewer System system within the boundaries of the MS4 Utility District; and

WHEREAS, the City-Parish currently funds stormwater operations and system investments via tax and other revenues of the General Fund; and

WHEREAS, the Department of Environmental Services has conducted a stormwater utility study to establish an equitable system of stormwater utility charges for recovering costs of capital improvements, regulatory compliance, and operation and maintenance costs including debt service and routine replacements related to stormwater management; and

WHEREAS, the Council deems it necessary and appropriate to amend the City-Parish Code of Ordinances and introduce a stormwater utility district fee to appropriately recover stormwater management costs from all properties within the MS4 Utility District boundaries that contribute to stormwater runoff.

THE METROPOLITAN COUNCIL OF THE CITY OF BATON ROUGE/PARISH OF EAST BATON ROUGE ACTING IN ITS CAPACITY AS THE JOINT COMMISSION OF THE MS4 UTILITY DISTRICT HEREBY ORDAINS:

Section 1. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Bonds" means revenue or general obligation bonds or notes heretofore or hereafter issued to finance the costs of improvements.

"Certificate of occupancy" means a certificate issued by the Permit office of the Department of Development that permits a newly constructed or a new addition to a residential developed property or nonresidential developed property to be occupied.

"Costs of Capital Improvement" means costs incurred in providing capital improvements to the storm and surface water management system or any portion thereof including professional services and studies connected thereto; payment of principal and interest on bonds heretofore or hereafter issued, including payment of delinquencies of principal and interest due on bonds that are

otherwise payable from special assessments or any other source of revenue; studies related to the operation of the system; and the costs of the rate study performed in relation to establishing rates for the storm and surface water utility and other start-up costs of the storm and surface water utility; costs related to the National Pollution Discharge Elimination System permit and any studies associated therewith as mandated by federal laws and regulations; and costs associated with purchasing equipment, computers, furniture, etc., that are necessary for the operation of the utility.

"Debt Service" means an amount equal to the sum of (i) all interest payable on bonds during a fiscal year, plus (ii) any principal installments payable on such bonds during such Fiscal Year.

"Developed Property" means any parcel of real property on record with the Clerk and Recorder for East Baton Rouge Parish which contains any measurable impervious area as measured in square feet.

"Director" means the person appointed by the City-Parish Mayor-President to be the director of the Department of Environmental Services.

"Exempt Property" means public rights-of-way, public streets, public medians, public alleys, public sidewalks, airport runways, airport taxiways and railroad rights-of-way.

"Extension and Replacement" means costs of extensions, additions and capital improvements to, or the renewal and replacement of capital units of, or purchasing and installing of equipment for, the storm and surface water management system, or land acquisition and relocation costs for the storm and surface water management system and any related costs thereto, or paying extraordinary maintenance and repairs, including the costs of capital improvements or any other expense that is not costs of operation and maintenance or debt service.

"Fiscal Year" means a twelve-month period commencing on the first day of January of any year.

"Impervious Area" or "hard surface area" means a hard surface area that causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, compacted dirt, and oiled, macadam or other surfaces that similarly impede the natural infiltration of stormwater.

"MS4 Utility District" or "Utility" means the utility created by Resolution 56560 to operate, regulate, maintain and improve the stormwater management system within the territory of the district as may be amended from time to time and for such other purposes as are set forth in this chapter.

"MS4 Utility District Area" means all of the territory with the City of Baton Rouge, and the unincorporated areas of the Parish of East Baton Rouge, except the territory of the cities of Baker, Central, and Zachary.

"Non-Residential Property" means any Property other than Single-Family Residential Property as defined in the Uniform Development Code and Undeveloped Property.

"Operating Budget" means the annual stormwater utility operating budget adopted by the Unified Government for the succeeding fiscal year.

"Operations and Maintenance" means without limitation the current expenses, paid or accrued, of operation, maintenance and current repair of the system, as calculated in accordance with sound accounting practice, and includes, without limiting the generality of the foregoing, insurance premiums, administrative expenses, equipment costs, in lieu of franchise fee payments, labor costs, and the cost of materials and supplies used for current operations.

"Parcel" means any real property, either developed or undisturbed, which is assigned a tax parcel number.

"Property" means land, buildings, and other improvements together considered as a parcel as identified by the tax parcel established by the Parish of East Baton Rouge Appraiser.

"Revenues" means all rates, fees, assessments, rentals, fines, penalties, interest, or other charges or other income received by the MS4 Utility District in connection with the ownership, management and operation of the stormwater management system, including amounts received from the investment or deposit of monies in any fund or account, as calculated in accordance with sound accounting practice.

"Runoff Coefficient" means the multiplier of ten percent (10%) used to estimate the impervious area for each of the "Undeveloped Property" parcels based on the parcel square footage (lot size) of the parcels as found in the City-Parish Land Use records.

"Separate Stormwater Sewer System" means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters,

ditches, man-made channels, or storm drains designed or used for collecting or conveying stormwater that is not combined with a sanitary sewer system of a publicly owned treatment works.

"Service Area" means all of the area that is contained within the boundaries of the territorial limits of the MS4 Utility District, as defined herein.

"Stormwater Management System," or "System" means storm sewers that exist at the time this ordinance is adopted or that are hereafter established and all appurtenances necessary in the maintaining and operating of the same, including, but not limited to, stormwater pumping stations, drainage pipes, outfalls, surface drains, street, curb and alley improvements associated with storm or surface water improvements, natural and manmade wetlands, channels, ditches, rivers, creeks, bayous, streams, detention and retention ponds and basins and other flood control facilities and works for the collection, transportation, pumping, treatment, and disposing of storm or surface water and pollutants born or carried in such waters.

"Stormwater Unit Rate" means the monthly rate per five hundred square feet (500 sf) of impervious area, as set forth in this ordinance.

"Stormwater Utility Charge" or "Stormwater User Fees" means a service fee that is authorized by this Ordinance, this chapter and as set forth in this ordinance adopted or amended by the Metropolitan Council acting in its capacity as the Joint Commission of the MS4 Utility District, and is established to pay operation and maintenance, extension and replacement and debt service associated with the stormwater management system

"Storm Water Customer" means the person, partnership, corporation, public agency, or other entity who occupies, controls, possesses, and/or owns, benefits from property and to whom Stormwater Utility Charges are billed.

"Undeveloped Property" means a Property that does not have any type of hardscape structures including any type of paving and are often wooded, overgrown with weeds, shrubs or other vegetation, or remains as dirt, or otherwise untouched. This includes empty Property in developed areas.

Section 2. Stormwater Utility Charge.

- (a) Charge Established. Subject to the provisions of this chapter, there is imposed on each and every Developed Property and

Undeveloped Property in the MS4 Utility District Service Area, a service fee to be known as a Stormwater Utility Charge.

- (b) Any new Property or Parcel resulting from the subdivision and/or consolidation of an existing parcel shall become liable for the Stormwater Utility Charge in the month such change is recorded in the Registrar of Deeds, and at such time as the parcel is reflected in City-Parish's Department of Land Use records.
- (c) The owner of record of a Property or Parcel will be assessed the Stormwater Utility Charge. In the event that the owner of a Property and the user of a Property are not the same, the owner shall be liable for the Stormwater Utility Charge.
- (d) Each and every Property's Impervious Area shall be measured in square feet. Each Property shall pay a Stormwater Utility Charge that shall be determined by multiplying every five hundred square feet of Impervious Area by the Stormwater Unit Rate.
- (e) Each and every Undeveloped Property's Impervious Area shall be measured as 10% of the property up to a maximum of the first two acres of the property. Each Property shall pay a Stormwater Utility Charge that shall be determined by multiplying every five hundred square feet of calculated Impervious Area by the Stormwater Unit Rate.
- (f) The Stormwater Unit Rate within the MS4 Utility District Service Area shall be as follows:
 - a. Effective January 1, 2024 - \$1.36 per 500 square feet of impervious area per month
 - b. A property shall pay a minimum Stormwater Unit Rate of one unit.
- (g) Based upon the projected revenue requirements the City-Parish administration shall recommend from time to time, to the Metropolitan Council acting in its capacity as the Joint Commission of the MS4 Utility District, the Stormwater Unit Rate, which needs to be made effective and used in the determination of the Stormwater Utility Charge. The Metropolitan Council acting in its capacity as the Joint Commission of the MS4 Utility District shall establish by ordinance the monthly Stormwater Unit Rate to ensure that the stormwater utility generates adequate annual revenues to pay the annual costs of operation and maintenance including replacement of the Stormwater Management System, to satisfy costs associated with any regulatory compliance and other obligations and to provide for costs associated with the City-

Parish capital improvement plan and the expenses of the annual operation. Changes to the stormwater utility rate ordinance shall be by amendments to this Ordinance.

Section 3. Stormwater Utility Charge Credits.

- (a) The MS4 Utility District may adopt regulations and procedures that establish credits and/or incentives that reduce the Stormwater Utility Charge that would otherwise be assessed against properties. A Stormwater Utility Charge credit shall be issued to a parcel at the discretion of the Director and upon written application by the Property owner for employing structural or non-structural best management practices or other stormwater management practices on-site, which significantly reduces the quantity of stormwater run-off or significantly improves the quality of stormwater run-off from the parcel.
- (b) If adopted, all procedures pertaining to credits shall be per the City-Parish Stormwater Utility Charge Credits, Appeals, and Grants Manual. Stormwater Utility Charge credits are applicable only to the Stormwater Utility Charge and to only any Non-residential Property or Undeveloped Property.

Section 4. Appeal procedure.

- (a) Any property owner who disagrees with the Stormwater Utility Charge, and/or disagrees with whether the property is within the MS4 Utility District Service Area, may appeal to the Director. Any owner of a Property for which a Stormwater Utility Charge has been assessed may appeal the Stormwater Utility Charge for that Property for the following reasons: (i) designation of property classification and/or ownership, (ii) calculations of the Stormwater Utility Charge, (iii) designation of impervious area square feet, and (iv) determination of Stormwater Utility Charge Credit.
- (b) Appeals must be in writing to the Director. The Director or their designee, prior to initiating a review of the appeal, may request that the appealing party provide information concerning the basis of the appeal, including a land survey prepared by a registered surveyor showing total property area and all improvements shown as impervious area as appropriate, if such information is deemed to be material by the Director or designee. The Director or their designee may consider any relevant evidence. Based on information provided, the Director shall make a determination as to whether the monthly Stormwater Utility Charge

should be adjusted for such Property. The Director or their designee shall notify parties in writing of the decision.

- (c) The burden of proof shall be on the appellant to demonstrate, by clear and convincing evidence the validity of the appeal.
- (d) If adopted, all procedures pertaining to appeals shall be per the City-Parish Stormwater Utility Charge Credits, Appeals, and Grants Manual to be adopted within the first year of the program and amended from time to time.
- (e) Right to Appeal and Appeal Hearing.

(1) A person shall have the right to appeal the decision of the Director to the JOINT COMMISSION OF THE MS4 UTILITY DISTRICT. Such appeal shall be in writing and shall be filed with the Director.

(2) A hearing on such appeal shall be held within thirty days from the date the notice of appeal is received, and the applicant shall be given seven days' advance notice of the time and date the appeal hearing is to be held. At such hearing, the appellant shall present evidence concerning the Stormwater Utility_Charge for the property in question and the Director and/or his/her designee shall present evidence concerning their findings from the informal proceedings. The Commission shall render a decision in writing that sets forth findings that support their decision within seven days of the hearing. The decision of the Commission shall be final, and any further appeal of such decision shall be to the 19th Judicial District Court of the State of Louisiana.

Section 5. Stormwater Utility Charge collection.

- (a) Stormwater Utility Charge shall be billed and collected in advance from the record property owner as shown on the East Baton Rouge Parish Property Tax Bill. The Stormwater Utility Charge shall be the responsibility of the person recorded as the owner of the Property with the Clerk and Recorder for East Baton Rouge Parish.
- (b) The Stormwater Utility Charge may be collected quarterly by the City-Parish on behalf of the MS4 Utility District or, if authorized by the Louisiana Legislature, collected annually on the parish property tax bill prepared by the East Baton Rouge Parish Assessor.

- (c) If collected annually as part of the property tax bill, Stormwater Utility Charges authorized to be charged in this chapter when delinquent will be subject to the same penalties and to be collected in like manner as taxes, and such Stormwater Utility Charges shall, thereafter, constitute a lien upon the real estate served by the MS4 Utility District, regardless of whether the Stormwater Utility Charges were incurred when a property owner was in possession of the Property or a non-owner was in possession of the Property.

- (d) If collected annually as part of the property tax bill, Stormwater Utility Charges authorized to be charged in this chapter to property owners who do not receive a property tax bill may be collected directly the MS4 Utility District using existing City-Parish procedures.

Section 6. - Stormwater Utility Enterprise Fund

Stormwater Utility Charges collected by the City-Parish for the MS4 Utility District shall be paid into an enterprise fund that is created, to be known as the "Stormwater Utility District fund." Such fund shall only be used for the purpose of paying the extension and replacement, regulation, operations and maintenance and debt service of the storm water utility district and to carry out all other purposes of the utility including but not limited to compliance with federal and state storm water regulations.

Section 7.- This ordinance shall take effect and be in fully force after its passage, approval and publication of the Summary Ordinance in the official journal of the MS4 Utility District.

**PASSED BY THE COUNCIL OF THE CITY OF BATON ROUGE/PARISH OF EAST
BATON ROUGE, LOUISIANA THIS _____ DAY OF _____, 2022.**