

ORDINANCE NO. 10-09-2018-2

AN ORDINANCE OF THE TOWN OF CICERO ADOPTING NEW STORMWATER UTILITY
RATES

WHEREAS, the Town of Cicero, Indiana created a Department of Storm Water Management (the “Department”) in Ordinance No. 10-07-2003-2, to provide for the collection and disposal of storm and surface water in the Town of Cicero, Indiana, and the Department is controlled by a Board of Directors (the “Board”); and

WHEREAS, pursuant to the Board’s recommendation set forth in the Board’s Resolution 06-24-2004, the Town Council adopted Ordinance 10-05-2004-2 which established the initial rate of \$3.15 per month per each single-family dwelling unit and each non-residential and each residential/business unit on October 19, 2004; and,

WHEREAS, this rate has not been modified or adjusted since the date of its adoption nearly thirteen years ago; and,

WHEREAS, the costs associated with the collection and treatment of storm water and the operation of the Department have continued to increase on a yearly basis throughout the past thirteen years; and

WHEREAS, the Board examined the costs of maintaining the utility and operating the Department; and

WHEREAS, the Board concluded that the current storm water rate was insufficient to cover these costs and needed to be increased; and

WHEREAS, United Consulting Engineers recommended that the Board adopt a system wherein single family residential properties will be assessed a fee for storm water collection with assessment the assessment of all other properties being based upon the Equivalent Residential Usage

as determined by United Consulting Engineers' study to better proportion the costs of the utility directly to larger users and their direct system impacts;

WHEREAS the single-family residential fee has been determined to be three dollars and ninety-five cents (\$3.95);

WHEREAS, the Board adopted Resolution # SWU 12-28-2018 at its meeting on October 9, 2018 recommending that the Town Council adopt these changes and a new residential fee;

WHEREAS, the Town Council, having been fully advised by the Board and United Consulting Engineers, is in agreement that the Board's recommendations are necessary for the continued operation and maintenance of the Town's storm water system; and

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Cicero, Indiana that Sections 53.03 and 53.04 are deleted and revised as follows:

1. Chapter 53.03 shall be read as follows:

Storm Water User Fee.

A Storm Water User Fee shall be imposed on each and every tax parcel of real estate within the corporate boundaries of the Town of Cicero, Indiana which directly or indirectly contributes to the storm water system of the Town of Cicero, which charge shall be assessed against the owner thereof, who shall be considered the User for purposes of this Ordinance. This charge is hereby deemed to be reasonable and necessary to pay for the regulations, planning, operation, and maintenance, repair, replacement, and improvement of the existing and future Cicero storm water system.

2. Chapter 53.04 shall read as follows:

Definitions.

Unless otherwise defined in this Ordinance, the terms and phrases shall be defined as follows:

- a. Advisory Board means the Board of Directors of the Town of Cicero's Department of Storm Water Management.
- b. Department of Storm Water Management means the Town of Cicero's Department of Storm Water Management.
- c. Equivalent Resident Unit (ERU) means the number of units, equal to the assumed average amount of Impervious Area of a single-family residential parcel of real estate within the Town of Cicero, Indiana, which is established at one ERU equals 0.1 acre of impervious area. This unit value, which will be carried out and rounded off to two (2) decimal points, being the equivalent of one hundredth (0.01) of an ERU, is also the basis for calculating the assessment of Storm Water User Fees for the Town of Cicero's storm water system.
- d. Impervious Area means those areas which prevent or impede the infiltration of storm water into the soil as it enters 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.
- e. Non-Residential Real Estate means 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.

- f. Residential Real Estate means 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 dwellings 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.
- g. User means an owner of a tax parcel of real estate within the corporate boundaries of the Town of Cicero, Indiana which directly or indirectly contributes to the storm water system of the Town of Cicero.

3. Chapter 53.05 shall read as follows:

Storm Water Rates

Until later revised or amended, the Storm Water User Fees shall be at the rate of Three Dollars and Ninety-Five Cents (\$3.95) per month per ERU. This storm water rate is designed to cover the cost of rendering storm water service to the Users of the Town of Cicero's storm water system and shall be the basis for the assessment of the Storm Water

User Fee. This rate is established to maintain adequate fund reserves to provide for reasonably expected variations in the cost of providing services, variations in the requirements of providing such services, as well as future improvements and capital needs. This rate may be evaluated and adjusted, as necessary, with regard to its sufficiency to satisfy the needs of the Department of Storm Water Management; otherwise, this rate shall remain in effect.

4. Chapter 53.06 shall read as follows:

Rate Structure and Calculation.

- a. There is hereby assessed a Storm Water User Fee to each owner of Residential Real Estate and Non-Residential Real Estate located within the corporate boundaries of the Town of Cicero, Indiana which contain Impervious Area in an amount based upon the assigned ERU as determined below. Such Storm Water User Fees shall be calculated and assessed on a tax parcel basis by Town of Cicero's Clerk-Treasurer's Office.
- b. All real estate having Impervious Area within the corporate boundaries of the Town of Cicero, Indiana will be assigned an ERU in accordance with the following provisions:
 - i. Residential Real Estate. A tax parcel containing only a single-family dwelling or one residential lot shall be one (1) ERU. A tax parcel containing multiple single-family dwellings or units shall be equal to the total number of units on the parcel. For example, a tax parcel containing two (2) family dwellings shall be considered two (2) ERUs.

- ii. Non-Residential Real Estate. The minimum ERU for a parcel of Non-Residential Real Estate shall be one (1) ERU. Each tax parcel of Non-Residential Real Estate shall be assigned an ERU based upon the parcel's individually measured or calculated Impervious Area in acres divided by one tenth (0.10) of an acre. This division will be calculated and rounded to the second decimal place. If the ERU determined by this method is greater than one (1) ERU, the tax parcel's ERU shall be assigned per this calculation. Any Non-Residential Real Estate with an ERU of less than one (1) shall be considered to have one (1) ERU.
 - iii. The identification of real estate tax parcels, the classification of primary use, the determination of whether a tax parcel contains a dwelling, the number of dwellings a tax parcel contains, the classification of the type of dwelling and type of real estate, and the calculation of the Impervious Area on the tax parcel shall be based upon existing data in the Hamilton County mass appraisal system database for the respective determination date used for making the Storm Water User Fee assessments.
 - iv. For each current Storm Water User Fee assessment, the determination date shall be March 1st of the prior year.
- c. There shall be no exceptions or exemptions from the assignment of ERUs and the assessment of Storm Water User Fees for a particular type of classification of real estate tax parcel within the corporate boundaries of the Town of Cicero, Indiana.

5. Chapter 53.07 shall read as follows:

Storm Water Credits on Commercial Properties

Commercial properties shall be eligible for a credit toward their storm water assessments based upon their implementation of storm water handling methods that reduce the impact of their storm water runoff from their impervious area via one of the following means:

- a. The establishment of a properly engineered and designed rain garden or pond shall result in a ten percent (10%) reduction in the assessment of a commercial parcel.
- b. The establishment of an approved Best Management Practice program shall result in a fifteen percent (15%) reduction in the assessment of a commercial parcel.

Eligibility shall be subject to yearly inspections and the completion of all required yearly maintenance

6. Section 53.08 shall read as follows:

Appeal 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 Fees 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 Town of Cicero's Clerk-Treasurer with verifiable documentation supporting the User's claim. To be timely for any current month Storm Water User Fee Assessment, a Petition to Appeal must be filed no later than the date on which the Storm

Water User Fees shall be due and payable. The Clerk-Treasurer shall refer the Petition to Appeal to the Board

- c. The Board shall investigate the User's claim and, upon review thereof, 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 Board shall be forwarded to the User by certified mail, return receipt requested. The User shall have fifteen (15) days from the date of receipt to request reconsideration if dissatisfied with the decision from the Board. Any additional facts concerning the dispute shall be reduced to writing and submitted with a copy of the original petition and supporting documents, to the Clerk-Treasurer. The Clerk-Treasurer 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 Cicero Town Council 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 Cicero Town Council shall issue a determination which shall be binding upon the Town of Cicero's 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 Clerk-Treasurer which rate shall be amended from time to time.

- f. Any User aggrieved by the final Cicero Town Council determination shall have the right to judicial review of such determination in accordance with Indiana law at their expense.
- g. If a User's storm water assessment is reduced or eliminated by the Board, the Cicero Town Council, or a court of law, the User shall be refunded accordingly for any overpayment made from the earlier of the date of 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 assessment shall not be a valid reason for non-payment of the originally assessed Storm Water User Fee.

7. Section 53.08 shall read as follows:

Penalties

If the monthly storm water utility fee is not paid by the due date stated on the bill, a late charge of 10% will be assessed, together with costs of collection, if any, including reasonable attorney's fees. Violations of the provisions of this ordinance shall also be subject to the penalty provisions set forth in Chapter 51.99 of Cicero Municipal Ordinance.

- 8. Severability - The terms and provisions of this Ordinance are hereby determined to be severable; the invalidity or unenforceability of any section, sentence, clause, term, or provision of this Ordinance shall not affect the validity of any other section, sentence, clause, term, or provision of this Ordinance which can be given meaning without such invalid part or parts.
- 9. That the adoption of this Ordinance is necessary for the protection of the public health and welfare of the inhabitants of the storm water district and the safeguarding of the property within the district and that the passage of this Ordinance is of public utility and benefit

9. Except for the amendments recommended by this Ordinance, all of the other terms, provisions, conditions, and storm water rates, fees and charges set forth in Section 53 of Title 5 shall remain in full force and effect.

10. This Ordinance shall be in full force and effect upon passage.

This ordinance is hereby passed this ____th day of _____ 2018 and shall be effective upon its passage.

Signatures of Town Council

Robert J. Miller, President

Christopher J. Lutz, Vice-president

Chad B. Amos

Brett S. Foster

Craig S. Penwell

Attested: _____
Jan Unger, Clerk Treasurer