

CITY OF BIRMINGHAM
ORDINANCE NO. 2204

**AN ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 114 UTILITIES, to
ADD ARTICLE VI. STORM WATER TO ADD DIVISION 6. STORM WATER UTILITY FEE**

THE CITY OF BIRMINGHAM ORDAINS:

Part II of the City Code, Chapter 114 Utilities, shall be amended to add Article VI. Storm water, Division 6. Storm Water User Fee, as follows:

ARTICLE VI. STORM WATER

DIVISION 6. STORM WATER UTILITY FEE

Sec. 114-400. - Definitions.

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

Runoff Potential: The runoff potential from a property is based on hydrologic principles for calculating runoff that use both the impervious surface area and the pervious surface area. Runoff potential is measured in square feet using the following formula:

$$\text{Runoff Potential} = 0.15x [\text{Total Area} - \text{Impervious Area}] + 0.9 x [\text{Impervious Area}]$$

Combined sewer system: Public sewers, drains, ditches, roads and retention ponds used for collecting and transporting storm water and non-storm water in the City.

Director: The City Engineer or such other person as the City Manager may designate.

Equivalent Storm Water Unit (ESWU): A subunit of measurement which relates the volume of storm water discharged from a lot based on the amount of total and impervious lot area, compared to the standard unit. The formula for an equivalent storm water unit (ESWU) is as follows:

$$1 \text{ ESWU} = \frac{(0.15 (TA_s - IA_s) + (0.90 (IA_s)))}{}$$

where,

TA_s = total area of standard unit;

IA_s = impervious area of standard unit;

0.15 = runoff coefficient for pervious area;

0.90 = runoff coefficient for impervious area.

One ESWU in the City is equal to the average runoff potential of the standard unit.

Impervious lot area: Impervious area means a surface area that is resistant to permeation by surface water.

Industrial sites: Those sites that contain industrial activities which require wastewater discharge permits as set forth in Section 114-202 of this Code.

Nonstorm water: All flows to the combined sewer system not defined as storm water in Section 114-199, or as determined by the director.

Pervious lot area: All land area that is not impervious. Pervious lot area equals the total lot area, minus the impervious lot area. Pervious lot area has a runoff coefficient equal to 0.15.

Separated Storm Water sewer system: Public sewers, drains, channels, ditches, roads and retention ponds used for collecting and transporting storm water in the City.

Standard unit: Single family residential parcel in the City within a lot size between 1.126 and 0.250 acres.

Storm Water: Storm water runoff, snow melt runoff and surface runoff and drainage.

Storm Water utility fee: The fee imposed for the use of that portion of the combined system that transports storm water, based on the number of ESWU's for a lot or parcel of land determined as provided in Section 114-402.

Storm Water sewer system: That portion of the combined sewer system and separated storm water sewer system that is attributable to the transportation and treatment of storm water.

User: An owner of property which directly or indirectly contributes to the combined sewer system.

Sec. 114-401. – Storm Water Utility Fees.

- (a) All users shall pay a storm water utility fee proportional to the volume of storm water which is projected to discharge into the combined sewer system and storm water sewer system from their property.
- (b) The City Commission shall, by resolution, set storm water utility fees at a rate which will recover from each user its share of the costs of the storm water sewer system attributable to the discharge of storm water from the users' property to the storm water system. The City shall use the revenues of the storm water utility fees to pay the costs of the water treatment operation and maintenance of the storm water sewer system, and for necessary improvements and additions to the storm water sewer system.

- (c) The City may also collect from users fees imposed to pay the implementation and operation of any of the following:
- (1) Monitoring, inspection and surveillance procedures;
 - (2) Reviewing discharge procedures and construction;
 - (3) Discharge permit applications; or
 - (4) Other fees as the City may deem necessary to operate the storm water sewer system.

Sec. 114-402. - Calculation of fees and appeals.

- (a) Single Family Residential ESWU. All single family residential properties in each of the lot-size categories are assigned the same ESWU for that category. The ESWU values for the single-family residential categories are summarized in the fee schedule.

<u>PROPERTY TYPE</u>	<u>SFR CLASS</u>
Single-Family Residential, 0.125 acres or less	Class A
Single-Family Residential, 0.126 acres to 0.250 acres	Class B
Single-Family Residential, 0.251 acres to 0.500 acres	Class C
Single-Family Residential, 0.501 acres to 0.750 acres	Class D
Single-Family Residential, 0.751 acres to 1.000 acres	Class E
Single Family Residential, 1.001 acres or larger	Class F

- (b) Non-Single Family ESWU. The storm water utility fee for non-single family lots shall equal the number of ESWU's for a given lot, multiplied by the annual rate established by the City Commission per ESWU per year. The formula for determining the number of ESWU's per non-single family lot shall be calculated from the amount of pervious and impervious lot area as follows:

$$\text{Number of ESWU's} = \frac{0.15 (TA - IA) + 0.90 (IA)}{\text{Average runoff potential of the standard unit/ESWU}}$$

where,

TA = total area of each lot (reported in square feet);

IA = impervious area of each lot (reported in square feet).

- (c) Any property owner liable for a storm water utility fee may appeal the determination that the property utilizes the storm water system or the amount of a storm water utility fee, including a determination on a reduction in or the elimination of the fee under Section 114-402(a) and (b). An appeal may be based on the quantity of storm water runoff generated, the reductions established, the reductions allocated, or any other matter relating to the determination of the storm water utility fee.
- (d) An appeal under subdivision (c) shall be heard by a storm water utility appeals board appointed by the local unit of government. The appeals board shall consist of 3 members, 2 of whom shall be licensed professional engineers not employed by the local unit of government.
- (e) An appeal of a storm water utility fee shall not be brought more than 1 year after the fee was billed.
- (f) To prevail in an appeal of a storm water utility fee, the appellant shall demonstrate in accordance with the requirements of the plan that the use of the system by the property is less than the amount used by the local unit of government in the calculation of that property's storm water utility fee, or the classification of the property type is in error, or there was a mathematical error in the calculation of the fee.
- (g) The sole remedy for a property owner who prevails in an appeal of a storm water utility fee is a prospective correct recalculation of the storm water utility fee.
- (h) If in an appeal of a storm water utility fee the appeals board finds that the requirements of subdivision (f) have not been met, that finding is conclusive until the property is modified to either increase or decrease the utilization of the system. The property owner remains eligible for reduction or elimination of fees under the storm water utility ordinance.
- (i) A property owner making an appeal shall provide the appeals board with information necessary to make a determination.
- (j) A person aggrieved by a decision of the appeals board on an appeal under this section may appeal to the circuit court in which the property is located. An appeal to the Circuit Court must be filed within thirty (30) days of the appeals board's decision.

Sec. 114-403. Credits.

- (a) The purpose of this section is to provide for each property owner's control over contributions of storm flows to the storm water utility system and the related storm water utility fees and to advance protection of the public health, safety, and welfare.
- (b) The City shall offer credits on an annual basis that will enable any property owner, through voluntary action, to reduce the storm water utility fees calculated for that property owner's property and will provide a meaningful reduction in the cost of

service to the storm water system, or that shall be reasonably related to a benefit to the storm water system;

- (1) Credits will only be applied if requirements outlined in this Chapter and other applicable sections of the City Code are met, including, but not limited to: completion of ongoing maintenance, guaranteed right-of-entry for inspections, and submittal of annual self-certification reports.
 - (2) Credits will be defined as either set fee reduction or percent (%) reductions applied as a credit adjustment to the fee calculation equation.
 - (3) Credits are additive to each credit category.
 - (4) As long as the storm water facilities or management practices are functioning as approved, the credit reduction will be applied to the fee. If the approved practice is not functioning as approved or is terminated, the credit reduction will be cancelled and the fee will return to the baseline calculation. Once the credit reduction has been cancelled, a customer may not reapply for credit for a period of 12 months and only then if the deficiency has been corrected, as determined by City inspection.
 - (5) Credits will be applied to the next complete billing cycle after the application has been approved.
- (c) The director shall define a method for applying and granting credits on an annual basis, as well as criteria for determining the credits a property owner may receive. The director may, by regulation, establish credits for 1 or more of the following:
- (1) Installation and maintenance of rain barrels, rain gardens, bioswales, cisterns, dry wells, infiltration trenches, porous pavement or pavers, or disconnecting footing drains;
 - (2) Installation and maintenance of a storm water control facility, or other water quantity controls; and
 - (3) Other actions of the property owner that, in the judgment of the director, result in a measurable reduction in storm water runoff.


Sec. 114-404. - Billing.

The billing for the storm water utility may be combined with the billing for other utility services. Final determinations on measurements per ESWU will be determined by the director.

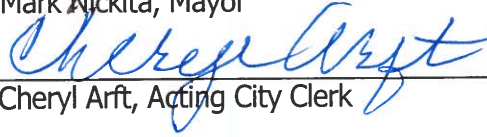
Sec. 114-405. - Collection.

Unpaid storm water utility fees shall constitute a lien against the property affected. Fees which have remained unpaid for a period of six months prior to April 30 may be certified to the City Treasurer who shall place the fees on the next tax roll of the City. In the alternative, the City Commission may direct the City Attorney to take appropriate legal action to collect unpaid fees.

Ordained this 5th day of December, 2016. Effective upon publication.

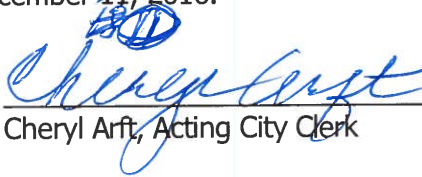


Mark Nickita, Mayor



Cheryl Arft, Acting City Clerk

I, Cheryl Arft, Acting City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held December 5, 2016 and that a summary was published in the Observer & Eccentric Newspaper on December 11, 2016.



Cheryl Arft, Acting City Clerk