

ORDINANCE NO. 2020-11-2

***AN ORDINANCE TO ESTABLISH A STORMWATER
UTILITY AND RELATED MATTERS***

**BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF WINONA
LAKE, INDIANA THAT:**

Chapter 70 of the Town of Winona Lake Code is hereby amended to add a new Article III Entitled STORMWATER and to provide as follows:

§ 70-200 STORMWATER UTILITY ESTABLISHED.

- (A) There is hereby established a Stormwater Utility for the Town of Winona Lake, Indiana.
- (B) The Town Council is hereby authorized to establish policies and procedures for the operation of the Winona Lake Stormwater Utility and to establish the Equivalent Residential Unit (ERU) and multiplier for Stormwater users.
- (C) The Town intends to operate its Stormwater Utility under provisions of I.C. 36-9-23. The Stormwater Utility will be responsible for the management of the Winona Lake Stormwater System and will fund Stormwater management activities by charging user fees to the owner/tenant of each property containing impervious surface area within the corporate limits of the Town.
- (D) All residential properties will be charged a uniform user fee. User fees for non-residential will be based upon the amount of impervious surface area contained within the property. The amount of impervious surface area for each property has been determined based upon measurements using aerial photography, submitted construction plans and by field measurements. Public right-of-way is exempt from the user fee.
- (E) User fees do not relieve any property owner from compliance with the Town of Winona Lake and/or Kosciusko County ordinances and/or other applicable state and/or federal laws/regulations.

§ 70-201 DEFINITIONS.

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

WINONA LAKE STORMWATER SYSTEM. All facilities and conveyances subject to the control of and/or under the ownership 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, inlets, conduits and appurtenant features, pipes, pumping stations, manholes, structures, channels, outlets, creeks, catch basins, ditches, legal county drains, streams, culverts, retention or

detention basins and other structural components and equipment that transport, move or regulate Stormwater. The system includes public streets, roads, alleyways and highways.

BUSINESS shall mean an act or means of providing goods or services for compensation.

HOME-BASED BUSINESS PROPERTY. A residential property in which business is conducted on the property.

COMPACTED GRAVEL. A gravel, crushed stone, or rock surface that impedes or prevents the infiltration of Stormwater into the soil. Such surfaces are subject to vehicular or equipment traffic, or are used as a roadway, driveway, alley or parking surface.

CREDIT. A reduction in the Stormwater user fee for a utility rate payer, based on attainment of criteria specified in this chapter.

EQUIVALENT RESIDENTIAL UNIT (ERU). The average amount of impervious surface area for a single-family residential property located within the corporate limits of the Town. The **ERU** for the Town is three thousand eight hundred (3,800) square feet, and shall be used in calculating user fees for non-residential properties.

IMPERVIOUS SURFACE AREA. The horizontal surface area of property covered with materials that include, but are not limited to, concrete, asphalt, rooftop, blacktop and compacted gravel, such that the infiltration of Stormwater is prevented or impeded. The total amount of impervious surface area located on a property without regard to topographic features of the property is included. Driveways, roadways, parking lots and other areas used for vehicular traffic are considered **IMPERVIOUS SURFACE AREAS**. Undisturbed land, tilled agricultural land, ponds, lawns and fields are not considered impervious surface areas. Open topped tanks or pools that collect rainwater are not to be measured as impervious surfaces.

INFILTRATION. passage or movement of water into the soil.

MULTI-UNIT PROPERTY. a lot or parcel on which a building is situated containing two (2) or more units. A multi-unit property containing four (4) or more units shall be classified and billed as a non-residential property. **MULTI-UNIT PROPERTIES** include, but are not limited to, apartment buildings, commercial plazas, strip malls, apartment buildings, medical complexes and commercial office buildings.

NON-RESIDENTIAL PROPERTY. All properties not categorized as residential properties or **NON-RESIDENTIAL PROPERTIES** include, but are not limited to the following:

- (1) Agricultural property;
- (2) Businesses and commercial property;
- (3) Churches and other places of religious affiliation;
- (4) Community buildings;
- (5) Federal, state and local government property;
- (6) Home-based business properties that significantly increase impervious surface area to accommodate the business. Home-based business property that is zoned residential.

- (7) Hospitals and medical centers;
- (8) Industrial property;
- (9) Multi-unit properties which contain four (4) or more units;
- (10) Mobile home parks;
- (11) Retirement centers;
- (12) Schools and colleges;

(13) Common areas of residential developments, including but not limited to, private streets, parking lots, recreational areas, office areas, maintenance areas and all other areas not occupied by residential units.

PROPERTY OWNER. The person(s) identified as the property owner on the most recent tax record maintained by the Kosciusko County Auditor's Office.

RESIDENTIAL PROPERTY. a lot or parcel on which a residential dwelling is situated. Residential properties include the following: Single family home; Mobile home on an individual lot or that is individually owned; Multi-unit property consisting of three (3) or less residential units in a single building. Home-based business properties that are zoned as residential

STORMWATER USER. The owner/renter of a lot or parcel of residential property or non-residential property within the Town's corporate limits.

§70-202 STORMWATER USER FEE DETERMINATION.

(A) The monthly Stormwater utility user fee is uniform for all residential properties assigned one (1) ERU. The user fee for one (1) ERU shall be

	<u>Date Effective</u>		
	<u>January 1, 2021</u>	<u>January 1, 2022</u>	<u>January 1, 2023</u>
ERU Rate	\$5.00	\$7.00	\$9.00

This user fee may be changed from time to time by the Town Council by ordinance.

(B) The monthly Stormwater utility user fee for a non-residential property or a multi-unit property with four (4) or more units (defined as non-residential) are determined using an ERU multiplier, which is calculated by dividing the total impervious surface area within the property by the base ERU of three thousand eight hundred (3,800) square feet. This method allows for the non-residential property user fees to be based upon the amount of impervious surface area within the property as compared to the amount of impervious surface area of the average residential property. For example, a non-residential property with thirty thousand (30,000) square feet of impervious surface area receives an ERU multiplier of 7.9 (30,000/3,800). The ERU multiplier shall be rounded to one decimal place and the minimum ERU shall be one (1).

The ERU multiplier is then multiplied by the current fee for one (1) ERU to determine the actual user fee in dollars.

(C) Impervious surface areas shall be measured in the field or based on aerial footprint of impervious surfaces. Angled rooftops shall be measured as if they were flat. All impervious surfaces within the parcel boundaries of a property shall be measured, with the exception of those surfaces located within a road right-of-way. For multi-unit properties, all units within a single parcel and all impervious surfaces (such as parking lots and walkways) shall be measured and billed to the property owner. For multi-level or multistory structures (containing more than one (1) level), the footprint of the building and other impervious surfaces shall be measured and billed to the property.

(D) A reduction in the Stormwater user fee, or credit, based on specific qualifying conditions may be available to utility rate payers. Utility rate payers must successfully complete any application process required by the Town Council to demonstrate compliance with this section.

(E) Credit requirements and procedures shall be established by the Town Council.

(F) Upon written notice, the Stormwater Utility may revoke a credit for good reason, including failure to meet credit conditions.

§70-203 BILLING AND COLLECTION.

(A) Charges for Stormwater service shall be billed by and through the Town utilities office on the annual payment booklet.

(B) The billing and collection procedures for charges for Stormwater service shall be the same as specified in Chapter 70 Article II for the wastewater sewer utility.

§ 70-204 APPEAL PROCEDURE.

Appeals procedures concerning ERU determinations, Stormwater credits and billing issues shall be established by the Town Council in a Stormwater Policy and Procedures Manual.

§ 70-205 OPERATIONAL MAINTENANCE FUND.

There is created and established a fund to be designated (with additional designations as deemed useful by the officer or official establishing the account) as the Stormwater Utility Operation and Maintenance Fund (the "Operation and Maintenance Fund") and it shall be credited on the last day of each calendar month with a sufficient amount of revenues of the utility so that the balance in the Operation and Maintenance Fund shall be sufficient to pay the expenses of operation, repair, and maintenance for the then next succeeding two calendar months. Monies credited to the Operation and Maintenance Fund shall be used for the payment of the reasonable and proper operation, repair, and maintenance expenses of the utility on a day-to-day basis, but none of the monies in the Operation and Maintenance Fund shall be used for depreciation, replacement, improvements, extensions, or additions. Any balance in the Operation and Maintenance Fund in excess of the expected expense of operation, repair, and maintenance for the next succeeding month may be transferred to the Sinking Fund if necessary to prevent a default in the payment of principal of or interest on the outstanding obligations of the utility.

§ 70-206 SINKING FUND.

(A) *Establishment.* There is created and established a sinking fund for the payment of the principal of and interest on revenue bonds which by their terms are payable from the net revenues of the utility, and the payment of any fiscal agency charges in connection with the payment of obligations and interest, which fund shall be designated (with additional designations as deemed useful by the officer or official establishing the account) as the Stormwater Utility Sinking Fund (the “Sinking Fund”). There shall be set aside and deposited in the Sinking Fund, as available, and as hereinafter provided, a sufficient amount of the net revenues of the utility to meet the requirements of the Bond and Interest Account and the Debt Service Reserve Account hereby created in the Sinking Fund. These payments shall continue until the balance in the Bond and Interest Account, plus the balance in the Debt Service Reserve Account hereinafter described, equals the amount needed to redeem all the then outstanding obligations of the issuer.

(B) *Bond and Interest Account.*

(1) There shall be credited, on the last day of each calendar month, to the Bond and Interest Account an amount of net revenues equal to the sum of:

(a) One-sixth of the interest on all then outstanding obligations payable from net revenues on the then next succeeding interest payment date (except with respect to the first interest payment date, the fraction credited on a monthly basis shall be sufficient to assure that funds will be available to make the interest payment); and

(b) At least one-twelfth of the principal (provided, if the bonds are issued with scheduled principal payments due on January 1 and July 1 of each year, then in lieu of one-twelfth of the principal payment, the transfer shall be at least one-sixth of the principal payment) on all then outstanding obligations payable from net revenues of the utility payable from net revenues on the then next succeeding principal payment date (except with respect to the first principal payment date, the fraction credited on a monthly basis shall be sufficient to assure that funds will be available to make the principal payment), until the amount of interest and principal payable on the then next succeeding respective interest and principal payment dates shall have been so credited.

(2) There shall similarly be credited to the account the amount necessary to pay the bank fiscal agency charges for paying principal and interest on the obligations payable from net revenues of the utility as the same become payable.

(3) The issuer shall, from the sums deposited in the Sinking Fund and credited to the Bond and Interest Account, remit promptly to the registered owner and to the bank fiscal agency sufficient monies to pay the principal and interest on the due dates thereof together with the amount of bank fiscal agency charges.

(C) *Debt Service Reserve Account.*

(1) Following the issuance of the bonds, there shall be credited to and become a part of the Debt Service Reserve Account not less than the required monthly deposit or some higher amount as fixed by the issuer from the net revenues of the utility on the last day of each calendar month until the balance therein equals, but does not exceed, the lesser of:

(a) The maximum annual debt service on the obligations payable from net revenues of the utility;

(b) 125% of average annual debt service on the obligations payable from net revenues of the utility; or

(c) 10% of the proceeds of the obligations payable from net revenues of the utility (“reserve requirement”).

(2) The amount of the monthly deposits shall be equal in amount and sufficient in the aggregate to accumulate the reserve requirement within five years from the date of delivery of the obligations payable from net revenues of the utility. The balance within the Debt Service Reserve Account shall never exceed the reserve requirement.

(3) The Debt Service Reserve Account shall constitute the margin for safety and protection against default in the payment of principal of and interest on outstanding obligations payable from net revenues of the utility, and the monies in the Debt Service Reserve Account shall be used to pay current principal and interest on outstanding obligations payable from net revenues of the utility to the extent that monies in the Bond and Interest Account are insufficient for that purpose. Any deficiency in the balance maintained in the Debt Service Reserve Account shall be promptly made up from the next available net revenues remaining after credits into the Bond and Interest Account. In the event the money in the Debt Service Reserve Account are transferred to the Bond and Interest Account to pay principal and interest on outstanding obligations payable from net revenues of the utility, then this depletion of the balance in the Debt Service Reserve Account shall be made up from the next available net revenues after the credits into the Bond and Interest Account.

(4) Any monies in the Debt Service Reserve Account in excess of the reserve requirement shall be transferred to the Improvement Fund unless used for the prepayment of installments of principal on the then outstanding obligations payable from net revenues of the utility which are then callable or pre-payable, or for the purchase of outstanding obligations payable from net revenues of the utility including accrued interest.

(5) For purposes of assuring compliance with the foregoing provisions, the Debt Service Reserve Account investments shall be valued at fair market value and marked to market at least once per year. No such investment shall have a final maturity extending beyond five years.

§70-207 IMPROVEMENT FUND.

In the event all required monthly payments into the Operation and Maintenance Fund and the Sinking Fund, including the Bond and Interest Account and the Debt Service Reserve Account, have been met to date, and the reserve requirement has been accumulated in the Debt Service Reserve Account (or within five years from the date of delivery of the bonds, the required payments to date have been made to the Debt Service Reserve Account), then any excess net revenues may be transferred into the fund hereby created and established to be designated (with additional designations as deemed useful by the officer or official establishing the account) as the Stormwater Utility Improvement Fund (the “Improvement Fund”), and the Improvement Fund shall be used for depreciation, improvements, replacements, additions, and extensions of the utility. Monies in the Improvement Fund shall be transferred to the Sinking Fund if necessary to prevent a default in the payment of principal and interest on the then outstanding bonds or, if necessary, to eliminate any deficiencies in credits to or minimum balance in the reserve account

of the Sinking Fund, or may be transferred to the Operation and Maintenance Fund to meet unforeseen contingencies in the operation and maintenance of the utility.

All prior ordinances or parts thereof inconsistent with any provision of this ordinance are hereby repealed.

This ordinance shall be in full force and effect from and after its passage, approval by the Town Council, and publication, all as by law provided.

ADOPTED by the Town Council this _____ day of _____, 2020, at 6:00 p.m.

WINONA LAKE TOWN COUNCIL

AYE

NAY

Rick Swaim, President

Rick Swaim, President

Dennis Duncan, Vice-President

Dennis Duncan, Vice-President

James Lancaster, Council Member

James Lancaster, Council Member

Heather James, Council Member

Heather James, Council Member

James Zachary, Council Member

James Zachary, Council Member

ATTEST:

KENT ADAMS, CLERK-TREASURER
Town of Winona Lake, Indiana