

CITY OF BIRMINGHAM

ORDINANCE NO. ____

AN ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 114. UTILITIES, ARTICLE VI. STORM WATER UTILITY FEE, SECTION 114.402 – CALCULATION OF FEES

THE CITY OF BIRMINGHAM ORDAINS:

The City Code, Part II, Chapter 114. Utilities, Article VI. Storm Water Utility Fee, Section 114.402 – Calculation of Fees, shall read as follows:

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.

Property Type	SFR Class
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:

$$\text{Number of ESWU's} = \underline{0.15 (TA - IA) + 0.90 (IA)}$$

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 non-single family residential 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 subsections (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) A single family residential property owner may appeal the determination that the property utilizes the storm water system, however, such an appeal shall be limited to the following reasons:
 - 1. The size of the lot has been miscalculated; or,
 - 2. All or part of the storm water runoff drains to an open drainage course, such as a river, lake or creek, which affects the quantity of the storm water runoff generated that gets into the storm water sewer system.
- (e) An appeal under subsection (c) shall be heard by a storm water utility appeals board appointed by the local unit of government. The appeals board shall consist of three members, two of whom shall be licensed professional engineers not employed by the local unit of government.
- (f) An appeal of a storm water utility fee shall not be brought more than one year after the fee was billed.
- (g) To prevail in an appeal of a storm water utility fee, the appellant shall demonstrate in accordance with the requirements of the plan for a non-single family residential property 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 for all properties the classification of the property type is in error, or there was a mathematical error in the calculation of the fee.
- (h) 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.
- (i) If in an appeal of a storm water utility fee the appeals board finds that the requirements of subsection (g) 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.

- (j) A property owner making an appeal shall provide the appeals board with information necessary to make a determination.
- (k) 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 30 days of the appeals board's decision.

All other Sections of Chapter 114 Utilities shall remain unaffected.

Ordained this ____ day of _____, 2017. Effective upon publication.

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

I, Cherilynn Brown, 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 _____, 2017 and that a summary was published _____, 2017.

Cherilynn Brown, City Clerk