

CHAPTER 1056

STORMWATER UTILITY

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1056.01 PURPOSE.

The purpose of this ordinance is to establish a stormwater management utility which shall be responsible for public stormwater management within the City of Avon and shall provide for the management, protection, control, regulation, use, and enhancement of public stormwater management systems and facilities. Pursuant to the Ohio Constitution, particularly Article XVIII, Section 4, the laws of the State of Ohio, the Charter of the City of Avon and its codified ordinances, the Council of the City of Avon finds that:

- a) The City may establish a Stormwater Management Utility and impose rates and charges for the services furnished by said utility;
- b) The City may plan, design, acquire, construct, establish, enlarge, improve, maintain, own, operate, and contract for the operation of public stormwater drainage systems and stormwater management programs of all types, to furnish service to the City and its residents;
- c) It is in the best interests of the City of Avon that the Stormwater Management Utility be established so as to provide these services and to provide for rates for the purposes of assuring sufficient funds for the same;
- d) Such a stormwater management utility shall be established, operated, and accounted for as a separate enterprise; and
- e) The City should establish and revise from time to time a schedule of rates and charges to fund the stormwater management utility and its related programs.

1056.02 DEFINITIONS.

As used in this chapter:

- a) Apartment building. A building which consists of housing units for rent wherein the land or lot beneath the multi-dwelling structure is owned by the building owner. In the application of stormwater management fees, the parcel on which the apartment building resides shall be classified as non-residential property and billed accordingly.
- b) Common area. A property which is privately owned by an individual or an entity such as a Homeowners' Association or Property Owners' Association, but is

available for use by all tenants, groups of tenants, or their invitees within a residential or commercial development. In the application of stormwater management fees, the parcel(s) on which the common area is located shall be classified as non-residential property and billed accordingly based on impervious surface area.

- c) Condominium. A dwelling unit which is detached or attached to one or more other dwelling units, wherein the land or lot beneath each dwelling may be individually owned, while common areas are privately owned by a condominium association. In the application of stormwater management fees, each condominium unit shall be charged (1) ERU, billed to the unit owner.
- d) Double or Multi Family Property. A property designed for or occupied by multiple families entirely surrounded by yard on the same lot. In the application of stormwater management fees, the property shall be charged one (1) ERU per residential unit designed to live on the parcel, billable to the property owner.
- e) Exempt property. Any public right of way, public street, public alley, public sidewalk, and all land owned by the federal government, the State of Ohio, and political subdivisions of the State of Ohio.
- f) Equivalent Residential Unit or "ERU". An ERU is the average impervious surface area (measured in square feet) of all residential properties in the City. As of 2017, that amount is 4,300 square feet. The ERU shall be used as the basis for determining stormwater management fees, for all property sites in the City.
- g) Impervious Surface. Any surface material that significantly impedes or prevents natural infiltration of water into the soil. Impervious surfaces include, but are not limited to, rooftops, streets, parking areas, and any concrete, asphalt, or compacted gravel surface.
- h) Impervious Surface Area. The number of square feet of horizontal surface covered by buildings, drives, and other impervious surfaces.
- i) Non-residential property. All properties not encompassed by the definition of residential. In the application of stormwater management fees, total property impervious area will be divided by 4,300 square feet to calculate ERUs for each non-residential property.
- j) Residential property. Property which serves the primary purpose of providing a permanent dwelling unit to a family or families, except properties which contain apartment buildings (See (a), above).
- k) Service Area. All real property within the corporate limits of the City, including all real property legally annexed thereto.
- l) Service Charge. A stormwater management fee applicable to a parcel of real property that generally reflects the impact on or demand for stormwater management services provided by the City to properly control and manage the quantity and/or quality of Stormwater runoff associated with the parcel of real property.
- m) Single Family Residential Property. A property designed for or occupied by one (1) family entirely surrounded by yard on the same lot. In the application of stormwater management fees, each single family residential property shall be charged one (1) ERU per parcel, billable to the property owner.
- n) Stormwater Drainage Facilities. Storm sewers, inlet basins, manholes, and facilities for the conveyance, retention, control, or storage of waters; improvements to or for any natural or structural channel, swale, ditch, drain,

floodplain, floodway, or watercourse, including location, construction, reconstruction, reconditioning, widening, deepening, cleaning, removal of obstructions, straightening, boxing, culverting, tiling, filling, walling, arching, or change in course, location, or terminus; improvements to or for a river, stream, creek, or run, including reinforcement of banks, enclosing, deepening, widening, straightening, removal of obstructions, or change in course, location, or terminus; facilities for the protection of lands from the overflow of water, including a levee, wall, embankment, jetty, dike, dam, sluice, revetment, lake, pond, reservoir, swamp, swale, wetland, retention or holding basin, control gate, or breakwater; facilities for controlled drainage, regulation of stream flow, and protection of an outlet; the vacation of a ditch or drain; equipment and furnishings; and all required appurtenances and necessary real estate and interests in real estate.

- o) Stormwater Drainage System. All Stormwater Drainage Facilities and natural watercourses owned by the City, or over which the City has jurisdiction by law to operate or maintain, used for collection and conducting Stormwater to, through, and from drainage areas to the points of final outlet including, but not limited to, any and all of the following: Conduits and appurtenant features, canals, channels, creeks, catch basins, ditches, streams, gulches, gullies, flumes, culverts, siphons, streets, curbs, gutters, dams, floodwalls, levees, retention or detention facilities, rivers, swales, swamps, wetlands, and pumping stations.
- p) Stormwater Management. The tasks required to control stormwater runoff using stormwater management systems, to protect the health, safety, and welfare of the public, and to comply with relevant state and federal regulations.
- q) Stormwater Management Program. An identified set of measures and activities designed (i) to protect, restore and/or manage Stormwater quality by controlling and/or reducing pollutants, and/or (ii) to reduce and/or manage Stormwater quantity by controlling velocity, volume and flow rate.
- r) Stormwater Management Utility. The enterprise fund utility created by this division for the purpose of collecting revenues for operating, maintaining, improving, and managing stormwater and imposing charges for the recovery of costs connected with such stormwater management.
- s) Undeveloped property. Unimproved properties with less than 4,300 square feet of total impervious surface that do not have a water service account and are not attached to and utilized by an adjacent developed parcel. In the application of stormwater management fees, undeveloped property will not be charged a stormwater fee.
- t) User. Any person owning, operating, or otherwise responsible for property within the City.
- u) Utility. The stormwater management utility established pursuant to this Chapter.

1056.03 ESTABLISH UTILITY.

The Council of the City of Avon finds, determines, and declares that it is necessary, appropriate, and conducive to the health, welfare, and safety of the City and its residents that a stormwater management utility be established within the City. As such, a stormwater management utility, to be known as the Avon Stormwater Management Utility, is established.

The purpose of the Avon Stormwater Management Utility shall be to comprehensively address the stormwater management needs of the City. This shall be accomplished through the

operation, maintenance, and improvement of facilities and programs designed to control the quality and rate of stormwater runoff received and conveyed by structural and natural stormwater drainage systems. The Avon Stormwater Management Utility shall own, operate, maintain, repair, improve, and extend the existing public Stormwater Drainage Facilities and Stormwater Management Program serving the City and its inhabitants in such a manner as is deemed necessary to prevent damage, physical, financial, or otherwise, to resident and non-resident property or the environment.

It is further determined and declared that it is necessary, appropriate, and conducive to the health, welfare, and safety of the City and its residents to establish a Stormwater Service Charge to be levied upon and collected from the owners of all developed parcels of real estate within the City limits. Proceeds of such charges shall be used for the purpose of operation, maintenance, repair, and replacement of the stormwater drainage facilities, flood protection improvements, and stormwater management programs comprising the stormwater management system. The City shall operate its stormwater management system as a public utility. The service provided shall be the provision and maintenance of a complete and adequate system of stormwater drainage for the City and its inhabitants. The improvement of both public and private stormwater drainage facilities through or immediately adjacent to new developments shall remain the responsibility of the private developers.

- a) The City shall maintain all public stormwater drainage facilities located on City-owned land and in public rights-of-way and easements. Public facilities include, but are not limited to:
 - 1) Open drainage ways owned by the City or located in public rights-of-way or drainage easements in the City;
 - 2) Piped drainage systems and their related appurtenances which have been designed and constructed expressly for use by the general public;
 - 3) Bridges on and culverts under public streets;
 - 4) Roadside drainage ditches within the public right-of-way along streets;
 - 5) Flood control facilities (levees, dikes, overflow channels, residential detention and retention basins, groundwater recharging basins, etc.) that have been designed and constructed expressly for use by the general public; and
 - 6) Residential storm water retention or detention facilities located on private property
 - 7) Named ditches, i.e., those not included in the definition of “private waterway” in §1050.153(a).
- b) The improvement of both public and private stormwater drainage facilities through and immediately adjacent to new developments shall remain the responsibility of the developers. Facilities not qualifying as public facilities include but are not limited to:
 - 1) Private parking lot storm drains;
 - 2) Commercial stormwater retention or detention facilities located on private property;
 - 3) Roof, footing, and area drains;
 - 4) Drains not designed and constructed for use by the general public;
 - 5) Open drainage swales or ditches on private property for which no public easement of record has been granted; and
 - 6) Culverts which provide access to driveways.
 - 7) Unnamed ditches on private property as set forth in §1050.153(a).

1056.04 POWERS, DUTIES, AND RESPONSIBILITIES.

The stormwater management utility shall have the following powers, duties, and responsibilities to:

- a) Prepare ordinances as needed to implement this division and forward the ordinances to the City Council for consideration and adoption, and adopt such regulations and procedures as are required to implement this division and carry out its duties and responsibilities.
- b) Administer the acquisition, design, construction, maintenance, and operation of the stormwater management program, including capital improvements for stormwater drainage.
- c) Administer and enforce this division and all ordinances, regulations and procedures adopted relating to the design, construction, maintenance, operation, and alteration of the utility system, including but not limited to the quantity, quality, flow rate and/or velocity of the stormwater conveyed thereby.
- d) Inspect private systems as necessary to determine the compliance of such systems with this division and any ordinances or regulations adopted pursuant to this division.
- e) Prepare and revise a comprehensive drainage and flood protection plan for periodic review and adoption by the City Council.
- f) Review plans, approve or deny, inspect and accept extensions to the stormwater drainage system.
- g) Establish and enforce regulations to protect and maintain water quality within the system in compliance with water quality standards established by state, regional, and/or federal agencies as adopted or amended.
- h) Periodically analyze the cost of services and benefits provided, and the system and structure of fees, charges, fines and other revenues of the utility, and make recommendations regarding adjustments to such fees, charges, fines and other revenues.
- i) Prepare an annual operating budget for the utility and make recommendations regarding the financing of the cost of extending, improving, and replacing the system.
- j) Administer a Credit Program for educational institutions which meet the requirements as set forth in this Chapter.
- k) Require the Chief Building Official to notify the Service Director every six (6) months, beginning January, 2018, of increases or decreases in the impervious surface area of a parcel of land based upon certificates of occupancy or razing permits issued in the previous six month period.

1056.05 ORGANIZATION.

The City Council shall be the governing body of this stormwater management utility. The stormwater management utility shall be under the direction, management, and control of the Service Director who shall function as its Director. In that capacity, the Director shall supervise the day-to-day operation of the stormwater management utility, shall enforce this division and the provisions of all ordinances and regulations adopted pursuant to this division, and shall carry out the policy directives of the City Council acting in its role as governing body of the stormwater management utility.

1056.06 JURISDICTION.

The jurisdiction (service area) of the Utility shall extend to the corporate limits of the City of Avon, Ohio, including all real property legally annexed thereto.

1056.07 IMPERVIOUS SURFACE AREA AND EQUIVALENT RESIDENTIAL UNIT.

The volume, rate, and pollutant loading of stormwater runoff discharged from a given lot or parcel of real property to the City's structural and natural stormwater drainage systems and facilities is directly related to the Impervious Surface Area on that lot or parcel. Therefore, Impervious Surface Area shall be the primary parameter for establishing a rate structure to distribute the cost of services associated with the Utility and its Stormwater Management Programs and the operation, maintenance, repair, improvement, and extension of its Stormwater Drainage Facilities. Based on an analysis by the City, an Impervious Surface Area of 4,300 square feet was determined to be the average amount of Impervious Surface Area of a typical single family residential property in the City as of 2017 and is hereby designated as one (1) Equivalent Residential Unit (ERU.)

1056.08 SCHEDULE OF FEES AND CHARGES.

Each customer whose property lies within the corporate limits of the City shall pay to the City, on a monthly basis as a part of the customer's service account with the City of Avon Water/Utilities Department, the base rate per Equivalent Residential Unit (ERU) for each parcel associated with the customer's property. For customers without an account, refer to §1056.09(a).

- a) Base Rate. The base rate has been calculated to ensure adequate revenues to fund the costs of stormwater management and to provide for the operation, maintenance, and capital improvements of the stormwater system in the City. The base rate for the stormwater utility is \$2.00 per ERU per month for the year 2018. The fee shall be evaluated on an annual basis and shall be adjusted as is deemed appropriate by the City.
- b) Property Classification. For the purposes of determining the stormwater user fees, all properties in the City shall be classified into one of the following classes and will be assigned an ERU per parcel as set forth below:
 - 1) Single Family Residential Property – One (1) ERU per residence. This classification includes residential parcels within condominium developments. Each property owner shall be responsible for payment. Privately-owned common areas within developments are classified under “Nonresidential Property,” to be billed as described below.
 - 2) Double or Multi Family Property . One (1) ERU per residential unit.
 - A) Residential parcels that contain multiple residential units shall be billed for the number of residential units. The owner of the parcel shall be responsible for payment.
 - B) This classification applies to detached residential units, not apartment buildings. Apartment buildings are classified

under “Nonresidential Property,” to be billed as described below.

- 3) Nonresidential Property. One (1) ERU per parcel, or a multiple thereof, for each ERU (4,300 square feet) of Impervious Surface Area on the subject lot or parcel of real property, rounded down to the nearest whole number.
 - A) Agricultural Property. A calculated ERU shall be billed to the property owner. The calculation of ERU’s for agricultural shall include Impervious Surface Area from permanent structures only. Temporary structures, such as greenhouses and gravel access drives, will not be included in the calculation of ERU’s, on agricultural property.
 - B) Privately-Owned Common Area within Developments. A calculated ERU shall be billed to the parcel owner as described above.
 - C) Apartment Building. A calculated ERU shall be billed to the parcel owner as described above.
 - 4) Undeveloped Property. Zero (0) ERU’s.
 - A) A parcel must meet all three of the following criteria to be classified as undeveloped:
 - i) The parcel must be unimproved with less than 4,300 square feet of impervious surface;
 - ii) The parcel must NOT have a water service account; and
 - iii) The parcel must NOT be attached to or utilized by an adjacent developed parcel.
 - B) If a parcel becomes developed, an ERU will be calculated and the parcel will be classified and billed according to the guidelines above. Stormwater billing will begin the first month in which water service is active at the parcel.
 - 5) Exempt property. Zero (0) ERUs.
- c) Review of Rates.
The City shall annually review the stormwater service charges and revise the charges as necessary to ensure the following:
- 1) That adequate revenues for the maintenance and operation of the stormwater management system are generated; and
 - 2) that stormwater service charges continue to distribute the costs of maintenance and operation of the stormwater management system in proportion to the users’ contribution of stormwater runoff to the system.

1056.09 BILLING AND COLLECTION.

- a) Billing Mechanism. The Service Charges established in this Chapter shall be billed on a monthly basis via the Water/Utilities Department. For users with a water service account, the charge will appear on the water service bill as a separate line item. Users without a water meter or current water billing will

receive a bill from the Water/Utilities Department with the stormwater fee as a solitary charge.

- b) Responsible Party. For residential and non-residential properties, the party responsible for payment of the stormwater bill shall be the property owner. The stormwater bill will accompany the water bill as described above. In instances where the owner of the property is not responsible for the water bill, the owner will receive a separate bill with the stormwater fee as a solitary charge, e.g., where the developed parcel contains a rented home, double or multi-family home, office buildings, retail stores, apartment buildings, etc. The owner of the parcel(s) will receive the stormwater bill for the entire property, independent of the tenants occupying the space and their respective water bills.
- c) Delinquencies. Water Service may be discontinued in accordance with the provisions contained in Section 1040.02 if any portion (water or stormwater) of the combined service account becomes delinquent. All provisions contained in Section 1040.02 shall also apply in the event of a delinquent account. The Service Director shall have the authority to make final determinations regarding billing disputes and to make legitimate billing adjustments. A financial statement of profit and loss shall be filed with the Service Director for each calendar year, within ninety (90) days after the close of each year.

1056.10 ESTABLISHMENT OF A STORMWATER MANAGEMENT ENTERPRISE FUND; DISPOSITION OF REVENUES OF THE UTILITY.

Pursuant to and in accordance with Section 5705.09(G) of the Revised Code, there is hereby established a special, segregated and distinct sewer fund, to be known as the "Stormwater Utility Fund No. 633". All moneys collected as Service Charges and interest and penalties thereon, and any other revenues or receipts of the Utility, shall be deposited in said Stormwater Management Enterprise Fund. The moneys in the Stormwater Management Enterprise Fund shall be used only to pay:

- a) costs of providing the Utility's Stormwater Management Programs;
- b) costs of operating, maintaining, repairing and replacement the capital facilities of the Stormwater Drainage System;
- c) costs of planning, design, acquisition, construction, reconstruction, improvement, and extension of capital facilities of that System;
- d) educational and other programs and measures as needed to meet applicable federal and state mandates ; and
- e) debt service on obligations incurred and to be incurred for capital facilities of that System and to maintain adequate fund reserves to provide for reasonable expected variations in the collection of Services Charges, in the cost of providing services, and in the demand for services.

The moneys in the Stormwater Management Enterprise Fund shall not be used for general or other governmental or proprietary purposes of the City, except to pay for costs incurred by the City in rendering services associated with the Utility. For that purpose, the City Council may adopt a cost allocation plan that identifies, accumulates, and distributes allowable direct and indirect costs that may be paid from the Stormwater Management Enterprise Fund, and that prescribes a method for allocating those costs. The plan shall authorize payment of only those costs incurred by the Utility, or a federal or state grant program, and those costs incurred by the General and other funds of the City for a common or joint purpose, that are necessary and

reasonable for the proper and efficient administration of the Utility and properly attributable to the Stormwater Management Enterprise Fund. The plan shall not authorize payment from the Stormwater Management Enterprise Fund of any general government expense required to carry out the overall governmental responsibilities of the City.

1056.11 CREDITS.

All developed parcels are required to pay the calculated stormwater fee. No credits/reductions to this baseline are available outside of the education credit detailed below. The City recognizes that non-residential properties are required by law to provide stormwater detention and water quality treatment onsite. Meeting the mandated requirements for stormwater management is not a basis for exemption. The educational credit available to schools for providing stormwater management education classes is outlined below. As stated, this is the only available credit.

- a) Education Credit for School Institutions. Elementary, middle, and high schools that provide educational activities regarding watershed pollution and protection, surface and groundwater resources, and the effects of urbanization on these resources will assist the City of Avon in achieving public outreach and education as required by the NPDES permit. Therefore these facilities are eligible for a Seventy-Five Percent (75)% reduction in the stormwater management utility fee for the school site. The credit is subject to the following conditions:
 - 1) The institution is an accredited K-12 educational institution that serves at least Fifty (50) students on a property parcel;
 - 2) The education outreach is designed to reach every student in the school at least once during their time at that school location; and
 - 3) The educational activities shall consist of a minimum of one (1) hour of instructional content specific to watershed education. Approved topics include but are not limited to:
 - A) The natural water cycle as well as the urban water cycle, including water and wastewater treatment;
 - B) The watershed concept, stream formation, and causes of erosion and flooding;
 - C) Effects of stormwater and surface water pollution on Northeast Ohio rivers, streams, and Lake Erie;
 - D) Stormwater runoff pollution prevention; and
 - E) Water conservation and its relevance in water-rich Northeast Ohio;
 - F) Watershed management, topography, and the geologic history of our region; or
 - G) The function and ecosystem services provided by streams, wetlands, and floodplains for flood control and erosion control.
 - 4) The institution will provide documentation of curriculum taught and verification of the number of students that received instruction annually. Documentation should include specifics of curriculum and/or lesson plans. For topics that are independent of those listed above, prior review and approval of lesson plans by the Administrator is required to be eligible for the credit.
- b) Restrictions. Separate parcels owned by the school or school district such as administrative, transportation, or maintenance facilities where no educational

curriculum is delivered, as well as closed school facilities, are not eligible for the Education Credit.

- c) Credit Application Procedure. Applications must be submitted with all required documentation as described herein. Applications can be submitted via e-mail to Service Department or via mail to 35400 Schneider Court, Avon, Ohio 44011. Applications must be received by the close of business every June 15th. All schools shall receive the Seventy-Five Percent (75%) credit at the commencement of this legislation. To continue to receive said credit, a school will be required to comply with the provisions of this section by June 15th, 2018 and every year thereafter.
- d) Processing. When an application is received, the City will conduct an administrative completeness review of all submitted materials. If the application is not complete, the City will contact the applicant and request the additional information necessary to complete the application. Following the receipt of a complete application, the City will provide a complete review and the applicant will be notified in writing within 20 business days if an application is approved or denied. Denied requests may be resubmitted addressing City comments and must be received no later than the close of business August 1. Only one (1) resubmittal is permitted. The second review is the final decision for that calendar year. There is no further appeal. To receive the Education Credit, applicants must submit the documentation listed below to the Avon Service Department, 35400 Schneider Court, Avon, Ohio 44011 (email: service@cityofavon.com):
 - 1) Education Credit Application;
 - 2) Lesson plan form; and
 - 3) Final report form, which will include grade levels using the curricula (must be at least 25% of all grades at school or school district), as well as estimated number of students reached each school year. Final report form must be received by the City no later than June 15th of the applicable school year.
- e) Recertification.
 - 1) The Education Credit is valid for one (1) year. The school must reapply every year to continue to receive the credit.
 - 2) Failure to submit the required documentation by June 15th will result in elimination of the credit.

1056.12 APPEAL.

The single-family residential fee will be a flat rate for each dwelling unit, or ERU, and cannot be adjusted. For double and multi-family properties, the number of units on a property can be reviewed. For non-residential properties, the calculated ERU's can be reviewed. All appeals shall be directed to and handled by the Service Director. The process for making an official appeal is as detailed below:

- a) Complete “*Stormwater Utility Fee Appeal Form A- Initial Review*”, available online at service@cityofavon.com or at the Service Department, 35400 Schneider Court, Avon, Ohio 44011.
- b) Completed forms shall be submitted to the Service Department, via email or in person.

- 1) Submittal of the appeal will trigger verification of the impervious area calculation or the number of dwellings by the Engineering Department utilizing available City of Avon Geographic Information System (GIS) information. Formal response with the results will be provided to the property owner within twenty-one (21) days of receipt of the Appeal Form.
- c) In the case that the appeal is approved, the stormwater bill issued prior to submittal of the appeal will be revised to reflect the new calculated ERU. All future stormwater bills will be likewise revised. Stormwater bills issued for billing cycles prior to submittal of the formal Appeal Form will NOT be revised.
- d) In the case that the appeal is rejected, further dispute by the property owner may be submitted within 30 days. This appeal must be initiated by submission of the “*Stormwater Utility Fee Appeal Form B- Secondary Review*” form, available online (www.cityofavon.com) or at the Service Department (Utilities Building, 35030 Detroit Road) and must include detailed information regarding the property’s impervious area. This information shall include drawings and calculations signed and stamped by a licensed Professional Surveyor within the State of Ohio. Specifically the property owner shall submit:
 - 1) A current (within the past 12 months) surveyed drawing outlining the limits of impervious area within the property; and
 - 2) Certified calculation of the impervious area.
- e) The submitted detailed information will be reviewed by the Service Director, and the property owner will receive a final formal response within 14 days of receipt of the detailed information. No appeal after this notification will be received. The decision of the Service Director shall be final.

1056.13 EFFECTIVE DATE.

Stormwater service charges shall accrue beginning January 1, 2018 on all existing property owners who meet the criteria set forth herein and shall be billed monthly thereafter. For all new construction, charges shall commence and be payable with their initial water bill.