

BOROUGH OF EBENSBURG

ORDINANCE #612

**AN ORDINANCE OF THE BOROUGH OF EBENSBURG, CAMBRIA COUNTY,
PENNSYLVANIA ESTABLISHING A FEE FOR SUPPORT OF A
STORMWATER MANAGEMENT SYSTEM**

WHEREAS, the Borough of Ebensburg has constructed, owns, operates, and maintains, and will continue to construct, own, operate, and maintain, an extensive public stormwater management system to collect and manage stormwater to protect the health, safety and welfare of its citizens; and

WHEREAS, the Borough desires to assess an equitable fee for all developed properties that are connected with, use, are serviced by, or are benefited by such stormwater management system to provide a dedicated funding source for the ongoing expenses associated with the Borough's stormwater management system; and

WHEREAS, the Borough commissioned a Stormwater Conveyance System Analysis Report, compiled by L.R. Kimball and dated September 2013; and

WHEREAS, the Borough commissioned a Stormwater Utility Rate Analysis Report, compiled by L.R. Kimball and dated June 2014.

NOW THEREFORE, BE IT ORDAINED AND ENACTED by the Council of the Borough of Ebensburg, County of Cambria and Commonwealth of Pennsylvania, and it is hereby Ordained and Enacted:

Section 1. Title

This chapter shall be known and may be cited as the "Borough of Ebensburg Stormwater Management System User Fee Ordinance."

Section 2. Statement of Findings

A. The Borough of Ebensburg incurs costs to maintain an extensive public stormwater system. The Borough's stormwater system includes underground pipes, conduits, inlets, outfalls, culverts, catch basins, reservoirs and lake, flood control structures, gutters, ditches, channels, detention ponds, public best management practices, public streets, curbs, conveyances, appurtenances and drains (collectively the "Stormwater Management System").

B. Inadequate management of accelerated stormwater runoff throughout a watershed increases flood flows and velocities, contributes to erosion and sedimentation, overwhelms the carrying capacity of existing streams and storm sewers, greatly increases the cost of public facilities to convey and manage stormwater, undermines floodplain management and flood mitigation efforts in upstream and downstream communities, reduces groundwater recharge and threatens public health and safety.

C. Inadequate planning and management of stormwater runoff throughout a watershed can harm surface water resources by changing the natural hydrologic patterns, accelerating stream flows (which increase scour and erosion of stream beds and stream banks thereby elevating sedimentation), destroying aquatic habitat, and elevating aquatic pollutant concentrations and loadings such as sediments, nutrients, heavy metals and pathogens.

D. A comprehensive program of stormwater management is fundamental to the public health, safety, welfare and the protection of the residents of the Borough of Ebensburg, their property, resources and the environment in order to control items such as flooding, erosion and pollution.

E. Federal and State regulations (including those found at 40 CFR Part 122) require the Borough of Ebensburg to implement and properly maintain a program of stormwater controls. The Borough of Ebensburg is required to obtain a permit for stormwater discharges from their separate storm sewer system under the National Pollutant Discharge Elimination System (NPDES) permit. In compliance with such Federal and State Regulations, the Borough enacted its Stormwater Management Ordinance, Ordinance No. 576, in June 2010.

F. In an urban environment such as the Borough of Ebensburg, each property uses or is in some fashion connected with, serviced by or benefited by the public Stormwater Management System.

G. Impervious surface is a primary characteristic of a property's generation of stormwater and usage of the Stormwater Management System.

H. The Borough of Ebensburg desires to establish fair and equitable user charges to assure that each lot, developed parcel, building, and recipient of services within the Borough of Ebensburg will pay its proportionate share of the costs of operation, maintenance, repair, regulatory compliance, administration, replacement and improvement related to the Stormwater Management System and stormwater services provided or paid for by the Borough of Ebensburg.

I. The charges as determined herein are fair and equitable and are based upon the following facts.

1. A minimum fee per residential unit is reasonable; the basis for the equivalent single-household detached residential unit of 2,830 square feet of impervious surface was based on a statistical sampling of properties in the Borough of Ebensburg.

2. The requirement that a property have a minimum 400 square feet of impervious surface to be assessed a fee is reasonable based on the use of aerial photography to determine impervious surface.

3. The use of aerial photography and Geographic Information Systems (GIS) analysis provides an accurate measurement for impervious surface.

4. The standard charge for single-household detached dwellings is based on the fact that there is not a great deal of variation in size and that on larger commercial and institutional properties (non-single household detached properties), the opportunity to control runoff in a meaningful way does exist and should be encouraged and acknowledged.

Section 3. Definitions

A. Words and terms used in this Ordinance and not given specific definition shall be defined as set forth in applicable statutes of the Commonwealth of Pennsylvania or Ordinances of the Borough of Ebensburg, if any, and shall otherwise be given their ordinary and common meaning.

B. For purposes of this Ordinance, the following words and terms shall be defined as set forth below:

The Authority – The Ebensburg Municipal Authority

Developed Parcel - A parcel altered from a natural state that contains impervious surface equal to or greater than 400 square feet. Excludes parcel adjoining a Single-Household Detached, owned by the same owner, on which the only development is an impervious surface(s) that is an appurtenant residential use that would customarily have been created on the adjoining Single-Household Detached parcel had the adjoining lot not existed and been owned by the same owner; i.e. a garage, driveway, shed, pool, patio, etc. Also excludes cemeteries for human remains.

Equivalent Residential Unit (ERU) - The measure of impervious ground cover for a typical single-household detached residential property used in assessing the fees for each parcel of developed property, and which has been determined to be 2,830 square feet.

Impervious Surface - A surface that prevents or retards the infiltration of water into the ground in a manner that such water entered the ground under natural conditions pre-existent to

development. Impervious surface (or area) includes, but is not limited to: roofs, additional outdoor living spaces, patios, garages, storage sheds and similar structures, parking or driveway areas (including pavement, concrete, pavers, brick, compacted aggregate), and any private streets and sidewalks. Any travel areas proposed to initially be gravel or crushed stone shall be assumed to be impervious surfaces.

Non-Single Household Detached (NSHD) - Any developed parcel not fitting the definition of single-household detached. NSHD shall include, but not be limited to, attached single-family houses, multi-family houses, townhouses and condominiums, apartments, boarding houses, hotels and motels, churches, industrial properties, commercial properties, manufactured home or mobile home parks, commercial and office buildings, storage areas, parking lots and other impervious areas, parks, recreation properties, public and private schools and universities, hospitals and convalescent centers, office buildings, government properties, and mixed-use properties.

Operation and Maintenance - The associated costs of equipment and facilities, energy, manpower, materials, transportation and services required to collect, convey, detain, pump and transport stormwater; keep equipment, infrastructure, and facilities functioning satisfactorily and economically; administer the Stormwater Management System; and shall include sums paid to defray costs of the Borough of Ebensburg's improvements to the Stormwater Management System.

Owner - Any person, firm, corporation, individual, partnership, trust, company, association, government agency, society or group owning real property in the Borough of Ebensburg.

User Fee - Sums assessed, imposed and to be collected from each developed lot, parcel, building or portion thereof which uses, benefits from or is serviced by the Stormwater Management System or which discharges stormwater, directly or indirectly, into the public Stormwater Management System, for the use of and the service rendered and improvement of such system.

Replacement - The associated costs of obtaining and installing equipment, infrastructure, accessories or appurtenances which are necessary during the service life of the Stormwater Management System so as to maintain the capacity and performance for which said system was designed and constructed and shall include costs associated with improvements to the Stormwater Management System.

Single-Household Detached (SHD) - Developed parcel containing one (1) structure which contains one (1) or more rooms with a bathroom and kitchen facilities designed for occupancy by one (1) family and shall include single family houses, single family units, manufactured homes, and mobile homes located on individual lots or parcels of lands. Developed parcels may be classified as 'single-household detached' despite the presence of incidental structures associated with residential uses such as garages, carports or small storage buildings. 'Single-household detached' shall not include developed land containing: structures used primarily for non-residential purposes; manufactured homes and mobile homes located within manufactured home or mobile home parks; or other multiple unit residential properties such as apartments, condominiums and town homes.

Stormwater Management System - The system of collection and conveyance, including underground pipes, conduits, mains, inlets, culverts, catch basins, gutters, ditches, manholes, outfalls, reservoirs and lake, flood control structures, stormwater best management practices, channels, detention ponds, public streets, curbs, drains and all devices, appliances, appurtenances and facilities appurtenant thereto used for collecting, conducting, pumping, conveying, detaining, discharging and/or treating stormwater.

Stormwater - Water from a rain or snowfall event that flows across the land and eventually into rivers, creeks, lakes, ditches and canals resulting in debris, sediment, pollutants, bacteria and nutrients from sidewalks, streets, parking lots, and other impervious surfaces washing into gutters, through storm drains, and eventually flowing into creeks and rivers.

Undeveloped Parcel - A parcel that does not meet the definition of developed parcel. Includes cemeteries for human remains.

User - Any person, firm, corporation, individual, partnership, company, association, government agency, society or group using, benefiting from or being served by the public Stormwater Management System.

Section 4. Statutory Authority

A. The Borough of Ebensburg is empowered to regulate these activities by the authority of the Act of October 4, 1978, 32 P.S., P.L. 864 (Act 167), 32 P.S. Section 680.1 *et seq.*, as amended, the "Storm Water Management Act", and the Borough Code, Title 53 P.S. Section 35101 *et. seq.*

B. The Borough of Ebensburg is also empowered to regulate land use activities that affect stormwater runoff and stormwater management systems by the authority of the Act of July 31, 1968, P.L. 805, No. 247, The Pennsylvania Municipalities Planning Code, as amended. See also, Environmental Protection Agency, Region III, *Funding Storm Water Programs*, January 2008, EPA 833-F-07-012.

C. The Borough of Ebensburg, through its duly created municipal authority, is also empowered to undertake stormwater planning, management and implementation by the authority of the Act of May 2, 1945, 53 Pa. C.S. (Act 164), The Pennsylvania Municipal Authorities Act, as amended. See specifically Act 68 of 2013, July 9, 2013, P.L. 569, No. 68.

Section 5. Imposition of User Fees

For the use of, benefit by and the services rendered by the Stormwater Management System, including its operation, maintenance, repair, replacement and improvement of said system and all other expenses, user fees are hereby imposed upon each and every developed lot, parcel of land, building or portion thereof that is connected with, uses, is serviced by or is benefited by the Borough of Ebensburg's Stormwater Management System, either directly or indirectly, and upon the owner(s) of such developed lots, parcels of land or buildings. Such user fees shall be payable to the Borough of Ebensburg by and collected from the owners of such developed lots, parcels of land or buildings as hereinafter provided, and shall be determined as set forth below.

A. Single-household detached residential dwellings shall be charged for one (1) ERU for each individual dwelling unit. The charge per ERU shall be set at \$4 per month (\$48.00 annual basis) effective September 1, 2014. Beginning on January 1, 2016 the charge shall increase to \$8 per month (\$96.00 annual basis). Thereafter, the charge per ERU may be adjusted from time to time as determined by Borough Council.

B. The charge for all other developed non-single household detached parcels within the Borough of Ebensburg shall be based upon the number of square feet of measured impervious surface, as determined through aerial photography and surface feature evaluation processes, expressed in whole ERUs by rounding to the next highest half ERU. The charge for said properties shall be computed by multiplying the number of ERUs for a given parcel by the unit rate established by the Borough of Ebensburg as set forth in subsection A above. In no event shall any such parcel be charged less than one ERU, nor shall any such parcel be charged more than thirty (30) ERUs.

C. Notwithstanding the foregoing, public streets, considered a part of the Stormwater Management System, shall be exempt from user fees under this Ordinance.

Section 6. Uniform Application of User Fees

User Fees shall be assessed, imposed, liened and collected as to all owners, lots, parcels, buildings units and users.

Section 7. "User" and "Owner" Distinguished

References in this Ordinance to "use," "user," "unit" or portion of a lot, parcel or building with respect to the calculation and assessment of user fees shall not be construed to modify or alter the fact that the fees imposed by this Ordinance are assessed to the owner of each developed lot, parcel, building and such owner shall be and remain liable for payment of the same, whether or not such owner occupies the property or directly uses the Stormwater Management System. Nothing in this Ordinance shall be construed to prohibit or limit an owner's ability to collect by lease or contract sums due by a tenant or other occupier of the owner's property, but such lease or contract shall not bind the Borough of Ebensburg or limit in any way the Borough of Ebensburg's authority to impose, assess, lien and collect stormwater user fees.

Section 8. Billing and Collection of User Fees

The User Fees fixed and established by this Ordinance shall be effective as to all lots, parcels, buildings or portions thereof that use, are served or are benefited by the Stormwater Management System existing as of the effective date of this Ordinance, and shall be effective to all other lots, parcels, buildings or portions thereof that use or are so served or benefit subsequent to the effective date of this Ordinance. The billing pursuant to this Ordinance shall be performed in the same manner and at the same frequency as is performed for water and wastewater utilities.

Section 9. Stormwater Management System Rules & Regulations

The Ebensburg Municipal Authority shall adopt, by resolution, rules and regulations governing the Stormwater Management System. Borough Council, as manager of the system, shall enforce the rules and regulations as adopted by the Authority. Said Rules and Regulations shall include right of inspection, rules relative to connection, maintenance and repair, billing, payments, rates and fees, and penalties.

Section 10. User Fees Constitute Lien on Property

In accordance with the Municipal Claims Act, 53 P.S. § 7101, et seq. (as amended), all rates and charges, penalties, interest, collection fees, lien filing and satisfaction fees and other charges imposed for failure to pay promptly shall constitute a lien upon and against the subject property and its owner from the date of their imposition and assessment.

Section 11. Credits Applicable to Stormwater Charges

The Borough shall establish a Credit Policy and develop a manual documenting the credit process. Credits against user fees are an appropriate means of adjusting user fees, and under some circumstances, to account for applicable mitigation measures. Upon adoption by Council, credit mechanisms shall be incorporated herein as the Borough of Ebensburg Stormwater User Fee Credit Manual, which may be updated or revised as needed at Council's discretion. No exception, credit, offset, or other reduction in user fees shall be granted based on age, race, tax status, economic status or religion of the customer, or other condition unrelated to the demand for and cost of services provided by the Borough of Ebensburg.

Section 12. Appeal Procedures

Any owner who believes the provisions of this Ordinance have been applied in error may appeal in the following manner and sequence.

A. An appeal of the rate and charge must be filed in writing with the Borough Manager or his/her designee within thirty (30) days of the charge being mailed or delivered to the property owner. Any appeal must state the reasons for the appeal.

B. Using information provided by the appellant, the Borough Manager (or his/her designee) shall conduct a technical review of the conditions on the property and respond to the appeal in writing within thirty (30) days. In response to an appeal, the Borough Manager may

adjust the user fees applicable to the property in accordance with the provisions of this Ordinance and related policies and procedures.

C. Any person aggrieved by the decision of the Borough Manager may request and shall then be granted a hearing before the Ebensburg Borough Council; provided, he files with the Ebensburg Borough Council within 10 days after notice of the Borough Manager's decision, a written petition requesting such hearing and setting forth a brief statement of the grounds therefore. The hearing shall commence not later than 30 days after the date on which the petition was filed unless postponed for sufficient cause. After such hearing the Ebensburg Borough Council shall sustain, modify or overrule the action of the Borough Manager.

Section 13. Policies and Procedures Authorized

A. The Borough of Ebensburg may by resolution adopt such policies and procedures as it deems appropriate to ensure collection of rates and charges assessed and imposed pursuant to this Ordinance. Without limitation, collection procedures may include referral of delinquent accounts to a collection agency; filing of liens; scire facias sur municipal lien proceedings to collect filed liens; and any and all other measures or combination thereof which the Borough may deem appropriate.

B All costs of such collection procedures, including but not limited to fees for filing, perpetuation and satisfaction of liens, collection fees, attorney's fees, court costs, litigation expense, charges for service of documents, shall upon being incurred by the Borough of Ebensburg be imposed as a charge for nonpayment and added to the balance due on said owner's account.

C. No lien shall be satisfied, nor shall any collection proceeding be discontinued until all amounts due on an account, including user fees, penalties, interest, collection fees, attorney's fees, court costs and other charges are first paid in full to the Borough of Ebensburg in the discretion of the Borough.

Section 14. Stormwater Management System Fund

The funds received from the collection of the user fees authorized by this Ordinance shall be deposited into the Borough of Ebensburg Stormwater Management System Fund, a fund dedicated to the operation, administration, maintenance, repair and improvement of the Stormwater Management System.

Section 15. No Warranty or Action

Nothing in this Ordinance or in the design, operation or maintenance of the Stormwater Management System shall be deemed to constitute a warranty, express or implied, nor shall it afford the basis for any action seeking the imposition of money damages against the Borough of Ebensburg, its officers, employees, or agents. The Borough of Ebensburg expressly reserves the right to assert all available immunities and defenses in any action seeking to impose monetary damages upon the Borough of Ebensburg, its officers, employees and agents arising out of any alleged failure or breach of duty or relationship as may now exist or hereafter be created.

Section 16. Severability

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or its application to any person, property or circumstances is for any reason held invalid or unconstitutional by any court, such holding shall not be construed to affect the validity of any of the remaining provisions of this Ordinance or its application, for such portion shall be deemed as a separate, distinct and independent provision from the remaining provisions which shall be and remain in full force and effect. It is hereby declared the legislative intent that this Ordinance would have been adopted had such invalid or unconstitutional provision of its application not been included therein.

ENACTED AND ORDAINED this 28th day of July 2014.

EBENSBURG BOROUGH COUNCIL

ATTEST:

Doug Tusing, President

Daniel L. Penatzer; Manager

Approved this 28th day of July 2014.

Randy S. Datsko, Mayor