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4 **AN ORDINANCE AMENDING CHAPTER 53 OF**
5 **THE CITY OF FORT WAYNE CODE OF ORDINANCES**

6 **WHEREAS**, the Common Council of the City of Fort Wayne, Indiana
7 (“Council”) established the Fort Wayne Stormwater Utility in 1991 and last approved a
8 stormwater service fee adjustment on March 28, 2017; and

9
10 **WHEREAS**, the Fort Wayne Stormwater Utility has developed a Capital
11 Improvement Plan (“CIP”) that includes drainage projects to protect homes and public
12 property, to improve public health and safety, and to comply with federal and state
13 stormwater quality regulations; and

14 **WHEREAS**, Baker Tilly was hired by Fort Wayne City Utilities to analyze the
15 Stormwater Utility’s proposed CIP and project revenues in order to arrive at a
16 stormwater rate that will generate sufficient funds to meet the fiscal needs of the
17 stormwater utility including:

18 (a) Payment of all legal and necessary expenses incident to the operation of
19 the utility;

20 (b) Provision of a sinking fund, a debt service reserve, adequate money for
21 working capital and making system extensions and replacements to the extent not
22 provided for through depreciation;

23 (c) Meeting the financial obligations of the Stormwater Utility’s CIP; and

24 (d) Compliance with the water quality improvement provisions of the
25 National Pollutant Discharge Elimination System (“NPDES”) program of the Clean
26 Water Act; and

27 **WHEREAS**, after reviewing a cost of service study by Baker Tilly, the Board of
28 Stormwater Management of the City of Fort Wayne found that the existing rates and
29 charges for the use of services rendered by the Fort Wayne Stormwater Utility do not
30 produce sufficient revenue to fund the Stormwater Utility, including, but not limited to

1 those costs related to the Utility's CIP;

2
3 **WHEREAS**, the Board of Stormwater Management, after conducting a public
4 hearing, resolved that an adjustment in the Stormwater Utility fee is necessary to provide
5 sufficient revenue to maintain the Stormwater Utility property in a sound physical and
6 financial condition to render adequate and efficient service and to fund the Utility's CIP,
7 which adjustments will produce a fair and just rate for such services and improvements
8 and has recommended an adjustment of the existing Stormwater Utility fee in five
9 phases, with the first phase to take effect not earlier than thirty (30) days after approval
10 of this ordinance, the second phase to take effect January 1, 2026, and phases three
11 through five to take effect on January 1, 2027, January 1, 2028, and January 1, 2029
12 respectively;

13 **WHEREAS**, the Board of Stormwater Management also resolved that it is in the
14 best interest of the Stormwater Utility to make further changes to Chapter 53 of the Fort
15 Wayne Code of Ordinances, specifically in regards to stormwater discharge discounts
16 and credits and clarification of certain pre- and post-construction stormwater and erosion
17 control requirements; and

18 **WHEREAS**, the Common Council of the City of Fort Wayne now finds it is in
19 the best interest of the Fort Wayne Stormwater Utility, in order to provide income
20 sufficient to maintain the utility property in a sound physical and financial condition to
21 be able to render adequate and efficient service to its users while implementing the
22 Utility's latest CIP to revise the stormwater utility fee charged to all users as shown
23 herein for the years listed, effective as of the following dates: the initial adjustment for
24 the year 2025 shall take effect no earlier than thirty (30) days after adoption of this
25 Ordinance and any necessary approval by the Mayor; subsequent adjustments shall take
26 effect on January 1 of each successive year through 2029.

27 **WHEREAS**, the Common Council of the City of Fort Wayne further finds it is in
28 the best interest of the Fort Wayne Stormwater Utility to make further changes to
29 Chapter 53 of the Fort Wayne Code of Ordinances as provided below.
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1 **NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL**
2 **OF THE CITY OF FORT WAYNE, INDIANA;**

3
4 **SECTION 1.** That Section 53.56 of the Fort Wayne Code of Ordinances is
5 hereby deleted in its entirety and replaced with the following:

6 **§ 53.56 STORMWATER RATE ESTABLISHMENT PROCEDURES.**

7 (A) The stormwater service rate shall be as follows:

8

<i>Stormwater Rate per Month</i>	<i>Unit of Measure</i>	<i>Effective 2025</i>	<i>Effective January 1, 2026</i>	<i>Effective January 1, 2027</i>	<i>Effective January 1, 2028</i>	<i>Effective January 1, 2029</i>
Residential	ERU	\$ 6.14	\$ 6.38	\$ 6.64	\$ 6.90	\$ 7.18
Non-Residential	ERU	\$ 4.95	\$ 5.14	\$ 5.35	\$ 5.56	\$ 5.79

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12 For purposes of this chapter, a month shall be considered to be a period of 25
13 days up through 35 days depending on billing cycles. Any billings for stormwater
14 service outside this time shall be on a per diem basis.

15 (B) These stormwater rates are designed to recover the cost of rendering
16 stormwater service to the users of the stormwater system and shall be the basis for
17 assessment of the city's stormwater service charge. These rates are established so as to
18 maintain adequate fund reserves to provide for reasonably expected variations in the cost
19 of providing services, as well as demand for services.

20 **SECTION 2.** That Section 53.57 of the Fort Wayne Code of Ordinances is
21 hereby deleted in its entirety and replaced with the following:

22 **§ 53.57 RATE STRUCTURE AND CALCULATION.**

23 (A) For the purposes stated in § 53.02 and subsequent, there is hereby
24 assessed a stormwater service charge to each user situated within the corporate limits of
25 the city who contributes directly or indirectly to the stormwater system of the city, in an
26 amount as determined below.

27 (B) For any such property, lot, parcel of land, building or premises which
28 contributes directly or indirectly to the stormwater system of the city, such charge shall
29 be based upon the quantity of impervious area situated thereon.
30

1 (C) All properties having impervious area within the city will be assigned a
2 number of equivalent residential units (ERUs), with all properties having impervious
3 surface being assigned at least one ERU.

4 (1) Residential properties. A monthly charge for stormwater service
5 rendered to residential properties shall be charged to each account within the city
6 limits according to the service address. All residential properties are hereby
7 assigned one ERU. This fee shall apply to all residential properties as defined
8 herein.

9 (2) Non-residential properties. Non-residential properties will be
10 assigned a number of ERUs based upon the property's individually measured
11 impervious area (in square feet) divided by 2,500 square feet (one ERU). The
12 division will be calculated to the first decimal place.

13 (3) For the purposes of quantifying the discharge of non-polluted
14 groundwater into the stormwater management system via sump pumps,
15 geothermal heating and cooling systems or similar devices, one equivalent
16 residential unit (ERU) shall be equal to 7,667 gallons per month.

17 (4) Only whole ERUs shall be used in determining the assignment of
18 gross ERUs to a property. All rounding necessary to reach the appropriate whole
19 ERU shall be done according to mathematical convention (0 – 0.4 rounded down
20 to nearest whole ERU; 0.5 – 0.9 rounded up to nearest whole ERU).

21 (D) There shall be no exceptions or exemptions from the assignment of gross
22 stormwater ERUs.

23 **SECTION 3.** That Section 53.60 of the Fort Wayne Code of Ordinances is
24 hereby deleted in its entirety and replaced with the following:

25 **§ 53.60 DISCOUNTS AND CREDITS POLICIES AND PROCEDURES.**

26 (A) This section establishes a discount for land and buildings used for various
27 purposes when exempt from property taxation under IC 6-1.1-10-1, 6-1.1-10-2, 6-1.1-10-
28 4, 6-1.1-10-5, and 6-1.1-10-16.

29 (B) This section also discusses some of the most common credit
30 considerations and requirements but is not intended to be the exclusive authority. The
Board, through the rules and regulations of the DSM and the adoption of the City

1 Utilities Stormwater Credit Manual shall more fully and completely establish the credit
2 policies and procedures for stormwater management.

3 (1) Discounts. The following categories of property exempt from
4 property taxation shall be entitled to up to a 25% discount off of the gross ERUs
5 assigned for any such land or building under § 53.57 where the statutory
6 exemption has been granted and can be confirmed through the records of the
Allen County Auditor's office, upon property application for said discount:

7 (a) IC 6-1.1-10-1. Property of the United States and its
8 agencies and instrumentalities.

9 (b) IC 6-1.1-10-2. Property owned by the state, and any
10 agency thereof of the Indiana Bureau of Motor Vehicles Commission.

11 (c) IC 6-1.1-10.4. Property owned by a political subdivision
of the state.

12 (d) IC 6-1.1-10.5. Property owned by the city which is used to
13 provide a municipal service.

14 (e) IC 6-1.1-10-16. Property owned, occupied, and used for
15 educational, literary, scientific, religious, or charitable purposes.

16 (2) Credit availability.

17 (a) Credit will be available to all non-residential properties
18 with more than one assigned ERU for various forms and levels of
abatement.

19 (b) Maintenance requirements. Credit will only be allowed for
20 properties where structural controls are maintained in fully functional
21 condition and according to maintenance criteria and design standards
22 issued by the DSM.

23 (c) Existing structure credits. Credits will be allowed for
24 previously constructed abatement features or stormwater controls until
25 December 31, 2025. Eligibility for credits after December 31, 2025 will
26 be determined in accordance with this Ordinance, rules and regulations of
the DSM, and the City Utilities Stormwater Credit Manual.

27 (d) Property location. Credit may be granted on the basis of
28 location of a given property in relation to a major waterway of the United
29 States, if it directly discharges its stormwater to that waterway in
30

1 conformance with all maintenance criteria and design standards as
2 applicable. The waterways covered by this section shall include the St.
3 Mayr's River, the St. Joseph River, the Maumee River, the major
4 tributaries of these three rivers and other ditches and drains specified in
5 the rules and regulations of the DSM, and any legal public drains under
6 the control of Allen County.

7 (e) Voluntary controls. For new developments, credit may be
8 granted where the city requires abatement features or stormwater controls
9 for quantity or quality to be constructed and/or maintained, and all city
10 standards and criteria are met. Other voluntary controls or upgrades of
11 existing systems through retrofitting will be granted credits on a case-by-
12 case basis considering the impact of the controls on the city's stormwater
13 system, as determined by the DSM.

14 (f) Detention/retention. Credit may be granted for qualifying
15 detention basins and wet ponds. Credit may be granted for other control
16 devices on a case-by-case basis providing sufficient technical justification
17 is available to make such determinations.

18 (g) Oversizing. Oversized private stormwater facilities or
19 improvements exceeding standard abatement design criteria and intended
20 to serve an area larger than the immediate project site or designed to
21 handle a larger than specified storm event as required by the DSM shall be
22 considered for additional credit.

23 (h) Industrial NPDES permit credits. No credit shall be
24 allowed for industries in compliance with federal laws and regulations
25 regarding the industrial stormwater discharge permits at this time.

26 (i) Pollution reduction credit may be granted on a case-by-
27 case basis for efforts to reduce the amount of pollutants in a user's
28 stormwater runoff or for improvements to the quality of a user's
29 stormwater discharge. This could include efforts such as setback buffers
30 or open channel maintenance activities.

(j) Regional basins. Credit will not be granted to properties
draining into ponds or basins maintained or owned by the city. Credit will
be considered for privately owned and maintained regional controls and

1 will be apportioned among owners on a prearranged basis.

2 (k) Percent discounted credits for private stormwater facilities.

3 1. Discounts and credits shall be computed on an ERU
4 basis. A maximum credit of less than 100% of the gross ERUs
5 originally assigned can be granted for the construction and
6 maintenance of private stormwater facilities considering the
7 potential of each to reduce peak flow and/or volume stormwater
8 flow and direct discharge capabilities. Private stormwater
9 facilities eligible for credits listed above constitute elements of the
10 secondary drainage system. The secondary system is designed to
11 drain a limited area with benefits limited to the owners of the
12 particular property or owners of adjacent properties. As such,
13 secondary elements of the system are not eligible for 100% credit.

14 2. Further, there are administrative costs involved
15 with operation of the DSM that must be shared by all users,
16 including costs incurred to meet quality-based permit
17 requirements, which provide community-wide benefits, and thus
18 cannot be credited. Discounts and credits shall be cumulative;
19 however, in no case shall the total amount of discounts and credits
20 equal more than 50% of the user's gross stormwater fee.

21 3. The formula for determining the applicable credit
22 percentage for individual parcels shall be specifically set out in the
23 rules and regulations of the DSM and the City Utilities Credit
24 Manual, as updated from time to time.

25 (l) Federal, state, city and county roadways, publicly-owned
26 airport movement areas. Publicly-owned streets and roads and highway
27 shall be given 100% credit in reliance on governmental guidance
28 documents which classify them as an integral part of the stormwater
29 conveyance system. Publicly-owned airport movement areas including
30 runways, taxiways, ramps and other areas of an airport which are used for
taxiing or hover taxiing, takeoff and landing of aircraft when constructed
and maintained similarly to public roadways, shall also qualify for this
credit. The surface water control systems incorporated in the design of

1 roadways and airport movement are areas engineered to convey all design
2 runoff without street flooding, and the like associated with frequent, small
3 runoff events up to about five – or ten recurrence intervals, and as such,
4 constitute elements of the primary drainage system. Primary elements of
5 the drainage system yield community-wide benefits and are installed to
6 service the general public's interests, conveying runoff from large areas
encompassing whole watershed in some cases.

7 (3) Procedure.

8 (a) Timing of applications and/or determinations. Application
9 for credits shall be made on forms provided by City Utilities and
10 accompanied by the appropriate application fee. The fee shall be \$200 for
11 all applications. However, in the event that a particular application
12 requires excessive review time due to the complexity of the proposed
13 controls or other reasons, City Utilities may charge a fee for each hour
14 after three hours of review time at the rates set forth in Section 53.63 of
15 the Fort Wayne Code of Ordinances. It is the intent of the city that all
16 applications will be reviewed and credits and discounts determined within
17 90 days after submittal of a complete and correct application package.
The credit will be effective on the 1st billing cycle following approval of
the application. Credits will expire after 3 years if not renewed.

18 (b) Appeals. Appeals of credit or discount determinations
19 shall be handled consistent with the procedures set out in Section 53.59
20 for reconsideration of ERU petitions. Appeals of credit or discount
21 decisions will be made initially to the Director, or his designee. Should
22 satisfaction not be achieved, an appeal may be lodged with the Board in
23 accordance with Section 53.59.

24 (c) Application for credit or discount, or appeal of
25 determination thereon shall not constitute a valid reason for non-payment
26 of the originally assessed stormwater service charge by the user.

27 **SECTION 4.** That all initial rate adjustments for 2025 shall take effect no earlier
28 than thirty (30) days after approval of this Ordinance. Subsequent adjustments shall take
29 effect on the dates set forth herein.
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SECTION 5. That this Ordinance shall be in full force and effect from and after
its passage and any all necessary approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY

Malak Heiny, City Attorney