

RESOLUTION NO. SW2021-02-01

RESOLUTION OF THE BOROUGH OF BALDWIN STORMWATER AUTHORITY, ALLEGHENY COUNTY, PENNSYLVANIA ESTABLISHING A STORMWATER FEE TO SUPPORT THE BOROUGH OF BALDWIN STORMWATER SYSTEM

WHEREAS, the Borough of Baldwin (the “Borough”) formed the Borough of Baldwin Stormwater Authority (the “Authority”) to administer, manage, and maintain the stormwater facilities and programs of the Borough (the “Stormwater Systems”); and

WHEREAS, due to the stormwater requirements under the Borough’s MS4 Permit, as well as applicable federal regulations, it has become necessary for the Authority to assess a reasonable, equitable, and uniform fee for all applicable properties to provide a dedicated funding source for the ongoing expenses associated with the Stormwater Systems.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Borough of Baldwin Stormwater Authority that the above recitals are incorporated herein by reference, that this Resolution shall be known and may be cited as the “Borough of Baldwin Stormwater Authority 2021 Stormwater Rate Resolution” and that the Board of Directors hereby finds, resolves, establishes and directs the following:

1. PREAMBLE

- 1.1 The Borough and the Authority have incurred, and will continue to incur, costs to operate the Stormwater Systems, as well as support maintenance and capital improvements of the stormwater system infrastructure owned by the Borough.
- 1.2 A comprehensive program of stormwater management is fundamental to the public health, safety, welfare and the protection of the residents of Borough, their property, resources and the environment in order to reduce erosion and pollution and avoid overwhelming the stormwater system.
- 1.3 In a developed, urban environment, such as the Borough, each property uses or is in some fashion connected with, serviced by, or benefited by the public Stormwater Systems. Each property is benefitted by the water quality preservation and improvements associated with and achieved by compliance with MS4 Permit issued by the Pennsylvania Department of Environmental Protection, including, but not limited compliance with Pollutant Reduction Plan requirements.
- 1.4 Several property characteristics, primarily the property’s impervious area, are prime indicators of a property’s level of generation of stormwater, usage of the Stormwater Systems, and contribution to stormwater pollution.
- 1.5 The Authority desires to establish reasonable, equitable, and uniform user fees to ensure that each recipient of services within the Borough will pay its proportionate share of the costs of operation, maintenance, repairs, regulatory compliance, administration, replacement, and improvements related to the Stormwater Systems provided or paid for by the Authority and/or the Borough.
- 1.6 The charges as established herein are fair and equitable and are based upon the following facts:
 - A. The use of aerial photography, photogrammetry, and/or GIS analysis provides an accurate measurement of impervious area coverage of land parcels within the Borough.

- B. The fee unit is identified as an Equivalent Residential Unit (ERU).
- C. The basis for the ERU of 2,200 square feet of impervious area for qualification as a developed parcel subject to the Fees established herein was based on a statistical sampling of properties in the Borough's Stormwater Management Fee Study (SWMFS) Report and analysis by LSSE Engineering, Inc. dated November 2020.
- D. ERU is based on the present use of the parcel and can be categorized into 5 groups:
 - Single Family Detached Residential
 - Single Family Attached Residential
 - Duplex Residential
 - Non Single Family Property
 - Vacant Land

2. DEFINITIONS

- 2.1 **BEST MANAGEMENT PRACTICES (BMPs)** – Methods, procedures and analyses specified in the Pennsylvania Stormwater Best Management Practices Manual to reduce flooding potential and control the volume, flow rate and water quality of Stormwater.
- 2.2 **DEVELOPED PARCEL** – A parcel altered from a natural state that contains Impervious Surface equal to or greater than 800 square feet. Excludes public roads, and land under initial development prior to issuance of a certificate of occupancy; however, a parcel undergoing initial development that does not receive a certificate of occupancy within three (3) years from start of construction will be considered a Developed Parcel.
- 2.3 **DUPLEX RESIDENTIAL PROPERTIES** – Developed Properties containing a single, two family attached structure containing only two dwelling units, each of which are constructed on top of one another and divided by a common floor/ceiling structure with each dwelling unit having direct access to the outside or a property containing a single two family attached structure containing only two dwelling units each of which are entirely separated from the other by a continuous, common wall extending from the basement to the roof, each unit having independent access to the outside.
- 2.4 **EQUIVALENT RESIDENTIAL UNIT (ERU)** – The measure of impervious ground cover for a typical single-family detached residential Property used in assessing the fees for each parcel of developed Property, and which has been determined to be 2,200 square feet.
- 2.5 **IMPERVIOUS SURFACE** – A surface that prevents or impedes the infiltration of water into the ground. Impervious Surfaces include, but are not limited to, streets, sidewalks, pavements, driveway areas, and roofs. Any surface areas designed to be gravel or crushed stone shall be regarded as Impervious Surfaces. In addition, any surface designed to be constructed of permeable, pervious or porous concrete, asphalt, or pavers are also considered to be an impervious surface.
- 2.6 **NON-SINGLE FAMILY PROPERTIES** – All Developed Parcels other than Single Family Detached Residential Properties, Single Family Attached Residential Properties and Duplex Residential Properties, as described herein, including multi-family properties (containing 3 or more dwelling units) such as apartments (including those apartments comprised of individual condominium units), mobile home parks, commercial, institutional, governmental, educational and industrial parcels.
- 2.7 **OWNER** – Any person, firm, corporation, individual, partnership, company, association, organization, society or group owning real Property in the Borough.
- 2.8 **PARCEL IDENTIFICATION NUMBER (PIN)** – A discrete identification number for each lot, parcel, building or other structure within the Borough.

- 2.9 PROPERTY – Each lot, parcel, building or portion thereof, separately established by a discrete parcel identification number (PIN).
- 2.10 SINGLE FAMILY ATTACHED RESIDENTIAL PROPERTIES – Developed Parcels containing an individual dwelling unit consisting of a single family attached residential home including townhouses, row homes and condominiums where the individual condominium units are designed as Townhouses.
- 2.11 SINGLE FAMILY DETACHED RESIDENTIAL (SFR) PROPERTIES – Developed Parcels containing single family detached residential homes. Developed Parcels may be classified as “SFR” despite the presence of incidental structures associated with residential uses such as garages, carports or small storage buildings. “SFR” shall not include Developed Parcels containing: (a) structures used primarily for non-residential purposes, (b) mobile homes located within mobile home parks, (c) apartment buildings or agricultural properties (Land Use Code 112).
- 2.12 STORMWATER – Runoff water from all precipitation events, snowmelts and springs.
- 2.13 STORMWATER SYSTEM – The system of runoff avoidance, infiltration, collection and conveyance, including storm sewers, pipes, conduits, mains, inlets, culverts, catch basins, gutters, manholes, ditches, channels, basins and detention ponds, streets, curbs, drains and all devices, appliances and Stormwater BMPs, such as infiltration and filtration facilities, used for collecting, conducting, pumping, conveying, detaining, infiltrating, reducing, managing, avoiding the generation of, and treating Stormwater, which is owned by the Authority or Borough.
- 2.14 USER – Any person, firm, corporation, individual, partnership, company, association, society or group using, benefiting from or being served by the Stormwater System.
- 2.15 FEE – Funds assessed, imposed and to be collected from each Developed Parcel by discrete PIN which uses, benefits from, or is serviced by the Stormwater System, or discharges Stormwater, directly or indirectly, into the Stormwater System for the use of such system and the service rendered by, and improvement of, such system.

3. STATUTORY AUTHORITY

- 3.1 The Authority is empowered to regulate these activities pursuant to the Act of May 2, 1945, P.L. 382, as amended and supplemented, known as the Municipality Authorities Act, 53 Pa. C.S.A. § 5601, et seq.

4. IMPOSITION OF STORMWATER SYSTEM FEES

- 4.1 The Authority hereby establishes and imposes Stormwater System Fees upon each and every Developed Parcel that is connected with, uses, or is benefited by the Stormwater System, either directly or indirectly. Fees shall be imposed for the use, benefit, operation, maintenance, repair, replacement and improvement of the Stormwater System. Such Fees are to be imposed as provided herein.
- 4.2 The Fee shall be \$8.00 per month per ERU which equates to \$96.00 annual fee per ERU.
- 4.3 Each Single Family Detached Residential parcel shall initially be charged a User Fee equal to one ERU through a monthly billing process.
- 4.4 Each Single Family Attached Residential parcel shall initially be charged a User Fee equal to one-half (0.5) ERU through a monthly billing process.

- 4.5 Each Duplex Residential parcel shall initially be charged a User Fee equal to one ERU through a monthly billing process.
- 4.6 The charge for each Non-Single Family Property within the Borough shall be based upon the number of square feet of measured impervious area, as determined through aerial photography and surface feature evaluation processes, expressed in increments of one half of one ERUs by rounding to the next nearest one-half of one ERU. The Fee for each other property shall be computed by multiplying the number of ERUs for a given property by the rate as set forth above. In no event shall any Non Single Family property pay a charge of less than one ERU.
- 4.7 Notwithstanding the foregoing, public streets shall be exempt from Fees under this Resolution.

5. UNIFORM APPLICATION OF FEES

- 5.1 Fees shall be assessed, imposed, liened, and collected as to all owners of classified impervious areas who are benefited, directly or indirectly, by the Stormwater Systems pursuant to the terms of this Resolution unless exempted by law.
- 5.2 References in this Resolution to "use," "User," "unit" or portion of a lot, parcel or building with respect to the calculation and assessment of Fees shall not be construed to modify or alter the fact that the Fees authorized by this Resolution are assessed to the Owner 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 Resolution 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 Authority or limit in any way Authority's duty to impose, assess, lien and collect the Fees as set forth herein.

6. POLICIES AND PROCEDURES AUTHORIZED

- 6.1 The Fees established by this Resolution shall be effective as to all properties that use, are served or are benefited by the Stormwater Systems existing as of the effective date of this Resolution, and shall be effective to all other properties thereof that use or are so served or benefit subsequent to the effective date of this Resolution.
- 6.2 The Fees established by this Resolution shall be assessed as of the first day of each calendar year and billed on a monthly basis by the Authority or its designee. Such assessments shall be due and payable thirty (30) days from the first day of the month for which the bill is rendered.
- 6.3 Fees assessed and collected will not be subject to proration or refund by the Authority or its designee in the event a Property is sold; provided, however, that this sentence shall not bind a buyer and seller from making their own proration of any Fees assessed hereunder.

- 6.4 The Authority will adopt such other rules, regulations, policies, and procedures as it deems appropriate to ensure collection of Fees and charges assessed and imposed pursuant to this Resolution, including the establishment of guidelines for the collection of delinquent Fees. 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 all other measures or combination thereof which the Board may deem appropriate.
- 6.5 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 Authority or its designee be imposed as a charge for nonpayment and added to the balance due on said Owner's account.
- 6.6 The Board of the Authority may review and update the Fees fixed and established by this Resolution as deemed necessary.
- 6.7 Credits for onsite structural and non-structural activities which reduce and manage Stormwater runoff including detention, retention, or infiltration of water and recharge of the aquifer and thereby avoid or minimize public construction, operation, repair and maintenance of facilities and services shall be in accordance with the Stormwater Management Fee Study, dated November 2020, or as otherwise adopted by resolution by the Board of the Authority. Applications for credit shall be filed in writing, on forms provided by the Authority, with the Authority Secretary or his/her designee.

7. SEVERABILITY

- 7.1 If any section, subsection, sentence, clause, phrase or portion of this Resolution 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 Resolution 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.

8. ADMINISTRATIVE

- 8.1 **Prepay Discounts.** The prepay discount is five percent (5%) for Owners pre-paying twelve (12) months in advance with payment received by March 31. Any past due balances must be paid in full on the account before an owner can take advantage of the prepay discount for the 2021 calendar year.
- 8.2 **Late Fees/Penalty.** Effective on the first day of the calendar month next following an assessment billing, a penalty of five percent (5%) of the Fees assessed for that month and not paid within the month of the assessment shall be added for nonpayment.
- 8.3 **Interest on Unpaid User Fees.** Interest at the rate of one half percent (1/2%) per month shall accrue and be added to all original amounts of User Fees remaining unpaid at the end of the month in which the same were first imposed and assessed, and shall continue to accrue until the full amount of such User Fees are paid in full.
- 8.4 **Insufficient Funds.** In addition to applicable late fees/penalties and interest, any failed payment due to a Returned Check or Insufficient Funds is subject to \$40.00 per occurrence penalty.
- 8.5 **Ability to Lien.** In accordance with the Municipal Claims Act, 53 P.S. § 7101, et seq., as amended, all Fees, 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. No lien shall be satisfied, nor shall any collection proceeding be discontinued until all amounts due on an account, including Fees, penalties, interest, collection fees, attorney's fees, court costs and other charges are paid in full.

9. APPEAL PROCEDURES

9.1 Any Owner who believes the provisions of this Resolution have been applied in error may appeal in the following manner and sequence.

(1) An appeal of any Fee must be filed in writing, on forms provided by the Authority, with the Authority Secretary or his/her designee within thirty (30) days of the Fee being mailed or delivered to the Property Owner. Any appeal must state the reasons for the appeal.

(2) Using information provided by the Appellant, the Authority Secretary (or his/her designee) shall conduct a technical review of the conditions on the subject Property and respond to the appeal in writing within sixty (60) days. In response to an appeal, the Authority Secretary may adjust the Fees applicable to the Property in accordance with the provisions of this Resolution. All decisions by the Authority Secretary or his/her designee shall be personally delivered to the Owner or, sent to the billing address of the Owner by registered or certified mail.

(3) A decision of the Authority Secretary that is adverse to Appellant maybe further appealed to the Board within thirty (30) days of receipt of the adverse decision. The Appellant, stating the ground for further appeal, shall deliver notice of the appeal to the Authority Secretary or his/her designee. The Appellant shall present his appeal at the next meeting of the Authority that is at least seven (7) days after delivery of the appeal. The Board shall issue a written decision, including Findings of Fact and Conclusions of Law, on the appeal within ninety (90) days of the conclusion of the presentation. The decision of the Board shall be final Local Agency decision and can be appealed to the Court of Common Pleas of Allegheny County pursuant to the Local Agency Law.

10. STORMWATER REVENUE ACCOUNT

10.1 All User Fees and other Stormwater related funds authorized by this Resolution shall be deposited in the Stormwater Fund Revenue Account, an account dedicated to the operation, administration, maintenance, repair and improvement of the Stormwater System.

11. NO WARRANTY

11.1 Nothing in this Resolution or in the design, operation or maintenance of the Stormwater Systems 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 Authority, its officers, employees, or agents. The Authority expressly reserves the right to assert all available immunities and defenses in any action seeking to impose monetary damages upon the Authority, its officers, employees and agents arising out of any alleged failure or breach of duty or relationship as may not exist or hereafter be created.

11.2 Floods from Stormwater may occur occasionally that exceed the capacity of the Stormwater System maintained and financed with Fees. Nothing in this Resolution shall be deemed to imply that Properties subject to charges shall always be free from flooding or flood damage, or that all flood control projects to control Stormwater can provide complete protection from all flood and storm events. Nothing whatsoever in this Resolution shall deem the Authority or Borough liable for any damages incurred from Stormwater or from adverse water quality. Nothing in this Resolution purports to reduce the need or necessity for flood insurance and the Borough and the Authority expressly reserve the right to assert all available immunities and defenses in any action seeking to impose monetary damages upon the Borough, the Authority, their officers, employees and agents arising out of any alleged failure or breach of duty with respect to the Stormwater System.

12. REPEALER.

12.1 All resolutions or parts of resolutions which are inconsistent herewith are hereby repealed.

13. EFFECTIVE DATE

13.1 This Resolution shall become effective immediately.

Duly adopted at a meeting held on the 16th day of February 2021.

ATTEST:	BOROUGH OF BALDWIN STORMWATER AUTHORITY
By: <u>Robert Firek</u> Robert Firek, Secretary	By:  <u>DENISE MAIDEN</u> , Chairperson