

TOWN OF WEST WARWICK

ORDINANCE

OF THE

TOWN COUNCIL

ORDINANCE NO.

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE TOWN OF WEST WARWICK, BY ADDING THERETO "PART II, SPECIAL ACTS, ARTICLE 47, STORMWATER UTILITY."

WHEREAS, unmitigated Stormwater has been a cause of significant property damage and is observed to routinely create serious public safety, public health, and nuisance issues in the Town of West Warwick, which are trending to become more severe with the passage of time;

WHEREAS, the Town of West Warwick has received substantial grant funding from the State of Rhode Island and the federal government for planning and implementation of sustainable Stormwater financing and Stormwater infrastructure improvement;

WHEREAS, the Town of West Warwick has engaged in analysis of existing Stormwater infrastructure and operations and identified a very significant capital and labor resource gap, which cannot be reasonably, reliably, or practicably addressed through grant subsidies, general taxation, or other existing town financial mechanisms;

WHEREAS, the Town Council of the Town of West Warwick desires to amend, by Ordinance, its existing Code of Ordinance by adding thereto a specific chapter entitled "Stormwater Utility."

NOW, THEREFORE, IT IS HEREBY ORDAINED that the Town Council of the Town of West Warwick hereby amends the West Warwick Code of Ordinances by adding thereto, PART II, SPECIAL ACTS, ARTICLE 47, STORMWATER UTILITY.

ARTICLE 47. STORMWATER UTILITY

Sec. 47-1. Findings, Intent, and Authority

- (1) Unmitigated Stormwater from developed lands may pose public health and safety threats. Stormwater runoff may transmit pollutants such as suspended solids, nitrogen, phosphorus, hydrocarbons, heavy metals, pathogenic bacteria, viruses and other organisms, and road salts. Several Waters of the State of Rhode Island in the Town of West Warwick, such as the Pawtuxet River and Hardig Brook, which is a tributary to Greenwich Bay, have been identified by the State of Rhode Island as impaired due in part to pollution from Stormwater.
- (2) Rain events, which have been found to occur more frequently than on an annual basis, are documented to cause significant flood damage at least in part because the Town of West Warwick's existing drainage infrastructure lacks capacity to properly convey flow from recurring storm events.
- (3) The Rhode Island Department of Environmental Management's *General Permit Rhode Island Pollutant Discharge Elimination System Storm Water Discharge from Small Municipal Separate Storm Sewer Systems and from Industrial Activity at Eligible Facilities Operated by Regulated Small MS4s* includes mandates that outstretch the existing financial capacity of the Town of West Warwick's General Fund and would be better supported by a dedicated funding source.

- (4) The intent of this Article is to provide funding for management of Stormwater in West Warwick by the Town of West Warwick by establishing a user fee based on generation of Stormwater associated with each privately owned property in the Town of West Warwick. Fees shall be applicable to all properties except Common Properties as defined in section 47-2 of this Article as set forth below.
- (5) Authority for Stormwater utilities has been established in Rhode Island General Law under chapter 45-61.

Sec. 47-2. Definitions

- (1) Commission. For the purposes of this ordinance, the term "Commission" means the Stormwater Utility Commission as discussed in section 47-3(2) of this Article.
- (2) Common Properties. The term "Common Properties" means properties such as roads and sidewalks that may be owned by the Town of West Warwick, State of Rhode Island, federally recognized Native American Tribes, or federal government and may contribute Stormwater flow to the Storm Sewer System; but, pursuant to section 47-4(1) of this Article, will not be levied a storm sewer system user fee.
- (3) Jurisdiction. The term "Jurisdiction" means the jurisdiction created pursuant to section 47-3(1) of this article.
- (4) Owner. The term "Owner" means any person who alone or jointly has a legal title to real property.
- (5) Person. The term "Person" shall include an individual, trust, firm, joint stock company, corporation (including a quasigovernmental corporation) partnership, association, syndicate, municipality, municipal or state agency, fire district, club, nonprofit agency or any subdivision, commission, department, bureau, agency or department of state of federal government (including quasigovernmental corporation) or of any interstate body.
- (6) Storm Sewer System. The term "Storm Sewer System" means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, ditches, manmade channels, or storm drains: (a) owned or operated by the Town of West Warwick; (b) designed or used for collecting or conveying Stormwater; (c) which is not a combined sewer; and (d) which is not part of a sanitary wastewater treatment works.
- (7) Stormwater. The term "Stormwater" means the discharge of runoff associated with rain, snow or other precipitation.
- (8) Stormwater Utility. The term "Stormwater Utility" means the utility created pursuant to section 47-3 of this Article and in accordance with chapter 45-61 of the Rhode Island General Laws.
- (9) Superintendent of Storm Sewers. The term "Superintendent of Storm Sewers" or, for the purposes of this ordinance, "Superintendent" means to the position created pursuant to section 47-3(3) of this Article.

Sec. 47-3. Creation and Administration of a Stormwater Utility

- (1) Jurisdiction. The Stormwater Utility shall have authority to implement Article 47 throughout the Town of West Warwick. Stormwater Utility Jurisdiction shall be referred to herein as the "Jurisdiction."

- (2) Stormwater Utility Commission. There shall be established a Stormwater Utility Commission, referred to herein as the "Commission," which shall oversee the administration of the Stormwater Utility. The Commission shall be made up of Stormwater utility Commissioners, who shall be the members of the Town Council and are referred to herein as "Commissioners." The Commission's duties shall include oversight of the activities of the Superintendent of the Storm Sewer System and to consult with the Town Manager regarding execution of duties under this Ordinance. The President of the Town Council shall chair the Commission. Rules of order, organization, and function for the Commission, not defined by this ordinance, shall follow those of the Town Council as discussed in Article 2 "Town Council" of the Town Charter.
- (3) The Town Manager, in consultation with the Commission, shall also have power to prescribe the Superintendent of the Storm Sewer System's duties, and to employ such other assistants and advisers as may be necessary.
- (4) Superintendent of the Storm Sewer System. The Town Council, acting as the Commission, shall appoint a Superintendent of the Storm Sewer System, referred to herein as the "Superintendent." The Superintendent shall be recommended by the Town Manager. The Superintendent shall be registered as a Rhode Island Professional Engineer and shall have significant expertise in municipal Stormwater management including both flow management and water quality management expertise. The Superintendent shall have such duties and responsibilities as assigned by the Commission. The Superintendent shall be vested with the powers and authorities described in Rhode Island General Law 45-61-4 including the power and authority to plan, acquire, construct, operate, maintain, extend and improve the Storm Sewer System for the Town of West Warwick or any part or parts thereof; and shall do so in consultation with the Commission. The Superintendent shall have the authority to delegate such responsibilities assigned in writing to a specified employee in the Public Works Department. Any such delegation of power shall occur in consultation with the Director of Public Works.

Sec. 47-4. Storm Sewer System User Fees

- (1) Establishment of User Fees by Rate Study. The Commission shall establish fees based upon a rate study. The rate or rates levied to ratepayers shall be approved by the Commission. The rate study shall consider the total cost of Stormwater management in the Stormwater Utility Jurisdiction including Stormwater management planning, Stormwater Utility staffing, engineering, maintenance and repair, public education, capital improvements, technical support, and other services authorized for the function of the Stormwater utility. The rate study shall consider both Stormwater quality and quantity management needs. User fees for funding for the Stormwater utility shall be equitably derived based on methods that establish a clear link between the fees and degree of impact imposed on the Storm Sewer System and programs to manage the Storm Sewer System. Similar properties shall be levied fees at a similar rate. Fees may be set at an individualized rate or flat rate as determined to be appropriate by the Commission in consultation with the Superintendent. Fees shall be established based on the cost incurred by each property in the Stormwater Utility Jurisdiction. The fee shall also include an equitable distribution of the cost of managing Stormwater from common properties as defined in section 47-2 of the Article
- (2) Updating User Fees. The Commission may, from time to time, modify the user fees of the Stormwater utility in order that the funds generated are commensurate with the cost of Stormwater management services incurred by the Town of West Warwick. The Town Manager shall annually determine the need to update the most recent rate study and if fees require adjustment. The Superintendent shall be responsible for determining this rate in consultation with the Commission.
- (3) Properties to be Assessed Fees. Stormwater management fees shall be levied on all properties in the Jurisdiction with the exception on Common Properties as defined in section

47-2 of this Article. Cost of managing Stormwater from Common Properties shall be included in the distribution of costs pursuant to 47-4(1) of this Article.

Sec. 47-5. Stormwater Fund

- (1) Establishment of a Stormwater Fund. The Finance Director shall establish a dedicated Stormwater enterprise fund in the Town of West Warwick budget and an accounting system for the purpose of managing all funds collected for the purposes and responsibilities of the Stormwater Utility. Fees and other revenues of the Stormwater Utility shall be placed in the Stormwater fund, which shall be separate from all other funds in the Town of West Warwick. Only expenses of the Stormwater Utility shall be paid by the Stormwater fund.
- (2) Interagency Cooperation. Fees shall not be collected for properties owned by Town of West Warwick, State of Rhode Island, federally recognized Native American Tribes, or the federal government; however, the Superintendent and the Commission may work in cooperation with Owners of such properties to manage Stormwater through binding agreements or other arrangements.

Sec. 47-6. Credits against Storm Sewer System User Fees

Credits against storm sewer system user fees shall be granted on a graduated scale for properties providing on-site or off-site Stormwater management measures or diversion of flows that reduce the impact of the property on the Town of West Warwick's cost of providing Stormwater management services. To receive credits such management measures must be adequately maintained and meet performance standards specified under Chapter 13, Article V of the Town of Warwick Code of Ordinances "Post-Construction Stormwater Control-" or demonstrate that stormwater flows discharge outside of West Warwick from the boundary of the property of concern. The scale for credits shall reflect the extent to which the subject properties reduce the costs incurred by the Stormwater Utility in the delivery of services and shall be determined by the Superintendent of the Storm Sewer. The maximum credit is forty (40) percent of the normal fee for the property.

Sec. 47-7. Levy, Billing, and Collection

- (1) In levying of the fees described in section 47-4 of this Article, the Commission shall provide that the Tax Collector shall name the owners subject to any fee, describe the property subject to such fee and state the amount of the fee. No error or omission in the name or description shall invalidate the levying of any fee, as long as either the owner or property is substantially identified.
- (2) Any such fee may bear interest as determined by the Commission and shall constitute a lien upon the respective properties on a parity with the lien for town taxes until paid in full. The Tax Collector shall have the same rights to enforce such liens against the subject properties and to collect such fees and interest from the owners as he has for town taxes.
- (3) Owners shall be billed for such fees in a manner as set forth by the Commission and as described in section 47-4 of this Article. Any person aggrieved by any such fee may within three (3) months of the mailing of such bill file a petition for relief pursuant to Rhode Island General Law section 44-5-26. The filing of such a petition shall not relieve the property from the lien provided for, but any final judgment reducing a fee shall reduce the amount due accordingly. The remedy provided herein shall be exclusive and no action or proceeding questioning the validity of any such fee shall be begun after the expiration of said ninety (90) day period.
- (4) The Commission shall be authorized to correct the levying of any fee and make any necessary abatements and to replace any invalid fee with a valid one.

(5) The Commission may provide for the apportionment of any fee in the case of the subdivision of a property subject to any such fee.

Sec. 47-8. Remedies not Exclusive.

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, State of Rhode Island or local law and it is within the discretion of the Superintendent or Commission to seek cumulative remedies.

Sec. 47-9. Severability and Conflicts with other Provisions

If any article, section, paragraph, subdivision, clause or provision of this chapter shall be adjudged invalid, such judgment shall apply only to such article, section, paragraph, subdivision, clause or provision so adjudged, and shall not affect, impair, or invalidate any other part or provision of this chapter. In the event of a conflict between any portion of this chapter and any other local law or Town of West Warwick ordinance now in effect, the more restrictive provision shall apply.

Sec. 47-10. Storms and Town Responsibility

Nothing in this ordinance shall be construed to impose any liability upon the Town of West Warwick for damages to persons or property related to storm events.

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POSTED:

FIRST READING AT COUNCIL MEETING ON:

SECOND READING AT COUNCIL MEETING ON:

COUNCIL PRESIDENT: _____

TOWN CLERK: _____

ADVERTISED IN:

THIS ORDINANCE WILL TAKE EFFECT ON: