

ORDINANCE NO. - 2016

BOROUGH OF WEST CHESTER

CHESTER COUNTY, PENNSYLVANIA

AN ORDINANCE OF THE BOROUGH OF WEST CHESTER, CHESTER COUNTY, PENNSYLVANIA, ESTABLISHING A USER FEE TO SUPPORT THE BOROUGH'S STORMWATER MANAGEMENT SYSTEM AND TO MEET THE BOROUGH'S REGULATORY REQUIREMENTS UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT.

WHEREAS, the Borough of West Chester 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;

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

NOW THEREFORE, BE IT ENACTED AND ORDAINED by the Borough Council of the Borough of West Chester as follows:

SECTION 1. Title.

This Ordinance shall be known as "the Borough of West Chester's Stream Protection Fee Ordinance."

SECTION 2. Statement of Findings.

Borough Council finds that:

A. The Borough of West Chester owns, operates, and maintains stormwater management facilities and infrastructure.

B. The Borough currently incurs costs to operate and maintain the stormwater management facilities and infrastructure, much of which was constructed over 100-years ago.

C. The collection and conveyance system for stormwater includes underground pipes, inlets, catch basins, culverts, streets, curbs and drains.

D. A comprehensive program of stormwater management is fundamental to the public health, safety, and general welfare of the residents of the Borough.

E. The Borough must adhere to increased regulatory requirements for managing the quantity and quality of stormwater runoff.

F. Inadequate management of accelerated stormwater runoff increases flooding, contributes to erosion and sedimentation, overtaxes the capacity of surface streams and storm sewers, greatly increases the cost of public facilities to convey and manage stormwater, undermines floodplain management and flood reduction efforts in upstream and downstream communities, reduces infiltration and groundwater recharge, increases nonpoint source pollution to waterways, reduces ecological health of the stream biota, and threatens public health and safety.

G. Inadequate planning and management of stormwater runoff resulting from land disturbance and development 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.

H. Groundwater resources are also impacted through loss of recharge associated with the increased impervious area resulting from land development and redevelopment.

I. Stormwater is an important water resource that provides infiltration and groundwater recharge for water supplies and baseflow of streams, which also protects and maintains surface water quality.

J. Impacts from stormwater runoff can be minimized by reducing the volume of stormwater generated and by using project designs that maintain the natural hydrologic regime and sustain high water quality, infiltration, stream baseflow, and aquatic ecosystems.

K. Public education on the control of pollution from stormwater is an essential component in successfully addressing stormwater.

L. Federal and State regulations require the Borough to implement a program of stormwater controls. The Borough is required to obtain a permit and comply with its provisions for stormwater discharges from its Municipal Separate Storm Sewer System (MS4) under the National Pollutant Discharge Elimination System (NPDES).

M. Non-stormwater discharges to municipal or other storm sewer systems can contribute to pollution of the Waters of the Commonwealth.

N. The Borough's streams have been designated as impaired by PADEP and the Borough is required to control the discharge of certain pollutants into the streams through a Total Daily Maximum Load (TMDL). Specifically, the following pollutant reduction requirements have been placed on the Borough (Source: [Draft MS4 Requirements Table](#) revised 05/06/2016):

Impaired Downstream Waters or Applicable TMDL Name	Cause of Impairment	Specific Requirements for Remediation
Chester Creek	Cause Unknown (5), Flow Alterations, Water/Flow Variability (4c)	Pathogens (Appendix B), Siltation (Appendix E)
Goose Creek TMDL	Cause Unknown (4a)	Nutrients (Appendix D)
Plum Run	Water/Flow Variability (4c)	Siltation (Appendix E)
Taylor Run	Cause Unknown (4a), Other Habitat Alterations (4c)	Siltation (Appendix E)

Brandywine Creek	n/a	Siltation (Appendix E)
Blackhorse Run	Other Habitat Alterations, Water/Flow Variability (4c)	Siltation (Appendix E)

O. On December 9, 2013 and February 10, 2014, the Stormwater Management Assessment Advisory Committee, hereinafter referred to as SWMAC, presented a report to the Borough Council on “Stormwater Management Assessment Fee Policy Options and Recommendations”, which report summarized the Borough’s stormwater program needs and policy options for funding those program needs.

P. The SWMAC worked with Borough staff to define those program needs, level of service and costs, and evaluated alternative funding options that support the need for a dedicated funding source and recommended creation of an impervious area based fee, referred to as the Stream Protection Fee, or hereinafter referred to as the Fee, that would be paid by all owners of properties in the Borough in direct proportion to the amount of impervious area that is on their property using a system of tiers as presented in this Ordinance. In addition, the SWMAC recommended that the Borough establish a system of credits to incentivize property owners to build and maintain stormwater management systems on their property, and therefore reduce their fee.

SECTION 3. Statutory Authority.

The Borough is empowered to regulate and manage stormwater within the Borough by the following acts and laws:

- (i) The Act of October 4, 1978, P.L. 864 (Act 167) 32 P.S. Section 680.1 *et seq.*, as amended, the “Storm Water Management Act”;
- (ii) The Clean Water Act, 33 U.S. §1251 *et seq.*;
- (iii) Pa. Clean Streams Law, 35 P.S. §691.1 *et seq.*; and
- (iv) The Borough’s Home Rule Charter.

SECTION 4. Interpretation.

For the purposes of this Ordinance, certain terms and words used herein shall be interpreted as follows:

A. Words used in the present tense include the future tense; the singular number includes the plural, and the plural number includes the singular; words of masculine gender include feminine gender; and words of feminine gender include masculine gender.

B. The word “includes” or “including” shall not limit the term to the specific example, but is intended to extend its meaning to all other instances of like kind and character.

C. The word “person” includes an individual, partnership, public or private association or corporation, firm, trust, estate, Borough, governmental unit, public utility or any other legal entity whatsoever which is recognized by law as the subject of rights and duties. Whenever used in any section prescribing or imposing a penalty, the term “person” shall include the members of a partnership, the officers, members, servants and agents of an association, officers, agents and servants of a corporation, and the officers of a Borough.

D. The words “shall” and “must” are mandatory; the words “may” and “should” are permissive.

E. The words “used” or “occupied” include the words “intended, designed, maintained, or arranged to be used, occupied, or maintained.”

F. The definitions in this Ordinance are for the purposes of enforcing the provisions of this Ordinance and have no bearing on other municipal regulations or ordinances.

SECTION 5. Definitions.

Base Rate – the dollar rate per Base Unit calculated by the Director, and adopted by the Borough Council from time to time by Resolution.

Base Unit - one thousand (1,000) square feet of impervious surface.

BMP (Best Management Practice) – Activities, facilities, designs, measures, or procedures used to manage stormwater impacts from Regulated Activities, to provide water quality treatment, infiltration, volume reduction, and/or peak rate control, to promote groundwater recharge, and to otherwise meet the purposes of this Ordinance. Stormwater BMPs are commonly grouped into one (1) of two (2) broad categories or measures: “structural” or “nonstructural.” In this Ordinance, nonstructural BMPs or measures refer to operational and/or behavior-related practices that attempt to minimize the contact of pollutants with stormwater runoff whereas structural BMPs or measures are those that consist of a physical device or practice that is installed to capture and treat stormwater runoff. Structural BMPs include, but are not limited to, a wide variety of practices and devices from large-scale retention ponds and constructed wetlands to small-scale underground treatment systems, infiltration facilities, filter strips, low impact design, bioretention, wet ponds, permeable paving, grassed swales, riparian or forested buffers, sand filters, detention basins, and manufactured devices. Structural stormwater BMPs are permanent appurtenances to the Site.

Condominium Property is a Property subject to a condominium regime established under the Pennsylvania Uniform Condominium Act.

Customer - any Property Owner of a Property in the Borough.

Department - the Borough's Department of Public Works.

Design Manual - the 2006 Pennsylvania Stormwater Best Management Practices Manual, as revised from time to time, which serves as the official guide for stormwater management principles, methods, and practices in Pennsylvania.

Developed – Property where manmade changes have been made which add impervious surfaces to the property, which changes may include, but are not limited to, buildings or other structures for which a building permit must be obtained under the requirements of the Pennsylvania Building Code and this Code, mining, dredging, filling, grading, paving, excavation or drilling operations, or the storage of equipment or materials.

Development - a project that consists of subdividing land or adding buildings and other improvements to individual parcels of land.

Director - the Director of the Department of Public Works of West Chester Borough or the Director's designee.

Drainage Area - That land area contributing runoff to a single point (including but not limited to the point/line of interest used for hydrologic and hydraulic calculations) and that is enclosed by a natural or man-made ridge line.

Green Infrastructure (GI) - small-scale stormwater management practices, nonstructural techniques, and better site planning to mimic natural hydrologic runoff characteristics and minimize the impact of development on water resources. Methods to design GI practices are specified in the Design Manual.

Impervious Surface – A surface that has been compacted or covered with a layer of material so that it prevents or is resistant to infiltration of water, including but not limited to, structures such as roofs, buildings, storage sheds; other solid, paved or concrete areas such as streets, driveways, sidewalks, parking lots, patios, decks, swimming pools, tennis or other paved courts; or athletic playfields comprised of synthetic turf materials. For the purposes of determining compliance with this Ordinance, highly compacted soils or stone surfaces used for vehicle parking and movement shall be considered impervious. Surfaces that were designed to allow infiltration (i.e. areas of porous pavement) will be considered on a case-by-case basis by the Borough Engineer, based on appropriate documentation and condition of the material, etc.

Infiltration - the passage or movement of water into the soil surface.

NPDES – National Pollutant Discharge Elimination System, the Federal government’s system for issuance of permits under the Clean Water Act, which is delegated to PADEP in Pennsylvania.

PADEP – Pennsylvania Department of Environmental Protection.

Property - each and every parcel of real estate located within West Chester Borough.

Property Owner - the owner of record for a given Property within the Borough, as registered in the Office of the Recorder of Deeds for Chester County, Pennsylvania.

Property Manager - a person, company or other entity hired by a property owner to manage a Property.

Stormwater - water that originates from precipitation.

Stormwater Management - the collection, conveyance, storage, treatment, and control of stormwater as needed to reduce accelerated stream channel erosion, flood damages and water pollution.

Stormwater Management Facility - an infiltration device, filtering device, stormwater pond, stormwater wetland, hydrodynamic structure, or other practice designed and constructed to control stormwater to reduce accelerated stream channel erosion and pollution of surface waters. A stormwater management facility does not include environmental site design practices or any nonstructural stormwater management systems.

Stream Protection Fee (SPF) - an assessment levied by the Borough to cover the cost of constructing, operating, and maintaining stormwater management facilities and to fund expenses related to the Borough’s compliance with PADEP NPDES permit requirements under applicable state law based on the impact of stormwater runoff from impervious areas of developed land in the Borough.

Stormwater Management Fund - the fund established from the collection of the Stream protection Fees authorized pursuant to this Ordinance.

Stormwater Management System - the system of collection and conveyance, including underground pipes, conduits, mains, inlets, culverts, catch basins, gutters, ditches, manholes, outfalls, dams, flood control structures, natural areas, structural

and non-structural 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.

Structural Maintenance - the inspection, construction, reconstruction, modification, repair, and cleaning of any part of a stormwater management facility undertaken to assure that the facility remains in the proper working condition to serve its intended purpose and prevent failure. Structural maintenance does not include landscaping, grass cutting, or trash removal.

Watershed - the total drainage area contributing runoff to a single point.

Undeveloped Land - any land that has not been altered from its natural state and which contains no impervious surfaces, or, if previously developed, land that has been allowed to return to its natural state with no impervious surfaces.

SECTION 6. Imposition of Stream Protection Fee.

A. 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, a Stream Protection Fee ("Fee") as described, defined, and calculated herein is hereby imposed upon each and every Developed Property within the Borough that is connected with, uses, is serviced by or is benefitted by the Borough's Stormwater Management System, either directly or indirectly, and upon the owners of such Developed Property as set forth herein.

B. Impervious Area Property Tiers: For purposes of determining the appropriate assessment rate for the Fee, all Properties are assigned to one of the following tiers ("Tier" or "Tiers"):

1. Tier 1: For Properties where the total impervious surface area is greater than zero square feet and less than or equal to 1,000 square feet.
2. Tier 2: For Properties where the total impervious surface area is greater than 1,000 square feet and less than or equal to 1,500 square feet.
3. Tier 3: For Properties where the total impervious surface area is greater than 1,500 square feet and less than or equal to 2,000 square feet.
4. Tier 4: For Properties where the total impervious surface area is greater than 2,000 square feet and less than or equal to 2,500 square feet.
5. Tier 5: For Properties where the total impervious surface area is greater than 2,500 square feet and less than or equal to 3,000 square feet.
6. Tier 6: For Properties where the total impervious surface area is greater than 3,000 square feet.

C. Impervious Area Property Tiers were developed using impervious estimates based on Chester County's geographic information system (GIS) impervious cover data layer from 2010.

SECTION 7. Billing and Payment.

A. The Director will prepare the necessary data for collecting the Fee from Property Owners subject to the Fee, including the identification of every parcel of Property to be charged and the amount of the Fee.

B. Prior to receipt of the first bill for the Fee, all Properties will be issued an assessment notice by the Borough with the Property's estimated Fee and the basis of that Fee.

C. The Fee fixed and established by this Ordinance shall be effective as to all Developed Properties that use, are served by or benefitted by the Stormwater Management System existing as of the effective date of this Ordinance. The first billing pursuant to this Ordinance shall be on or about, October 1, 2016 and shall cover the fourth quarter of 2016. Thereafter for subsequent years, the Fee imposed by this Ordinance shall be assessed and billed by the Borough effective as of January 1st each calendar year. Property owners shall have the option to pay the Fee in full within 30 days following the date on which the bill was mailed and receive a 2% discount of the fee. Alternatively, Owners may pay the fee on a quarterly basis at face amount of the bill and upon a schedule designated by Council.

D. Bills for the Fee or charges shall be paid by the owner of the property and mailed to the address listed in the Chester County tax records for the property served by the Stormwater Management System, unless and until a different address is specified, in writing, by the owner of such property to the Borough. Failure of the owner to receive a bill as a result of an incorrect address or otherwise shall not excuse payment of the Fee or charges or extend the time for payment thereof. It shall be incumbent upon all owners of Developed Property who are subject to the Fee to provide the Borough with the correct billing address or any changes thereto.

E. All Fees not paid within 21 days of the date of the bill shall be deemed to be delinquent and shall be subject to a penalty of 1 1/2% per month. All delinquent Fees, together with interest, penalties, charges and costs thereof, shall constitute a municipal claim against the property or properties served by the Stormwater Management System from the date the same first became due and payable. If such Fees, penalties and charges are not timely paid, the Borough shall file a municipal lien against the property served pursuant to the procedure established in the Pennsylvania Municipal Lien Law and such lien shall be collected in the manner provided for by law for the filing and collecting of such municipal liens. The Borough is further authorized to collect reasonable attorney's fees that it incurs in the collection of any delinquent accounts. In addition, the Borough may collect all delinquent Fees, penalties, interest and charges, including attorney's fees, by referring such delinquent claims to a collection agency, by filing an action in assumpsit, or in any manner or by proceeding otherwise provided by law. Any fees that the Borough incurs in exercising its legal remedies shall be added to the amount of the delinquent account. All of the Borough's remedies shall be cumulative.

G. The Borough shall deposit all payments collected under this Section into the Borough Stormwater Management Fund.

H. When Developed Properties are altered such that the amount of Impervious Surface on the Property increases or decreases, the Fee will be revised as of the date of the issuance of a building permit for the proposed improvements which will alter the amount of Impervious Surface on the Property. A bill will be issued in the next billing cycle and will be prorated for the number of days in which service was provided.

SECTION 8. Calculation of the Stream Protection Fee.

A. The Stream Protection Fee for Tier 1 through Tier 5 properties shall be calculated by multiplying the Base Rate by the percentage amount listed herein for the appropriate Tier as follows:

1. The Fee for each Tier 1 Property is 50 percent of the applicable Base Rate.
2. The Fee for each Tier 2 Property is 125 percent of the applicable Base Rate.
3. The Fee for each Tier 3 Property is 175 percent of the applicable Base Rate.
4. The Fee for each Tier 4 Property is 225 percent of the applicable Base Rate.
5. The Fee for each Tier 5 Property is 275 percent of the applicable Base Rate.

B. The Stream Protection Fee for each Tier 6 Property shall be computed based on the actual impervious area on the Property. The Director shall compute the Stream Protection Fee by dividing the actual impervious area of the Property by the number of Base Units, and then multiplying the result by the Base Rate.

C. The Base Rate utilized by the Director shall be the Base Rate as established from time to time by Resolution of Borough Council.

D. If the property is a Condominium Property, the Director shall calculate the Stream Protection Fee to be billed in equal shares to the condominium units owners by dividing the total number of Base Units by the number of individual condominium units and then multiplying that by the Base Rate to determine the amount billable to each condominium unit owner or in such other manners as may be promulgated by the Director in policies and procedures based on square footage, types of condominium units or other similar classification and calculations.

SECTION 9. Stormwater Management Fund.

A. All sums collected from the payment of Stream Protection Fees shall be deposited into the West Chester Borough Stormwater Management Fund.

B. The Stormwater Management Fund shall be used by the Borough for:

1. Implementation and management of a program to manage stormwater within the Borough.
2. Constructing, operating, and maintaining the Borough's Stormwater Management System.
3. Debt service for financing stormwater capital projects.
4. Payment for other project costs and performance of other functions or duties authorized by law in conjunction with the maintenance, operation, repair, construction, design, planning and management of Stormwater facilities, programs and operations.

SECTION 10. Stormwater Credits.

A. The Borough may provide a system of credits against Stream Protection Fees for Properties on which stormwater facility construction or maintenance substantially mitigates the peak discharge or runoff pollution flowing from such Properties or substantially decreases the Borough's cost of maintaining the Stormwater Management System.

B. The Borough has developed written policies and procedures to implement the credit system, known as the Stream Protection Fee Program Rebate and Credit Policies and Procedures Manual ("Credit Manual"). The Credit Manual may be updated from time to time by the Borough Council.

SECTION 11. Appeals.

A. The Borough has developed written policies and procedures to implement the appeal process, known as Stream Protection Fee Program Appeal Policies and Procedures Manual ("Appeals Manual"). The Appeals Manual may be updated from time to time by the Borough Council.

B. A Property Owner who believes the provisions of this Ordinance have been applied in error may appeal in accordance with the provisions of this Section and as described in greater detail in the Appeals Manual.

C. An appeal of the assigned Tier and/or the Fee must be filed in writing to the Borough Manager or his designee within thirty (30) days of receipt of the notice of the assigned Tier or Fee. The property owner must submit justification using the Appeal Application, which states in detail the basis and reasons for the appeal.

D. Using information provided by the appellant, the Borough Manager, or his designee, shall conduct a technical review of the conditions of the Property and respond to the appeal in writing within sixty (60) days. In response to an appeal, the Borough Manager may adjust the Fee applicable to the property in accordance with the provisions of this Ordinance.

E. Any person aggrieved by a decision of the Borough Manager relevant to the provisions of this Ordinance may appeal to the Court of Common Pleas of Chester County, Pennsylvania.

F. Borough Council may, from time to time, by Resolution, establish fees for the processing and handling of an appeal.

SECTION 12. Rules and Regulations.

Borough Council or the Director may promulgate policies and procedures, appeal applications and other forms relating to the interpretation, enforcement and application of the provisions of this Ordinance.

SECTION 13. Limitation on Borough's Liability for Failure of Supply of Stormwater Services

A. Floods from runoff may occur that exceed the capacity of stormwater facilities constructed and maintained by funds made available pursuant to this Ordinance. This Ordinance does not imply that property subject to the fees and charges established herein will be free from stormwater flooding or flood damage. The Borough shall not be liable to any person for any flood damage. Further, payment of a Stream Protection Fee to the Borough does not relieve a Property Owner from any local, State or Federal requirements to obtain flood insurance or other laws applicable to the Property.

B. The Borough, by taking any action pursuant to this Ordinance, does not waive, reduce, lessen or impair the lawful police powers vested in the Borough under applicable Federal, State and local laws and regulations.

C. The failure of the Borough to insist on timely performance or compliance shall not constitute a waiver of the Borough right to later insist on the same. Further, the failure of the Borough to enforce any provision of this Ordinance on any occasion shall not operate as a waiver or estoppel of its right to enforce any provision of this Ordinance on any other occasion, nor shall the failure to enforce any prior ordinance or rule or regulation relating to sewer services, water services, stormwater services, sewer charges, water charges or the Stream Protection Fee, act as a waiver or estoppel against enforcement of this chapter or any other provision of applicable law.

SECTION 14. Severability. If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality

or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts hereof. It is hereby declared as the intent of Council of the Borough of West Chester that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included therein.

SECTION 15. Repealer. All Ordinances or parts of Ordinances conflicting with any provision of this Ordinance are hereby repealed insofar as the same affects this Ordinance.

SECTION 16. Effective Date. This Ordinance shall become effective upon enactment as provided by law.

ENACTED AND ORDAINED THIS _____ DAY OF _____, 2016.

ATTEST:

**COUNCIL FOR THE BOROUGH
OF WEST CHESTER**

BY:

Ellen Koopman, President

APPROVED THIS _____ DAY OF _____, 2016.

Carolyn T. Comitta, Mayor