

**COMMISSIONERS' ORDINANCE NO. 0-09-21**

AN ORDINANCE AMENDING SECTION 50.12 OF THE COVINGTON CODE OF ORDINANCES, STORM WATER AND FLOOD MANAGEMENT FEE – DEFINITIONS, TO REVISE THE CALCULATION OF THE STORM WATER AND FLOOD MANAGEMENT FEE RELATED TO CERTAIN RESIDENTIAL PROPERTIES KNOWN AS DUPLEXES.

\* \* \* \*

WHEREAS, Covington and Sanitation District #1 (SD1) entered into an Interlocal Agreement to Provide KPDES Storm Water Discharge Permit Services and Other Storm Water Related Services (MS4 program services) dated February 5, 2003 (the "Interlocal Agreement"); and

WHEREAS, pursuant to the Interlocal Agreement, Covington and SD1 are co-permittees under Kentucky Pollution Discharge Elimination System ("KPDES") General Permit for Storm Water Discharges Associated with Phase II Municipal Separate Storm Sewer Systems (MS4s) Permit No. KYG200007 dated March 30, 2018 and effective on May 1, 2018 (the "Permit") as administered by the Kentucky Division of Water ("KDOW"); and

WHEREAS, the SD1 Permit mandates the Parties to be jointly responsible for storm water quality management in compliance with KPDES program and requirements established in 40 CFR 122.26; and

WHEREAS, Covington and SD1 entered into a subsequent Transfer and Assignment of the SD1 Storm Water Drainage System Agreement dated December 22, 2009 (the "Transfer Agreement") whereby SD1 agreed to operate and maintain Covington's storm sewer system; and

WHEREAS, SD1 is responsible to mitigate sanitary sewer overflows ("SSOs") and combined sewer overflows ("CSOs") under an Amended Consent Decree known as *Commonwealth of Kentucky and United States of America v. SD1*, Civil Action No. 2:05-cv-199, United States District Court, Eastern District of Kentucky (the "Amended Consent Decree"); and

WHEREAS, SD1 has developed an Updated Watershed Plan pursuant to the terms of the Amended Consent Decree and has plans to augment that Updated Watershed Plan with a wet weather detention plan to also mitigate overland flooding issues within Covington; and

WHEREAS, the Interlocal Agreement and the Transfer Agreement were meant to be in perpetuity with termination by either Party limited to the dissolution of either of the Parties or the inability of SD1 to assess and collect fees necessary to perform under the agreements; and

WHEREAS, pursuant to a resolution adopted by the board of directors of SD1 and pursuant to Commissioners' Order ORD-233-20, Covington and SD1 signed an agreement known as the *Termination of Interlocal Agreement and Transfer of Storm Water Assets*; and

WHEREAS, the *Termination of Interlocal Agreement and Transfer of Storm Water Assets* was effective March 1, 2021; and

WHEREAS, Covington is applying for its own KPDES MS4 Permit and part of that process required passage of an ordinance adopting a user fee for parcels located within its jurisdiction, which Covington completed by adopting Ordinance O-02-21; and

WHEREAS, feedback received after the adoption of the Covington storm water and flood management fee ordinance revealed a discrepancy in the billing of residential duplexes compared with previous SD1 practices and it was determined that such discrepancy was the result of a drafting error; and

WHEREAS, staff recommends revision of the Covington storm water and flood management fee ordinance to correct the drafting error and to achieve the result of treating residential duplexes as single family residential properties, consistent with prior SD1 billing practices.

NOW THEREFORE,  
BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY  
OF COVINGTON, KENTON COUNTY, KENTUCKY:

#### Section 1

Section 50.12 of the Covington Code of Ordinances is amended to read as follows:

### **STORM WATER AND FLOOD MANAGEMENT FEE**

#### **§ 50.12 DEFINITIONS.**

For purposes of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ASSESSMENT ROLL.** The official listing of assessments of real property maintained by the Kenton County Property Valuation Office.

**BASE RATE.** The Storm Water Management Fee charged on a base unit (equivalent residential unit). The monthly Storm Water Management Fee for a Single Family Residential (SFR) property in the City of Covington equals the base rate.

**DEVELOPED PROPERTY.** Real property which has been altered from its natural state by an addition of any improvements such as buildings, structures, or other impervious areas.

**EQUIVALENT RESIDENTIAL UNIT (ERU).** The average impervious surface area associated with a single-family residential property in the city as calculated using statistical methods.

**FEE or STORM WATER AND FLOOD MANAGEMENT FEE.** The charge to the property owner established under this chapter and levied on owners of parcels or pieces of real property to fund the costs of storm water and flood management and of operating, maintaining, and improving the stormwater system in the city.

**FISCAL YEAR.** July 1 of the calendar year to June 30 of the next calendar year, both inclusive.

**IMPERVIOUS SURFACE.** Developed areas of land which prevent, retard, or significantly impede the infiltration of surface and storm water into the soil mantle and/or cause water to run off the surface in greater quantities or at an increased rate of flow that present under natural conditions prior to development. Typically impervious surface areas include but are not limited to roof, sidewalks, walkways, patios, swimming pools, private driveways, parking lots, access extensions, alleys and other paved, engineered, compacted or gravel surfaces that prevent or significantly impede the natural infiltration of surface and storm water into the soil.

**MULTI-FAMILY DWELLING.** A building with three or more dwelling units.

**NON-DEVELOPED PROPERTY.** Any non- SFR property not altered from its natural state.

**NON-SINGLE FAMILY RESIDENTIAL (NON-SFR).** Developed property other than single-family residential property. Such property shall include, but not be limited to, multi-family dwellings, commercial properties, condominium complexes (regardless of individual ownership of units), industrial properties, parking lots, hospitals, schools and other governmental owned buildings, recreational and cultural facilities, hotels, offices and churches.

**NPDES PHASE II PERMIT.** National Pollution Eliminations System Phase II Storm Water Permit as mandated by United States Environmental Protection Agency.

**PROPERTY OWNER/ DEVELOPER/ APPLICANT.** The person, firm, partnership, or corporation who is the owner of record as listed in the Kenton County Property Valuation Office assessment rolls.

**SINGLE FAMILY RESIDENTIAL (SFR) PROPERTY.** [A] [d]Developed property which serves the primary purpose of providing a permanent dwelling unit and which is classified as residential in the Kenton County assessment rolls. For purposes of this

definition, a duplex shall be considered as ~~two~~ a SFR[s]. Notwithstanding, regardless of designation by the assessment role, a condominium shall not be considered a SFR for purposes of this subchapter.

**STORM WATER MANAGEMENT.** The planning, design, engineering, construction, regulation, improvement, repair, maintenance and operation of facilities and programs relating to storm water, flood plains, flood control, grading, erosion, pollutant capture and/or transformation and sediment control.

**STORM WATER MANAGEMENT FUND OR FUNDS.** The Fund created by this subchapter to operate, maintain, and improve the city's storm water systems and address flooding issues.

**STORM WATER SYSTEM.** The primary system or network of storm and surface water management facilities including, but not limited to, inlets, conduits, manholes, natural streams and sinkholes, channels, ditches, drainage easement, retention and detention basins, infiltration facilities and other components, as well as all natural waterways. Public roads and public sidewalks are considered part of the storm water collection system.

**WATER.** Any storm water, surface water, snow melt or groundwater.

#### Section 2

City staff are hereby directed to reconcile any overpayment from owners of properties meeting the definition of residential duplexes for the 2021 storm water and flood management fee billing by offering applicable refunds or by adjusting the 2022 storm water and flood management fee bills.

#### Section 3

The repeal or amendment of any applicable ordinance or regulation does not release or extinguish any penalty, forfeiture, or liability incurred or right accruing or accrued under that law, unless specifically so provided above. Any applicable ordinance shall be treated as remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of the right, penalty, forfeiture, or liability.

#### Section 4

Should any section or part of any section or any provision of this Ordinance be declared invalid by a Court of competent jurisdiction, for any reason, such declaration shall not invalidate, or adversely affect, the remainder of this Ordinance.

Section 5

This ordinance shall take effect and be in full force when passed, published, and recorded according to law.

  
MAYOR

ATTEST:

  
CITY CLERK

Passed: 06/29/2021 (Second Reading)

06/15/2021 (First Reading)