

BY *Ms. Neal*.....

2nd
NO. *29358-97*.....

AN ORDINANCE

Supplementing the Revised Code of General Ordinances to Provide for the Protection of Surface and Groundwater from Contamination by Storm Water Runoff and to Provide for the Financing of City Activities Related Thereto

WHEREAS, the Commission of the City of Dayton has determined that the proper management of the waters of the City of Dayton is necessary to the preservation and enhancement of the health and welfare of its citizens; and

WHEREAS, the Commission of the City of Dayton has determined that development of storm water pollution control measures are necessary to maintain compliance with pertinent provisions of the Federal Water Pollution Control Act (33 U.S.C. Sec. 1342(p)) and the rules adopted thereunder;

WHEREAS, the Commission of the City of Dayton has determined that uncontrolled drainage and development of land have significant adverse impacts upon the health, safety and welfare of the community and constitutes a public nuisance. More specifically,

Discharges of materials other than storm water in to the municipal separate storm sewer system cause and contribute to the pollution of ground and surface waters;

Illicit connections to the City storm sewer system cause and contribute to the pollution of ground and surface waters;

Storm water runoff can carry pollutants including, but not limited to, oil, fertilizers, pesticides, heavy metals, toxic substances, bacteria and oxygen-demanding materials into receiving water bodies, degrading water quality and inhibiting the attainment of water quality standards;

Storm water runoff containing nutrients such as phosphorus and nitrogen accelerates eutrophication of receiving waters, adversely affecting flora and fauna;

Improperly channeling storm water increases the velocity of runoff, thereby increasing erosion, sedimentation and damage to municipal storm sewer system;

Construction and development requiring the alteration of natural topography and removal of vegetation tend to increase erosion, sedimentation, and the pollution associated with these activities;

Siltation of water bodies resulting from increased erosion decreases their capacity to hold and transport water, interferes with navigation, and harms flora, fauna, and habitat;

Erosion leads to sedimentation in storm water management systems that decrease their hydraulic capacity;

Impervious surfaces increase the volume and rate of storm water runoff and allow less water to percolate into the soil, thereby decreasing groundwater recharge and increasing surface water runoff into the municipal separate storm sewer system;

Improper collection and conveyance of storm water adversely affects offsite property and increases the incidence and severity of flooding, which can endanger property and human life;

Failure to adequately maintain the municipal separate storm sewer systems contributes to flooding and pollution of ground and surface water;

Substantial economic losses result from these adverse impacts;

Many future problems can be avoided if construction and development occur in accordance with sound storm water management practices and illicit discharges and illicit connections and other sources of pollution to the municipal separate storm sewer system are eliminated; now therefore,

BE IT ORDAINED BY THE
CITY COMMISSION OF THE CITY OF DAYTON,

SECTION 1. That Chapter 54 of the Revised Code of General Ordinances, "Storm Water Management," be enacted to provide as follows:

Section 54.01 Definitions

For the purpose of this chapter the following words and phrases shall have the following meanings ascribed to them respectively:

- (A) "Earth-disturbing activity" means any grading, excavating, filling, or other alteration of the earth's surface where natural or man-made ground cover is destroyed and which may result in or contribute to erosion and sediment pollution except that such term shall not apply to agricultural activities.
- (B) "Illicit connection" means any man-made conveyance, other than the municipal separate storm sewer system, connecting an illicit discharge directly to the municipal separate storm sewer system.
- (C) "Illicit discharge" means any discharge that is not composed entirely of storm water except discharges authorized by a state or federal National Pollutant Discharge Elimination System Permit and those described in Section 54.09(G) of this ordinance.
- (D) "Impervious surface area" means land area covered by buildings, pavement or other material that prevents storm water from penetrating the soil.
- (E) "Industrial waste" means any liquid, gaseous or solid waste substance, or wastewaters (including, but not limited to those from commercial carpet cleaning, exterior building cleaning, paint related activities, and commercial washing of vehicles) resulting from any process of industry, manufacture, trade, or business; or from the development, processing, or recovery of any natural resource.
- (F) "Municipal separate storm sewer system" means all conveyances and control structures including, but not limited to, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, dry-wells, infiltration devices, or storm drains owned and operated by the City of Dayton which are designed or used for collecting,

controlling or conveying storm water but shall not include any part of any airport owned or operated by the City of Dayton.

(G) "Other wastes" means garbage, refuse, sediment, decayed wood, sawdust, shaving, bark, grass clippings, yard wastes, and other wood debris, lime, sand, ashes, offal, litter, oil, grease, antifreeze, tar, coal dust, dredged or fill material, or silt, or other substances that are not sewage or industrial waste, and any other "pollutants" or "toxic pollutants" as defined under the Federal Water Pollution Control Act (33 U.S.C. Secs. 1251-1387).

(H) "Person" includes an individual, corporation, business trust, estate, trust, partnership, association, the state, any political subdivision thereof, and the United States and any agency or instrumentality thereof.

(I) "Pollution" means the entry of any sewage, industrial waste, or other wastes into the municipal separate storm sewer system or storm water.

(J) "Sewage" means any liquid waste containing animal or vegetable matter in suspension or solution, and includes household wastes as commonly discharged from residences and from commercial, institutional, or similar facilities.

(K) "Storm water" means storm water runoff, snow melt runoff, surface runoff, and surface drainage.

Section 54.02 Storm Water Utility Created

There is hereby created a storm water utility to be administered by the Director of Water. The Director of Water shall have power, subject to the approval of the City Commission, to make rules for the management and protection of the municipal separate storm sewer system and to prevent the pollution thereof; to classify storm sewer services; to establish, adjust, and regulate the rates charged for different classes of storm sewer services; to provide and require payment for materials and services rendered to others including political subdivisions not covered in the storm sewer rate schedules.

Section 54.03 Powers of the Director of Water

The Director of Water may do any of the following:

- (A) Develop plans and programs for the prevention, control, and abatement of storm water pollution;
- (B) Advise, consult, and cooperate with agencies of the state and federal government, and political subdivisions in the furtherance of the purposes of this ordinance;
- (C) Administer the municipal storm water fund;
- (D) Encourage, participate in, or conduct studies, investigations, research and demonstrations relating to storm water management, and the causes, prevention, control, and abatement of storm water pollution;
- (E) Collect and disseminate information relating to storm water management and storm water pollution;
- (F) Require any person discharging to the municipal separate storm sewer system to monitor and report the quantity and quality of its discharge;
- (G) Require any applicant for plan approval to submit the results of hydrological modeling performed according to methods approved by the Director;
- (H) Require any applicant for a plan approval to submit such information as the Director deems appropriate to evaluate the plan;
- (I) Require the owner of any property or earth-disturbing activity, which the Director determines constitutes a risk of a spill or other discharge to the municipal separate storm sewer system, to develop a spill or discharge control plan to be approved by the Director of Water and implement said plan;
- (J) Issue orders to prevent, control, or abate storm water pollution as follows:
 - (1) Prohibiting or abating discharges of storm water or storm water pollutants into the municipal separate sewer system;
 - (2) Requiring the construction of new storm water management systems or parts thereof, or the modification, extension, or alteration of existing storm

water management systems or any parts thereof;

(3) Prohibiting connections or discharges to the municipal separate storm sewer system when such connections or discharges would result in pollution or be inconsistent with sound storm water management practices;

(4) Requiring compliance with this ordinance and any rule or regulation adopted thereunder.

(K) Review and approve plans, specifications, or other data relative to storm water management systems or any parts thereof;

(L) Establish fair, reasonable, and equitable fees and charges and make recommendations to the City Commission for the revision thereof;

(M) Acquire interests in property for the management of the municipal separate storm sewer system;

(N) Monitor and assess aquatic environments and the effects of storm water pollution thereon;

(O) Cause to be instituted in any court of competent jurisdiction proceedings to compel compliance with this ordinance and any rules, regulations or orders issued thereunder; and,

(P) Exercise all incidental powers necessary to carry out the purposes of this ordinance.

Section 54.04 Storm Water Charges

(A) There is hereby levied and imposed upon all premises which have an impervious surface area located within the City of Dayton just and equitable charges for storm water service. A Municipal Storm Water Fund is established to receive all fees collected pursuant to this section. All owners of real property in the City of Dayton shall be responsible for payment of charges levied upon their property.

(B) Except as provided in this section, all real property shall be subject to the storm water fees regardless of whether privately or publicly owned. Public streets and land with no storm water discharge to the municipal separate storm sewer system, and

airports owned and operated by the City of Dayton shall not be subject to storm water fees.

(C) The storm water fees shall be established by the City Commission by separate ordinance.

(D) A flat residential fee shall be applicable to all conventionally developed residential properties in R-1, R-2, R-3, and R-4 zoning districts. All other properties shall be charged a fee based upon the impervious surface area as calculated by the Director of Water.

(E) Unpaid storm water service charges shall constitute a lien against the property affected. Unpaid storm water charges may be certified to the County Auditor for collection with the property owner's real property tax payment.

(F) All funds collected for storm water service shall be placed in a separate account and shall be used solely for the construction, operation and maintenance of the municipal separate storm sewer system, the reimbursement of moneys advanced from the General Fund to pay the costs incurred by the City to cover expenditures (incurred since 1993) for storm water quality management activities mandated by the relevant provisions of the Federal Water Pollution Control Act (33 U.S.C. Section 1342(p) for the municipal separate storm sewer system, and pollution prevention and elimination activities related to compliance with the relevant provisions of the Federal Water Pollution Control Act (33 U.S.C. Section 1342(p)). Funds shall not be used for private purposes or to extend storm sewer service to unsewered areas. The first priority for the expenditure of this fund shall be to address the specific requirements of the City's storm water discharge permit for the municipal separate storm sewer system.

(G) Storm water fees may be appealed to the Director of Water. Decisions of the Director may be appealed to the Board of Water and Sewer Charge Review and to the Board of Water and Sewer Charge Appeals in accordance with the procedures set forth in Sections 50.20 through 50.28 of the Revised Code of General Ordinances. The respective boards shall have such powers with respect to storm water fees as they have with respect to water and sanitary sewer service charges.

Section 54.05 Earth-Disturbing Activity

(A) No person shall engage in earth-disturbing activity without complying with the terms of this ordinance, the "City of Dayton, Ohio, Construction and Materials Specifications" and the rules and standards published by the Director of Water. No person shall engage in earth-disturbing activity of one acre or more without a storm water management plan approved by the Director of Water and/or the Ohio Environmental Protection Agency.

(B) In determining whether to approve a storm water management plan for earth-disturbing activity, the Director of Water may consider, but is not limited to, the following principles:

- (1) The smallest practical area of land shall be exposed at any given time during development;
- (2) Such minimum area exposure shall be kept to as short a duration of time as is reasonably practicable;
- (3) If reasonably practicable, temporary vegetation, mulching or other cover shall be used to protect areas exposed during development;
- (4) To the extent reasonably practicable, construction materials which may contribute pollution to the municipal separate storm sewer system shall be covered, diked, or otherwise controlled to prevent such discharge;
- (5) Provision shall be made to effectively accommodate the increased runoff caused by changed soil and surface conditions during development;
- (6) Prevention of sediment deposition on streets by vehicles leaving the site;
- (7) Permanent, final plant covering or structures shall be installed as soon as possible.
- (8) To the extent reasonably practicable, natural plant covering shall be retained and protected and be deemed a dominating factor in the development of the site;
- (9) On the completion of earth-disturbing activity, all wastes, unused construction material, and contaminated surface waters shall be promptly

removed from the site.

(C) No person required to have an approved storm water management plan shall conduct earth disturbing activity in a manner inconsistent with the approved plan. No person shall conduct earth-disturbing activity on any portion of a property required to have an approved storm water management plan in a manner inconsistent with the approved plan.

Section 54.06 Subdivision Planning

(A) An applicant for subdivision plan approval pursuant to Chapter 151 of the Revised Code of General Ordinances shall submit a storm water drainage plan to the Director of Water, developed in accordance with the "City of Dayton, Ohio, Construction and Material Specifications" or standards published by the Director of Water.

(B) No subdivision plan shall be approved by the City of Dayton Plan Board until the Director of Water has approved those provisions of the subdivision plan dealing with storm water drainage.

(C) In determining whether to approve a storm water drainage plan for subdivision plans, the Director of Water may consider, but is not limited to, the following principles:

(1) The applicability of the following storm water management practices:

(a) Storm water retention structures;

(b) Storm water detention structures.

(2) Where appropriate and consistent with subdivision ordinances, reducing the need for storm water management facilities by incorporating the use of natural topography.

(3) Designs which minimize the need for maintenance, which provide access for maintenance purposes, and which are structurally sound;

(4) Designs which minimize the likelihood of storm water pollution by materials and activities at the subdivision.

(D) No person required to have an approved storm water drainage plan shall conduct subdivision activity in a manner inconsistent with the approved plan. No person shall conduct any activity on any portion of a property required to have an approved storm water drainage plan in a manner inconsistent with the approved plan.

(E) No bond, financial assurance or part of any bond or financial assurance given pursuant to Section 151.80 of the Revised Code of General Ordinances shall be released by the City Engineer until the Director of Water has certified that the release will not interfere with the achievement of storm water drainage provisions of the storm water management.

Section 54.07 Private Storm Laterals and Plumbing Maintenance

The property owner has all maintenance responsibilities associated with private storm lateral from a building or an inlet structure to the municipal separate storm sewer system. Repairs of private laterals, beyond the customer's property line, in the right-of-way or easement require the services of a licensed plumber and a City permit. Whenever a cut is to be made in a dedicated street or alley, the customer's plumbing contractor shall contact the City of Dayton, Department of Water. The City of Dayton shall perform all said excavations, repairs and restoration with the contractor being billed for the work. For any work on the private lateral, City permits and inspections are required.

Section 54.08 Inspections

(A) The Director of Water or his authorized representative, upon proper identification and stating the purpose of an inspection, may enter at reasonable times upon any private or public property, real or personal, to inspect or investigate, obtain samples, and examine or copy any records to determine compliance with this ordinance, the approved construction plans, and the approved storm water management plan. If entry is refused or inspection or investigation is refused, hindered, or thwarted, the Director of Water may suspend municipal water services to the property. The Director of Water or his authorized representative may apply for an appropriate search warrant necessary to achieve the purposes of this ordinance, the approved construction plans, and the approved storm water management plan.

(B) No person shall obstruct or interfere with inspection of any premises or the sampling of any discharge by the Director of Water or his designee.

(C) The Director of Water or his designee may collect and analyze samples of

discharges to the municipal separate storm sewer system, install and require the installation of storm water sampling and measurement devices, and examine records concerning discharges to the municipal separate storm sewer system. Where adequate facilities do not exist for the installation of storm water sampling and measurement devices, the Director of Water may order the owner of the property to install such facilities.

Section 54.09 Prohibitions

- (A) No person shall place, cause to be placed, or maintain any material in the municipal separate storm sewer system which obstructs or pollutes the flow in any part thereof. No person shall place, cause to be placed, or maintain any material in a place from which it may enter the municipal separate storm sewer system and obstruct or pollute the flow in any part thereof.
- (B) No person shall erect any structure over any part of the municipal separate storm sewer system so as to interfere with its flow, maintenance, or cleaning.
- (C) No person shall uncover, make any connections with or opening into, use, alter, or disturb any part of the municipal separate storm sewer system without obtaining written approval from the Director of Water.
- (D) No person shall install, cause to be installed, or maintain any illicit connection to the municipal separate storm sewer system.
- (E) No person shall cause any illicit discharge to the municipal separate storm sewer system.
- (F) No person may discharge, spill, or dump sewage, industrial wastes, other wastes, or any substances or materials which are not entirely composed of storm water into any water body or into the municipal separate storm sewer system or streets, driveways, sidewalks, parking lots or other areas that drain into the municipal separate storm sewer system.
- (G) Unless an individual discharge is identified by the Director of Water as a significant source of storm water contamination the following non-storm water discharges are not prohibited by this ordinance from entering the municipal separate storm sewer system:

- (1) potable water system flushing;
- (2) landscape irrigation;
- (3) diverted stream flows;
- (4) rising ground waters;
- (5) uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20) to separate storm sewers;
- (6) uncontaminated pumped ground water;
- (7) discharges from potable water sources;
- (8) foundation drains;
- (9) air conditioning condensate;
- (10) irrigation water;
- (11) springs;
- (12) water from crawl space pumps;
- (13) footing drains;
- (14) lawn watering;
- (15) non-commercial washing of vehicles or equipment;
- (16) flows from riparian habitats and wetlands;
- (17) dechlorinated swimming pool discharges;
- (18) street wash waters;
- (19) discharges or flows from emergency fire fighting and emergency response activities;

(20) unanticipated utility repairs or failures for potable water systems.

(H) No person shall apply pesticide, herbicide, or fertilizer to any surface which drains to the municipal separate storm sewer system in a manner inconsistent with the label directions.

(I) No person shall discharge oil, petroleum products, antifreeze, or other waste materials from the maintenance of motor vehicles, water craft or aircraft to the municipal separate storm sewer system.

(J) No person causing or contributing to the occurrence of a spill of pollutants shall fail to take all reasonable actions to prevent the spilled materials from entering the municipal separate storm sewer system.

Section 54.10 Enforcement

(A) Any violation of this ordinance is hereby declared to be a public nuisance. In addition to any other relief provided by this ordinance, the City Attorney may apply to a court of competent jurisdiction for an injunction to prohibit any violation or threatened violation of this ordinance. Such application for relief may include seeking a temporary restraining order, preliminary injunction and permanent injunction. The City Attorney may also sue for money damages on behalf of the city.

(B) Any person who violates any provision of this ordinance is guilty of a misdemeanor, and upon conviction is subject to a fine not exceeding \$1,000 and imprisonment not exceeding a term of six months or both. Each day upon which a violation occurs constitutes a separate offense.

(C) In addition to any other sanction under this ordinance, a person is liable for a civil penalty as provided in this subsection if the person:

(1) Engages in earth-disturbing activity without complying with the requirements of this ordinance and, where applicable, an approved storm water management plan;

(2) Fails to implement controls in accordance with an approved storm water drainage plan within the time specified by the Director, or to maintain those controls.

(D) The Director of Water may recover a civil penalty under paragraph (C) of this section in an amount equal to double the cost of:

- (1) The installation of controls in accordance with an approved plan;
- (2) Maintaining controls in accordance with an approved plan; and
- (3) The permanent restoration of the disturbed land to a stable condition.

(E) The Director of Water may recover a civil penalty under paragraph (C) of this subsection on proof of costs as specified in paragraph (D) of this subsection, without the necessity of proving that he performed work or incurred expenses. However, if any person responsible has made the required corrections within the time specified by an order of the Director, the Director may recover a civil penalty under this subsection in an amount equal to not more than 50 percent of the costs specified in paragraph (D) of this subsection.

(F) All civil penalties recovered in accordance with this ordinance shall be placed in the Municipal Storm Water Fund and shall be used solely for the construction, operation, and maintenance of the municipal separate storm sewer system and pollution prevention and elimination activities related to compliance with the relevant provisions of the Clean Water Act (33 U.S.C. Section 1342(p)).

(G) The Director of Water may issue or lift a stop work order in the following circumstances:

(1) If the Director of Water or his authorized representative finds that earth-disturbing activity requiring plan approval pursuant to this ordinance is being carried on in violation of this ordinance because it is being undertaken:

(a) Without the approval of the Director; or,

(b) Not substantially in accordance with the approved plan or any written requirements of the Director regarding control of erosion, siltation, or the elimination of pollution, the Director may issue an order requiring the person conducting the work to stop all work, except work necessary to implement the approved plan, until such time as approval of the plan has been obtained from the Director of Water and control measures required by the Director have been implemented.

(2) In order to request that a stop work order be lifted, the person to whom the stop work order has been issued shall notify the Director when the required approval has been received and the required control measures have been implemented.

(3) The Director of Water shall act on a request to lift a stop work order and shall notify the requester of the approval or denial of the request within two working days of the receipt of that request. Any denial shall be in writing and state the reasons therefor. Denial of a request to lift a stop work order solely for reasons pertaining to implementation or maintenance of approved sedimentation, erosion and pollution control measures shall be based on an inspection of the site by the Director of Water or his authorized representative. If the initial request is denied, the Director shall act upon each subsequent request within 10 working days of receipt of that subsequent request.

(4) A stop work order is effective immediately whether or not a request for a hearing is filed, and remains in effect until lifted in accordance with this ordinance.

SECTION 2. This ordinance does not affect rights, duties, and privileges that vested, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. If any provision of this ordinance or application thereof to any person or circumstance is held invalid, the invalidity does not affect any other provisions or applications of this ordinance which can be given effect without the invalid provisions or application, and to this end the provisions of this ordinance are severable.

Passed by the Commission..... March 26, 1997

Signed by the Mayor..... March 26, 1997

Michael R. Luman
MAYOR OF THE CITY OF DAYTON, OHIO

ATTEST:

B. R. King
Clerk of Commission

asst.

APPROVED AS TO FORM:

[Signature]
City Attorney

By Mr. Lovelace

²¹⁰⁰
No. 29359-97

AN ORDINANCE

Enacting Section 54.11 of the Revised Code of General Ordinances Pertaining to the Rates to be Charged to the Owners of Benefited Property for the Use of the City's Storm Water Utility and Parts Thereof

WHEREAS, The maintenance of an effective storm water conveyance and storm water pollution prevention system is necessary to protect the health and environment of the citizens of Dayton; and

WHEREAS, It is deemed necessary and appropriate to raise revenues for the operation of the storm water conveyance and pollution prevention system; now, therefore,

BE IT ORDAINED BY THE COMMISSION OF THE CITY OF DAYTON:

Section 1. That Section 50.03 of the Revised Code of General Ordinances be, and the same hereby is amended to read as follows:

Section 54.11 ASSESSMENT RATES AND USER CHARGE SYSTEM

The annual rate per square foot of impervious surface area shall be \$0.0134.

Section 2. The rates established by this Ordinance to be effective as of the date of enactment of this ordinance and shall be assessed annually in accordance with the procedures set forth in Section 54.04 of the Revised Code of General Ordinances

Passed by the Commission March 26, 1997

Signed by the Mayor March 26, 1997

Michael H. Hunt
MAYOR OF THE CITY OF DAYTON, OHIO

Attest:

B. A. [Signature]
Clerk of the Commission

Asst:

Approved as to form:

[Signature]
City Attorney