

ORDINANCE 2021-12

AN ORDINANCE TO ENACT ARTICLE 936 OF THE CITY OF MARTINSBURG CODE ESTABLISHING THE MARTINSBURG STORMWATER UTILITY.

The City Council of Martinsburg hereby enacts Article 936 “Martinsburg Stormwater Utility,” inclusive of title, as follows:

ARTICLE 936 Martinsburg Stormwater Utility.

936.01 Martinsburg Stormwater Utility Established.

There is hereby established the Martinsburg Stormwater Utility, which shall be operated as a municipal stormwater system under Chapter 8, Article 20 of the West Virginia Code of 1931, as amended (the "Act") under the supervision and control of the Martinsburg City Council and shall be operated as a separate utility and enterprise fund pursuant to W. Va. Code § 8-20-1c. This utility shall serve the Martinsburg urban watershed, which shall include all areas within the corporate boundaries of the City of Martinsburg. The Stormwater Utility shall provide storm, flood and surface water drainage management services to all real property located within the Martinsburg urban watershed.

936.02 Duties.

(a) The Martinsburg Stormwater Utility shall protect, to the greatest extent practicable, life, property and the water environment from loss, injury and damage by pollution, erosion, flooding, and other potential hazards, whether from natural causes or from human activity, and shall protect, to the greatest extent practicable, surface waters and receiving waters from pollution, mechanical damage, excessive flows, and other conditions which degrade the water environment, reduce recharging of groundwater, or endanger aquatic and benthic life within the Martinsburg urban watershed and other receiving waters of the State. The Martinsburg Stormwater Utility shall further meet the requirements of State and Federal law and the City's municipal stormwater NPDES permit.

(b) The Martinsburg Stormwater Utility shall have all powers conferred by the Act, specifically including, but not limited to plan, acquire, improve, construct, inspect, develop, install, modify, manage, operate, maintain, replace, control, demolish, abandon, regulate, and fund storm and surface water drainage services, system and facilities within the urban watershed. The Utility is further authorized to acquire property and/or rights in land by gift, purchase, lease, or exercise of the right to eminent domain, to construct, to reconstruct, to improve, to better and to extend stormwater and flood management facilities within the City watershed. The Utility is further authorized to charge and collect rates and fees for these services, which rates and fees shall be determined by the Council of the City of Martinsburg. The utility is further authorized to accept Federal funds under any Federal law for actions preliminary to construction/reconstruction or construction/reconstruction of stormwater and flood management facilities.

(c) The Martinsburg Stormwater Utility is authorized, in anticipation of the collection of revenues of and from stormwater facilities, to issue revenue bonds to finance in whole or in part the cost of acquisition, construction, reconstruction, improvement, betterment or extension of such facilities, and to pledge punctual payment of said bonds and interest thereon all or any part of the revenues of the utility.

(d) The Martinsburg Stormwater Utility may enter into and perform contracts and agreements with other governmental entities, utility enterprises and private parties for or concerning the planning, construction, lease or other acquisition and the financing of stormwater and flood management facilities and the maintenance and operation thereof.

(e) All real property, easements, fixtures and personal property of the city pertaining to stormwater, specifically including, but not limited to, all assets of the stormwater division of the department of public works currently held by the department of public works shall be transferred to the Martinsburg Stormwater Utility.

(f) Article 937 of the Martinsburg City Code and Ordinance 2013-17 relating to illicit discharge and detection and erosion and sediment control shall be amended to transfer the responsibilities to the Martinsburg Stormwater Utility under the supervision and control of the Martinsburg City Council.

(g) All power and authority possessed by the City of Martinsburg pertaining to stormwater management is hereby transferred to the Martinsburg Stormwater Utility under the supervision and control of the Martinsburg City Council.

(h) All stormwater systems or facilities owned or controlled by the City of Martinsburg, and revenues raised for stormwater management, including but not limited to, public flood control are to be collected and/or managed by the Martinsburg Stormwater Utility.

936.03 Definitions.

Unless the context specifically indicates otherwise, the meaning of the terms used herein shall be as follows:

(a) "*City*" is the City of Martinsburg, West Virginia, and its duly elected and appointed officers and employees, including the Martinsburg City Council and the Martinsburg Stormwater Utility.

(b) "*Customer*" is any person or entity, of any kind, that is the legal owner of real property containing impervious area within the Martinsburg Stormwater Utility's Service area as defined by this article.

(c) "Equivalent Residential Unit (ERU)" of impervious area shall mean the median impervious coverage of detached dwelling unit properties in the City of Martinsburg as determined by the City, and shall be used as the basis for determining stormwater service charges to dwelling unit properties or classes of dwelling unit properties and other properties. Two thousand two hundred eighty (2,280) square feet of impervious area shall be one equivalent residential unit (ERU).

(d) "*Martinsburg Urban Watershed*" is all areas within the corporate boundaries of the City of Martinsburg and those areas outside of said corporate boundaries from which stormwater or surface water naturally drains into the city.

(e) "*Impervious area*" means any portion of real property covered by buildings, structures, pavement, gravel or other material that significantly inhibits stormwater from penetrating the soil.

(f) "*Multi-unit property*" is a residential, non-residential or commercial property of any size that has located upon the property structures capable of housing two or more residents or tenants, at least one of which having no ownership interest in the property.

(g) "*MS4*" means municipal separate storm sewer system. The City of Martinsburg is a regulated MS4 under the NPDES program.

(h) "*NPDES*" means National Pollutant Discharge Elimination System. A permitting program with authority from the Clean Water Act.

(i) "*Non-residential customer*" means any owner of property not defined as a residential customer and includes, but is not limited to, owners of multi-unit, commercial and industrial property and governmental entities that own property within the Martinsburg Stormwater Utility's Service area.

(j) "*Non-stormwater*" is all flows to the stormwater system not defined as a pollutant or stormwater in this article or as so determined by the city. This may include, but is not limited to, cooling water, process water, ground water from a purge well and dechlorinated swimming pool discharge.

(k) "*Pervious area*" is all real property that is not impervious.

(l) "*Pollutant*" means any liquid or non-liquid material including, but not limited to, dredged soil, solid waste, sewage, garbage, sewage sludge, grease, petroleum products, munitions, chemical waste, detergents, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, silt, dirt, industrial, municipal and agricultural waste, gasses entrained in water, paints, oil and other automotive fluids, soil, rubbish, debris, materials containing fecal coliform, fecal streptococcus, and enterococcus, heavy metals, hazardous wastes, yard waste from commercial landscaping operations, animal waste, materials that result from the process of building, and offensive matter of any kind which, when discharged to water, causes or contributes to water pollution and/or the degradation of water quality.

(m) "*Pollution*" is the degradation of the physical, thermal, chemical, biological or radioactive properties of the watercourses and water supplies located in or running through the city and/or the discharge of any pollutant to the watercourses and water supplies located in or running through the city which will or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare or to the beneficial use of the water and/or the water environment.

(n) "*Real property*" as used in this article, is land and fixtures and improvements upon that land, but does not include publicly owned streets or sidewalks.

(o) "*Residential customer*" means the owner of real property on which is located one single family dwelling.

(p) "*Service area*" is, initially, all areas within the corporate boundaries of the city.

(q) "*Stormwater*" includes atmospheric precipitation, surface runoff water, groundwater discharge and floodwater.

(r) "*Stormwater management*" is the process of collection, conveyance, storage, treatment and/or disposal of stormwater to reasonably manage the magnitude and frequency of runoff to minimize the impact of the runoff upon the water quality of the receiving stream and the other hazards associated with stormwater, including, but not limited to, pollution and flooding.

(s) "*Stormwater system*" includes all real property, fixtures and personal property of the Martinsburg Stormwater Utility, including, but not limited to, stormwater sewers, drains, ditches, streets, retention/detention structures, floodwalls, dams, and river impoundments, used for collecting, conveying, storing, treating and/or disposal of stormwater and non-stormwater.

(t) "*Stormwater utility fee*" is a flat rate charge or a charge based on square feet of impervious land area.

(u) "*Stormwater utility service charge*" is a charge for services rendered by the Martinsburg Stormwater Utility, including, but not limited to, fees for permit applications, stormwater management plan review, flood protection activities, inspection, and other services.

936.04 Fees.

(a) Fees and charges for the Martinsburg Stormwater Utility shall be subject to review, approval and enactment by the Martinsburg City Council, pursuant to the Martinsburg City Charter and the City Code of the City of Martinsburg and the duly enacted procedures of city council. Enacted rates and fees shall at all times be sufficient to fully fund the Martinsburg Stormwater Utility. Collected rates and fees shall be solely for the purposes of the Martinsburg Stormwater Utility.

(b) Owners of real property located within the service area shall pay the stormwater utility fee and service charges for the operation, maintenance, improvement of, and necessary additions to, the stormwater system. Therefore, all owners of real property in the service area shall be charged for the use of the stormwater system.

(c) The city council shall, by ordinance, set a stormwater utility fee to recover from owners of real property located within the service area, the cost of the Martinsburg Stormwater Utility. Such stormwater utility fee and service charges are intended to cover costs that

include, but are not limited to, the costs of administration, operation, maintenance, improvement of, and necessary additions to the stormwater system, debt service for any debt obligations secured by the revenues of the stormwater system and regulatory compliance of the stormwater system and stormwater management program, all as authorized under the provisions of W. Va. Code, § 16-13-1, et seq.

936.05 Authorized Stormwater Utility Fee and Charges.

- (a) There is hereby established a stormwater utility fee to fund the operations of the Martinsburg Stormwater Utility. The monthly stormwater utility fee authorized under 936.04 shall be established as follows: \$6.00 per each ½ Equivalent Residential Unit (ERU) per month for each residential and non-residential property. The minimum charge on each parcel of real property owned shall be equivalent to ½ ERU. No bill shall be rendered for less than ½ ERU.
- (b) The initial stormwater utility fee shall be effective January 1, 2022. The stormwater utility fee shall be based upon square feet of impervious area based upon mapping of the service area completed by the Martinsburg Stormwater Utility.
- (c) Returned check charge. A service charge of \$25 will be imposed upon any customer, property owner or any other person or entity whose check is returned by the bank for any reason.
- (d) EFT, credit card and drop box payments. A service charge will be imposed on EFT, credit card or drop box payments or any other electronic transactions. The amount shall be equal to the actual charges to the utility from any source.
- (e) Delayed payment penalty. On all current usage billings not paid in full by the latest pay date, 10% will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.
- (f) The city council may, from time to time, by ordinance, change the stormwater utility fee or charges.
- (g) The Martinsburg Stormwater Utility may develop a Stormwater Utility Credit Program and assign discount credits to commercial properties employing volumetric flow reduction facilities, and to those existing properties employing volume and/or rate of flow reduction practices three (3) years after this Ordinance becomes effective. The maximum credit allowable shall be twenty percent (20%). The credits may be made available only with adequate mapping and research by the Martinsburg Stormwater Utility and may be reasonably delayed pending the fulfillment of these prerequisites.

936.06 Collection.

The Martinsburg Stormwater Utility shall assess interest and penalties upon unpaid and past due stormwater utility fee and service charges, and act as it deems appropriate to enforce collection of unpaid stormwater utility fee and charges. Unpaid stormwater utility fee and charges shall constitute just cause for disconnection of public water service to the non-paying property. The Martinsburg Stormwater Utility shall enter into an agreement with the public water provider(s) to accomplish these purposes and shall further ensure sufficient notice of disconnection is made in accordance with the rules of the Public Service Commission. Water service shall be reactivated only upon full payment of the stormwater utility fee and charges or other payment arrangements approved by the Martinsburg Stormwater Utility. The Martinsburg Stormwater Utility may also take appropriate legal action to collect unpaid stormwater utility fee charges, including, but not limited to, placing a lien upon the subject property and/or bringing a civil action in a court of competent jurisdiction to recover unpaid charges and fees.

936.07 Use of Funds.

All funds collected by the Martinsburg Stormwater Utility shall be accounted for separately and shall be used solely for the purposes of the Martinsburg Stormwater Utility authorized under West Virginia Code, including, but not limited to, construction, operation, repair, improvement, extension and maintenance of the stormwater system, debt service on any obligations secured by the revenues of the stormwater system, and stormwater environmental compliance and stormwater management programs.

936.08 General Requirements and Prohibitions

(a) The stormwater system shall be used for the collection, conveyance, storage, treatment and disposal of stormwater.

(b) No person shall place or cause to be placed any substance or material, including any pollutant, into the stormwater system, unless written approval has been granted by the Martinsburg Stormwater Utility or the person maintains a current industrial waste discharge permit authorizing such discharge and such discharge will not cause a pass-through violation for the stormwater system. The Martinsburg Stormwater Utility may grant approval to discharge non-stormwater into the stormwater system for any reason or combination of reasons in its sole discretion.

(c) Any person or entity engaged in activities which will or may result in any pollutant entering the stormwater system shall undertake stormwater control practices to reduce such pollutants. Examples of such activities include, but are not limited to, compliant operation of facilities that may be a source of pollutants, such as paved parking lots, gasoline stations, industrial facilities, storage facilities, and private roads/streets.

(d) No person shall deposit, leave or maintain, or cause to be deposited, left or maintained, any refuse, rubbish, grass clippings, leaves, garbage, grease, petroleum products, or other discarded or abandoned objects, articles or accumulations in or upon any street, alley, sidewalk, storm

drain inlet, catch basin, stream, conduit or other drainage structures, parking area, or upon any private or public plot of land so that any discharge therefrom may result in pollution.

(e) No person shall cause or permit any dumpster, solid waste bin, storage facility, or similar container to leak such that any pollutant is discharged into any street, alley, sidewalk, storm drain, inlet, catch basin, conduit or other drainage structure, or upon any public or private plot of land in the service area.

(f) No person shall use the stormwater system for discharge from any environmental cleanup that is regulated under federal or state law unless approved by the stormwater utility. Approval by the Martinsburg Stormwater Utility must be conditioned upon the discharge meeting all criteria for discharge under this article. Approval conditions may provide for measures appropriate to prevent harm due to possible exfiltration into the ground adjacent to the stormwater system or failure of any pretreatment system for the discharge.

(g) Any person who maintains and complies with a Ground Water Protection Plan established pursuant to 47 CSR 58 (West Virginia Ground Water Protection Rule) shall be deemed to be in full compliance with the requirements of subparagraphs (c), (d) and (e) this section.

936.09 Illicit Connections.

It is prohibited to establish, use, maintain or continue illicit connections to the stormwater system. The provisions of Article 936 of the Martinsburg City Code, relating to illicit discharge and detection are incorporated by reference herein.

936.10 Storage Areas.

No person shall store any material including grease, oil or other hazardous substance in a manner that will or may result in such substance entering the stormwater system causing pollution. No person shall store motor vehicles, machine parts, or other objects or materials in a manner that may leak grease, oil, or other hazardous substance, and/or other pollutant into the stormwater system to prevent the pollution of the stormwater system. Spill containment systems may consist of a system of dikes, walls, barriers, berms, or other devices as required. No person shall operate a spill containment system such that it allows incompatible liquids to mix and thereby create a hazardous condition. Any person who maintains and complies with a Ground Water Protection Plan established pursuant to 47 CSR 58 (West Virginia Ground Water Protection Rule) shall be deemed to be in full compliance with the requirements of this section.

936.11 Discharge in Violation of Permit.

Any discharge that would cause a violation of any NPDES permit assigned to the City of Martinsburg and any amendments, revisions or reissuance thereof, either separately considered or when combined with other discharges, is prohibited. Liability for any such discharge, including, but not limited to, the cost of remedial activity, shall be the responsibility of the person(s) causing or responsible for the discharge, and the city shall seek to have such persons

defend, indemnify and hold harmless the city in any administrative or judicial enforcement action against the City of Martinsburg relating to such discharge as provided by applicable rules of law.

936.12 Stormwater System Construction.

(a) Only parties authorized by the Martinsburg Stormwater Utility may perform construction upon the public facilities of the stormwater system. Public facilities of the stormwater system which may be constructed by authorized parties shall include, but not be limited to:

(1) Those facilities that serve two or more properties, including, but not limited to, stormwater system facilities that collect and transmit stormwater from and/or across two or more properties; and,

(2) All taps or other connections from a private lateral to a facility of the stormwater system.

(b) All costs and expenses of the Martinsburg Stormwater Utility incidental to the installation of private stormwater facilities, connection of a private facility to the stormwater system, and installation of public facilities to facilitate and/or convey flows from a specific private facility to the stormwater system, shall be borne by the owner(s) of the private facility. The amount of, and terms of payment for, these costs and expenses, shall be determined by the Martinsburg Stormwater Utility for such facility, in its sole discretion.

(c) Parties authorized by the Martinsburg Stormwater Utility to perform construction of or upon the stormwater system shall comply with the design and construction standards required by the Martinsburg Stormwater Utility. These parties shall allow for inspection of the construction by the Martinsburg Stormwater Utility at all times, and construction shall only occur during normal working hours of the Martinsburg Stormwater Utility unless otherwise authorized by the Martinsburg Stormwater Utility. No facility constructed by an authorized party may be covered or connected to the stormwater system without specific authorization of the Martinsburg Stormwater Utility. This authority shall be granted by the Martinsburg Stormwater Utility upon satisfaction of the design and construction standards required by the Martinsburg Stormwater Utility for such facility, in its sole discretion.

(d) All public facilities of the stormwater system shall, upon authorized completion and acceptance, be property of the Martinsburg Stormwater Utility.

936.13 Stormwater Taps.

(a) The Martinsburg Stormwater Utility or a party authorized by the Martinsburg Stormwater Utility will furnish and install stormwater system taps of the size and at the location requested in writing by an applicant upon a form to be provided by the Martinsburg Stormwater Utility. The applicant shall pay the full and actual cost of the tap installation.

(b) The Martinsburg Stormwater Utility may deny a tap application when the requested tap is proposed to an inadequate public facility. A public facility shall be considered inadequate when, under expected wet weather conditions, that facility is calculated to be unable to effectively convey stormwater in a manner, and to a location, deemed appropriate by the Martinsburg Stormwater Utility.

936.14 Enforcement.

(a) No person shall construct or maintain any property, residence or business not in compliance with the standards of this article.

(b) Authorized Martinsburg Stormwater Utility employees bearing proper credentials and identification shall be permitted, after reasonable notice, to enter upon all properties for the purposes of inspection, observation, measurement, sampling and testing in accordance with the provisions of this article.

(c) No person or firm shall fail to provide any report or other information or perform any duty required by this article.

(d) The Martinsburg Stormwater Utility is authorized to take appropriate legal action to require compliance with this article.

(e) The Martinsburg Stormwater Utility is authorized to enforce and collect upon the terms of a payment and performance bond in the event of default of the conditions described therein.

(f) If, after reasonable notice, a person fails to comply with this article, the Martinsburg Stormwater Utility may cause the work to be done to achieve compliance and shall charge the cost of that work to the person responsible. The responsible person shall pay in full the charged amount within 30 days of the invoice date, or otherwise make arrangements, acceptable to the Martinsburg Stormwater Utility, for full payment of the invoiced amount.

936.15 Concealment.

Causing, permitting, aiding, abetting or concealing a violation of any provision of this article shall constitute a violation of such provision.

936.16 Administrative Enforcement Powers

In addition to the other enforcement powers and remedies established by this article, the Martinsburg Stormwater Utility has the authority to utilize any of the remedies or sanctions authorized by West Virginia law and this Code that, in its judgment, will effectively protect the stormwater system and comply with federal and state laws and regulations.

936.16 Non-Exclusivity of Remedies

Remedies under this article are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

936.17 Disclaimer of Liability.

The degree of protection required by this article is considered reasonable for regulatory purposes. The standards set forth herein are minimum standards and this article does not imply that compliance will ensure that there will be no unauthorized discharge of pollutants into the waters of the state or no damage to real or personal property within the Martinsburg Urban Watershed. This article shall not create liability on the part of the city, any agent or employee thereof for any damages that result from reliance on this article or any administrative decision lawfully made thereunder.

This Ordinance shall become effective upon the date of adoption.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

INTRODUCED: September 9, 2021

ADOPTED: October 14, 2021


Kevin Knowles, Mayor

Attest:


Gena Long, City Recorder