

TOWNSHIP OF MAPLEWOOD



ORDINANCE NUMBER 3138-

24

AN ORDINANCE TO ESTABLISH A STORMWATER UTILITY IN THE TOWNSHIP OF MAPLEWOOD, IN THE COUNTY OF ESSEX, NEW JERSEY

“Interpretive Statement”

This Ordinance will establish a stormwater utility within the Township in accordance with the Clean Stormwater and Flood Reduction Act, N.J.S.A. 40A:26B-1 et seq.

WHEREAS, the Township of Maplewood (the “Township”) oversees stormwater management within its borders; and

WHEREAS, the New Jersey Stormwater Management Rules set forth at N.J.A.C. 7:8-1.1 et seq. provide that the purpose of the stormwater management statute is to facilitate municipal compliance with the National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System regulations, and other applicable federal and state regulations, and to enable municipalities to regulate stormwater discharges, establish a system of drainage facilities, and construct and operate a system of stormwater management and flood control facilities; and

WHEREAS, the State of New Jersey has determined that there are an extensive set of problems due to inadequate stormwater infrastructure and management, and these problems directly affect the health, safety, economic well-being, and quality of life of New Jersey residents; and

WHEREAS, when storms occur, excess stormwater runs off impervious surfaces such as roads, roofs, and parking lots, and into stormwater management systems and waterways. This stormwater carries with it oil, pesticides, other chemicals, sediments, and bacteria that may contaminate State waters, potentially making them unsafe for drinking, fishing, and recreational purposes; and

WHEREAS, the effects of climate change have increased the frequency and severity of storms throughout the country; and

WHEREAS, if an adequate stormwater management system is not in place or is not able to adequately absorb, capture, or convey stormwater, then runoff in large volume and force may cause flooding and damage to homes, businesses, and property. Due to climate change, there is a projected increase in the frequency and severity of storms that is expected to result in more flooding in the coming years; and

WHEREAS, the establishment of local stormwater utilities presents an effective management strategy to address stormwater issues. Currently, there are more than 2,000 stormwater utilities operating across the country; and

WHEREAS, the State of New Jersey has determined that it is in the public interest to authorize the establishment of local stormwater utilities, and to allow those utilities to assess fees that are based on a fair and equitable approximation of the proportionate contribution of stormwater runoff from any real property, in order to finance the improvement of stormwater infrastructure, better control of water pollution and flooding, the restoration and enhancement of the quality of the State’s waters, and the protection of the public health, safety, and welfare and the environment; and

WHEREAS, the Clean Stormwater and Flood Reduction Act, N.J.S.A. 40A:26B-1 et seq. (the “Act”) authorizes municipalities such as the Township to establish a local stormwater utility

and to adopt a system of charges to fund the implementation of stormwater management programs; and

WHEREAS, all real property in the Township of Maplewood, including property owned by public and tax-exempt entities, contributes to runoff; and

WHEREAS, stormwater runoff contributes to nonpoint source pollution to the streams of the Township's watersheds and a stormwater management program can reduce this type of pollution; and

WHEREAS, stormwater can produce local or regional flooding and proper stormwater management can reduce potential hazards to property and thus help to preserve its value; and

WHEREAS, the State of New Jersey has determined that green infrastructure is an effective approach to managing stormwater because it reduces and treats stormwater at its source while delivering other environmental, social, and economic benefits. The use of green infrastructure should be encouraged and, where appropriate, required to help decrease pollutant loads and runoff volumes to receiving waters; and

WHEREAS, a stormwater management fee system offers additional financial management options that could assist the Township to improve stormwater and drainage services, including but not limited to green infrastructure; and

WHEREAS, it is in the interest of the public to fund stormwater management with a stormwater fee system that allocates the cost of stormwater management among property owners in the Township and that further seeks to base the amount of the stormwater management fee on a fair and equitable approximation of the proportionate contribution of stormwater runoff from any real property,

NOW, THEREFORE, BE IT ORDAINED, by the Township Committee of the Township of Maplewood, County of Essex, State of New Jersey, as follows:

Section 1. Legislative Findings and Policy. The Township hereby finds and determines that:

(a) The Township maintains a stormwater management system including, but not limited to, storm inlets, storm pipes, storm manholes, open curb drainage, and stormwater outfalls and discharge locations and other components.

(b) The stormwater management system in the Township needs regular maintenance and improvements.

(c) Water quality is degraded due to erosion and the discharge of nutrients, metals, oil, grease, toxic materials, and other substances into and through the stormwater management system.

(d) The public health, safety, and welfare is adversely affected by poor ambient water quality and flooding that result from inadequate management of both the quality and quantity of stormwater.

(e) The costs of improving, maintaining, operating, and monitoring the stormwater management system should be allocated to the extent practicable to all property owners, based on an approximation of their proportionate contribution of stormwater runoff. The amount of stormwater runoff from a property is influenced by the amount of impervious surfaces on the property.

(f) Management of the stormwater management system to protect the public health, safety, and welfare requires adequate revenues and it is in the interest of the public to fund stormwater management adequately with a stormwater charge system that is reasonable and equitable.

Section 2. Creation of Stormwater Utility. The Township hereby establishes the Maplewood Stormwater Utility in accordance with the Act.

Section 3. Definitions. For the purposes of this Ordinance, the following definitions shall apply. Words used in the singular shall include the plural, and the plural shall include the singular; words used in the present tense shall include the future tense. The word “shall” is mandatory and not discretionary. The word “may” is permissive.

1. “Base Rate” means the stormwater annual fee per Equivalent Residential Unit.
2. “BMPs” or “Best Management Practices” mean activities or structural improvements that reduce, retain, or treat stormwater onsite.
3. “Developed Property” means real property in the Township altered from a natural state that contains Impervious Surface Area equal to or greater than 300 square feet. Real property includes roads and rights-of-way.
4. “Equivalent Residential Unit” or “ERU” means the measure of impervious ground cover for a typical single family residential property used in assessing the fees for each Developed Property, and which has been determined to be 3,213 square feet for the Township.
5. “Fee” or “Stormwater Management Fee” means the charge established under this ordinance and levied on owners of Developed Property to fund the costs of stormwater management and of operating, maintaining, and improving the stormwater management system in the Township. The stormwater management fee is in addition to any other fee that the Township has the right to charge under any other rules or regulations.
6. “Fiscal Year” means January 1 through December 31.
7. “Green Infrastructure” means a stormwater management measure that manages stormwater close to its source by treating stormwater runoff through infiltration into subsoil, treating stormwater runoff through filtration by vegetation or soil, or storing stormwater runoff for reuse.
8. “Impervious Surface” means a surface that prevents or impedes the infiltration of water into the ground. Impervious surfaces include, but are not limited to sidewalks, packed dirt or stone paths, parking areas, driveways and private roads, pavements, driveway areas and roofs. Any surface areas designed to be gravel or crushed stone shall be regarded as impervious surfaces. Railroad track ballast is not included as Impervious Surface. The water surface area of a swimming pool is included as Impervious Surface.
9. “Impervious Surface Area” means the number of square feet of horizontal surface covered by Impervious Surfaces.
10. “Person” means any and all individuals, firms, partnerships, business entities, associations, and any municipal or private corporations organized or existing under the laws of this or any other state or country.
11. “Property Owner” means the property owner of record of real property as listed in the tax assessment records.
12. “Stormwater” means water resulting from precipitation, including rain and snow, which runs off the land’s surface, is transmitted to the subsurface, or is captured by separate storm sewers or other sewage or drainage facilities, or conveyed by snow removal equipment.
13. “Stormwater Management” means the planning, design, construction, regulation, improvement, repair, maintenance, and operation of facilities and programs relating to water, flood plains, flood control, grading, erosion, tree conservation, and sediment control.
14. “Stormwater Management System” means any equipment, plant, structures, machinery, apparatus, management practices, design practices, planning activities, or land, or any combination thereof, acquired, used, constructed, implemented, or operated to convey stormwater, control or reduce stormwater runoff and associated pollutants or flooding, induce

or control the infiltration of groundwater recharge of stormwater, or eliminate illicit or illegal non-stormwater discharges.

15. “Stormwater Utility”, “Utility”, or “MSU” means the stormwater utility established by the Township in accordance with the Act pursuant to Section 2 of this Ordinance.
16. “Stormwater Utility Director” means the Township Engineer or other person designated by the Township Committee to be responsible for administration of the stormwater utility.
17. “Stormwater Utility Fund” means that separate fund within the Township wherein Stormwater Management Fees are deposited.
18. “Township” means the Township of Maplewood, in the County of Essex, New Jersey.
19. “Township Committee” means the governing body of the Township.
20. “Undeveloped Property” means any real property which has less than 300 square feet of Impervious Surface Area.

Section 4. Funding of Stormwater Utility. Funding for the Stormwater Utility’s activities may include, but not be limited to, the following:

1. Stormwater Management Fees;
2. Civil penalties and damage assessments imposed for or arising from the violation of the Township’s stormwater management ordinance;
3. Stormwater permit and inspection fees;
4. The proceeds of bonds or notes issued pursuant to the Local Bond Law, N.J.S.A. 40A:2-1 et seq.;
5. The proceeds of loans made by governmental entities such as the State or federal government; and
6. Other funds or income obtained from federal, state, local, and private grants, or revolving funds.

To the extent that Stormwater Management Fees collected are insufficient to construct needed Stormwater Management System components, the cost of the same may be paid from such Township funds as may be determined by the Township Committee.

Section 5. Stormwater Utility Fund. All revenues generated by or on behalf of the Stormwater Utility shall be deposited in the Stormwater Utility Fund and used exclusively for the Stormwater Utility as further described below.

Section 6. Purposes of the Stormwater Utility Fund. Funds in the Stormwater Utility Fund shall be limited to the following purposes:

1. The acquisition by gift, purchase, or condemnation of real and personal property, and interests therein, necessary to construct, operate, and maintain stormwater control facilities.
2. All costs of administration and implementation of the stormwater management program, including the establishment of reasonable operating and capital reserves to meet unanticipated or emergency stormwater management requirements.
3. The costs of inventorying assets currently in place and of evaluating what is needed to address future stormwater management needs.
4. Engineering and design, debt service and related financing expenses, construction costs for new facilities, and enlargement or improvement of existing facilities.

5. Installation of Green Infrastructure practices.
6. Operation and maintenance of the stormwater management system.
7. Monitoring, surveillance, and inspection of the stormwater management system.
8. Water quality monitoring and water quality programs related to surface waters.
9. Retrofitting developed areas for pollution control.
10. Inspection and enforcement activities.
11. Billing and administrative costs, to the extent permitted by the Act.
12. Public education and outreach related to stormwater management.
13. Other activities which are reasonably required, including but not limited to those that are reasonable and necessary to comply with the municipal separate storm sewer system (MS4) permit of the Township and the Act.
14. Any other purpose permitted by the Act or applicable law.

Section 7. Scope of Responsibility for Stormwater Management Systems and Facilities.

1. The Township owns or has rights established by written agreements which allow it to operate, maintain, improve and access those Stormwater Management Systems and facilities which are located:
 - a. Within public road rights-of-way owned by the Township;
 - b. On private property but within easements granted to, and accepted by, the Township, or are otherwise permitted to be located on such private property by written agreements for rights-of-entry, rights-of-access, rights-of-use or other permanent provisions for operation, maintenance, improvement and access to the Stormwater Management System facilities located thereon;
 - c. On land dedicated to, and accepted by, the Township solely for the operation, maintenance, improvement and access to the Stormwater Management Systems and facilities located thereon; or
 - d. On public land which is owned by the Township and/or land of another governmental entity upon which the Township has agreements providing for the operation, maintenance, improvement and access to the Stormwater Management Systems and facilities located thereon.
2. Operation, maintenance and/or improvement of Stormwater Management Systems and facilities which are located on private or public property not owned by the Township, and for which there has been no written agreement granting easements, rights-of-entry, rights-of-access, rights-of-use or other form of dedication thereof to the Township for operation, maintenance, improvement and access of such Stormwater Management Systems and facilities shall be and remain the legal responsibility of the Property Owner, except as otherwise provided for by the State and federal laws and regulations.
3. It is the express intent of this Ordinance to protect the public health, safety and welfare of people and property in general, but not to create any special duty or relationship with any individual person, or to any specific property within or outside the boundaries of the Township. The Township expressly reserves the right to assert all available immunities and defenses in any action seeking to impose monetary damages or equitable remedies upon the Township, its elected officials, officers, employees and agents arising out of any alleged failure or breach of duty or relationship.
4. If any permit, plan approval, inspection or similar act is required by the Township as a condition precedent to any activity or change upon property not owned by the Township pursuant to this or any other regulatory ordinance, regulation or rule of the Township, or under

federal or state law, the issuance of such permit, plan approval or inspection shall not be deemed to constitute a warranty, express or implied, nor shall it afford the basis for any action, including any action based on failure to permit, negligent issuance of a permit, negligent plan approval, or negligent maintenance of any permitted Stormwater Management System or facility not expressly dedicated to and accepted by the Township for further maintenance in an action seeking the imposition of money damages or equitable remedies against the Township, its elected officials, employees or agents.

Section 8. Operating Budget. The Township Committee shall adopt an operating budget for the Stormwater Utility each fiscal year. The operating budget shall set forth for such fiscal year the estimated revenues and the estimated costs for operations and maintenance, extension and replacement, and debt service, together with any other items or details required by applicable law.

Section 9. Stormwater Management Fees Established. (a) There is hereby imposed upon each and every Developed Property within the Township a Stormwater Management Fee for the operation, maintenance, repair, replacement and improvement of the Stormwater Management System.

(b) The Stormwater Management Fee shall be calculated based upon the amount of Impervious Surface Area on a Developed Property and divided by the Equivalent Residential Unit to determine the number of ERUs on the property, rounded to the nearest 0.5 ERU with no Developed Property being billed less than 0.5 ERUs. The Stormwater Management Fee for each Developed Property shall be determined by multiplying the number of ERUs by the Base Rate.

Section 10. Base Rate. The Base Rate is hereby set at \$70 per ERU per year. The Township Committee may, by ordinance from time to time, modify the Base Rate for the Stormwater Management Fee. The Base Rate shall be calculated to ensure adequate revenues to fund the costs of stormwater management and to provide for the operation, maintenance, and capital improvements of the Stormwater Management System in the Township.

Section 11. Adjustments to Stormwater Management Fees. Prior to the issuance of the first Stormwater Management Fee bills, the Township will adopt a Stormwater Utility Fee Credit manual that defines procedures for owners of Developed Properties to obtain credits for onsite activities which reduce, retain, or treat Stormwater runoff onsite. Amendments to the Stormwater Utility Fee Credit manual may be adopted by the Township from time to time.

Section 12. Property Owners to Pay Charges. The owner of each Developed Property shall pay the Stormwater Management Fees and charges as provided in this Ordinance.

Section 13. Billing Procedures and Penalties for Late Payment.

1. Rate and Collection Schedule. The Stormwater Management Fee shall be calculated in accordance herewith. It shall be billed once annually, and shall become delinquent if not paid within thirty (30) calendar days following the billing date.
2. Place of Payment. The Stormwater Management Fee shall be paid in person or by mail at the Maplewood Municipal Building, 574 Valley Street, Maplewood, NJ 07040, or by electronic payment portal if the Township shall establish same.
3. Collection of Unpaid Stormwater Management Fees. Commencing on the 30th calendar day after the billing date, any unpaid Stormwater Management Fee shall bear interest at the same legal rate as those established for unpaid property taxes. Unpaid Stormwater Management Fees shall constitute a municipal lien and shall be collected in the same manner as unpaid property taxes and other unpaid municipal charges.

Section 14. Appeals of Stormwater Management Fee Calculation. Any Property Owner who disagrees with the calculation of the Stormwater Management Fee for their property may appeal such fee determination to the Stormwater Utility Director within thirty (30) days from the date of the last bill containing Stormwater Fee charges. Any appeal shall be filed in writing and shall state the grounds for the appeal. The Stormwater Utility Director may request additional information from the appealing party. Using information provided by the appellant, the Stormwater

Utility Director, or his/her designee, shall conduct a technical review of the conditions on the property and respond to the appeal in writing within 30 days of the date the appeal was received. In response to an appeal, the Stormwater Utility Director may adjust the Stormwater Fee applicable to the property in accordance with the provisions of this Ordinance.

Section 15. Reporting. The Township shall prepare an annual report as required by the Act. The report shall be posted to the Township's website and submitted to the New Jersey Division of Local Government Services in the Department of Community Affairs and to the Department of Environmental Protection.

Section 16. Severability. If any section, paragraph, sub-paragraph, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the specific section, paragraph, clause or provision so adjudged and the remainder of the Ordinance shall be deemed valid and effective.

Section 17. Repeal of Prior Ordinances. Ordinances or parts of Ordinances inconsistent with the provisions of this Ordinance be and the same are hereby repealed to the extent of any such inconsistencies.

Section 18. Effective Date. This Ordinance shall take effect after final passage and publication as provided by law.

PUBLIC NOTICE is hereby given that the foregoing proposed Ordinance was introduced and read by title at a meeting of the Township Committee of the Township of Maplewood, held on December 3, 2024 and that the Township Committee will meet again on December 17, 2024, at 7:30 p.m. at the Municipal Building, 574 Valley Street, Maplewood, New Jersey, at which time and place the Township Committee will hold a hearing and proceed to consider the said Ordinance on final reading and final passage.

ELIZABETH J. FRITZEN, R.M.C.
Township Clerk