



AVON TOWN COUNCIL

ORDINANCE NO. 2017 - 15

**AN ORDINANCE OF THE TOWN OF AVON ESTABLISHING A DEPARTMENT
OF STORMWATER MANAGEMENT**

WHEREAS, the Town of Avon desires to establish a Department of Stormwater Management (the “ Department”), under the Indiana Code §8-1.5-5 for the purpose of providing uniform and centralized management of the stormwater collection and conveyance systems and activities in the Town, including, without limitation, stormwater quality, separate storm sewers, neighborhood drainage, flood control, flood pumping, stormwater conveyance, sewer separation, and other improvements to the existing and future storm sewers; and

WHEREAS, a portion of the stormwater works of the Town consists of a stormwater collection and conveyance system, including separate storm sewers, drainage structures, and flood control components; and

WHEREAS, the creation of a new stormwater management program will help address stormwater management problems; and

WHEREAS, all territory in the Town will receive a special benefit from the collection and disposal of stormwater in a manner that protects the public health and welfare; and

WHEREAS, the Town operating under Indiana Code §8-1.5-5 is authorized to consider the costs of collecting and treating stormwater drainage; and

WHEREAS, the Town has undertaken a Stormwater Management Feasibility Study for the purpose of establishing the need for the Department and setting rates and charges in a fair and reasonable manner; and

WHEREAS, new stormwater user fees could help the Town design, fund and construct the projects and run the programs necessary to provide the safe conveyance of stormwater, as well as identify additional projects that need to be funded, and begin an inspection and maintenance program of the Town's stormwater infrastructure; and

WHEREAS, new requirements for stormwater quality may affect the Town directly resulting from the United States Environmental Protection Agency (EPA) regulation entitled "National Pollutant Discharge Elimination System (NPDES) – Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges" (Federal Register, Volume 64, Number 235, pages 68722-68852) on December 8, 1999 as required by section 402(p) of the Clean Water Act (CWA); and

WHEREAS, the federal stormwater quality program is administered by the Indiana Department of Environmental Management with the adoption of 327 IAC 15-5 for Storm Water Run-off Associated with Construction Activity, and 327 IAC 15-13 for Storm Water Run-off Associated with Municipal Separate Storm Sewer System (MS4) conveyances; and

WHEREAS, in accordance with and pursuant to the CWA, the Town further desires to establish a distinct just and equitable schedule of user fees for the users of the System; and

WHEREAS, the Town will serve as the local agency to administer the federal and state stormwater quality programs within its jurisdiction and authority when it is required to do so; and

WHEREAS, the Town could provide technical and engineering assistance to local agencies when dealing with water quality, drainage, and floodplain issues; and

WHEREAS, the Town has adopted Town Code Chapter 6, Article 15, Sections 6-215 through 6-236, the Town Zoning Ordinance, and Town Subdivision Control Ordinances and other stormwater-related ordinances; and

WHEREAS, the system of user fees shall allocate the cost of providing stormwater management service to each user so that the charges assessed are reasonably related to the costs of providing stormwater management service, insofar as those costs can reasonably be determined.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL that a new Article, Article 3, is hereby added to Chapter 9 of the Avon Town Code, and the new article reads as follows:

“ARTICLE 3: DEPARTMENT OF STORMWATER MANAGEMENT

- 9-30 Department of Stormwater Management to operate the stormwater system
- 9-31 Purpose and Objective
- 9-32 Definitions
- 9-33 Board
- 9-34 Stormwater user fee
- 9-35 Stormwater user fee establishment procedure
- 9-36 User fee structure and calculation
- 9-37 Billings; terms of payment
- 9-38 Appeals of ERU determinations

- 9-39 Stormwater Revenue Fund
- 9-40 Delinquent Fees
- 9-41 Violations and Enforcement
- 9-42 Severability

SECTION 9-30: DEPARTMENT OF STORMWATER MANAGEMENT TO OPERATE STORMWATER SYSTEM.

(a) Establishment: The Department of Stormwater Management, a Department of the Town, is hereby established (the "Department"). The Department shall be directed by the Town Manager. The Town Manager and his or her designees, will be responsible for the day-to-day operations of the Department.

(b) Applicable State Law: The Department of Stormwater Management shall be subject to Indiana Code §8-1.5-5, as amended and in effect from time to time.

(c) Board of Storm Water Management: The Department, through the Town Manager, shall report directly to the Board of Storm Water Management.

(d) Town Council: The Town Council shall fulfill the obligations of the Department as identified in Indiana Code §8-1.5-5. The Town Council shall perform all necessary administrative, employee relations and fiscal policy-making oversight of the Department.

(e) Special Taxing District: The Department of Stormwater Management is a Special Taxing District as defined by Indiana Code §8-1.5-5-5. The policies of the Board and Town Council shall determine the combination of taxes, user fees, and other revenue sources of the Department.

(f) General Powers of the Department: The Department shall have Departmental jurisdiction over stormwater within the Town and shall possess the following general powers:

- (1) Install, maintain and operate the stormwater system of the Town.
- (2) Make all necessary or desirable improvements to the stormwater collection and conveyance system of the Town, and, when determined to be in the best interests of the Town, to acquire or otherwise assume jurisdiction over any other improvements or facilities relating to the control of stormwater currently owned or under the jurisdiction of other parties.

- (3) Establish and enforce the rules, regulations, policies and procedures promulgated by the Department.
- (4) Hold hearings after proper public notice and make findings and determinations to carry out the policies and procedures of the Department with respect to the use of the stormwater system by the users thereof and the proper rates and charges imposed on such users.
- (5) Recommend to the Town Council reasonable and just user fees for services to the users of the stormwater collection and conveyance system of the Town.
- (6) Track revenues and expenses of the Department of Stormwater Management separately using Departmental policies, operational procedures and cost accounting methods to adequately determine the equitable allocation of funds to serve the Department's and Town's needs.
- (7) After approval of the Town Council, levy a special benefit tax upon all the property of the stormwater district to pay for the bonds issued and the interest on the bonds, in accordance with Indiana Code § 8-1.5-5-22.
- (8) Issue and sell bonds of the district in the name of the unit served by the department for the acquisition, construction, alteration, addition, or extension of the storm water collection and disposal system or for the refunding of any bonds issued by the Board.
- (9) Enter into interlocal governmental cooperation agreements or other agreements with Hendricks County, the Surveyor of Hendricks County, the Hendricks County Drainage Board or the Stormwater Management Department of any other municipality for the reconstruction or maintenance of drains which are partially in the Town and partially outside the corporate limits of the Town and the sharing of the costs of such reconstruction and maintenance.

SECTION 9-31: PURPOSE AND OBJECTIVE

The mission of the stormwater management program is to develop, implement, operate and adequately and equitably fund the acquisition, construction, operation, maintenance and regulation of stormwater collection and drainage systems and activities in the Town including without limitation, stormwater quality, separate storm sewers, neighborhood drainage, flood control, flood pumping, stormwater

conveyance, and other improvements to the existing and future storm sewers of the Town.

The program shall safely and efficiently control stormwater runoff, insure compliance with the National Pollutant Discharge Elimination System Stormwater Discharge permit, enhance public health and safety, protect lives and property, facilitate mobility and enable access to homes and businesses throughout the community during storms, complement and support other Town programs and objectives, control the discharge of pollutants in stormwater to receiving waters and enhance the natural resources of the community.

SECTION 9-32: DEFINITIONS

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

- (a) **ADMINISTRATOR:** The Town Manager or his or her designee.
- (b) **COMBINED SEWER:** Pipe or conduit primarily used to convey sanitary sewage and secondarily intended to convey stormwater. The Town does not contain, own, operate, or maintain any combined sewers.
- (c) **CUSTOMER (OR USER):** Shall mean a property owner benefiting from the stormwater system.
- (d) **DEPARTMENT:** The Department of Stormwater Management established in this Ordinance.
- (e) **DEVELOPED:** The condition of real property altered from its natural state by the addition to or construction on such property of impervious surfaces or physical improvements such that the hydrology of the property or a portion thereof is affected.
- (f) **DETENTION:** The temporary storage of storm runoff in a basin, pond or other structural or non-structural device to control the peak discharge rates by holding the stormwater for a lengthened period of time and which provides gravity-settling of pollutants.
- (g) **DITCH-OPEN:** A relatively deep drainage channel which may have a continuous water flow. Open ditches are outlets for both surface, subsurface, or storm sewer drainage systems.

(h) **DITCH-LEGAL or REGULATED DRAIN:** Any drainage system under the jurisdiction of the Hendricks County Drainage Board as of the date of enactment of this Ordinance.

(i) **DRAIN:** Relative to stormwater drainage, any sewer, tile, ditch, stream or other stormwater runoff conveyance channel or conduit.

(j) **DRAINAGE EASEMENT:** The land required for the installation of stormwater sewers or drainage ditches, or required along a natural stream or water course for preserving the channel and providing for the flow of water therein to safeguard the public against flood damage.

(k) **DRAINAGE FACILITIES:** All ditches, channels, conduits, retention-detention systems, tiles, drainage swales, sewers, and other natural or artificial means of draining stormwater from land.

(l) **DRAINAGE REQUIREMENTS:** (1) minimum drainage standards as established by Ordinance; (2) regulations promulgated by the Town Council; (3) obligations and requirements relating to drainage established under the Subdivision Control Ordinances of the Town or Hendricks County; (4) requirements contained in the Zoning Ordinances of the Town or Hendricks County, including floodway zoning requirements; (5) obligations and requirements relating to drainage established under the Drainage Board of Hendricks County, Indiana; and (6) conditions relating to drainage attached to a grant of variance by the Board of Zoning Appeals.

(m) **DRAINAGE-SUBSURFACE:** A system of pipes, tile, conduit, or tubing installed beneath the ground used to collect underground water from individual parcels, lots, building footings, or pavements.

(n) **DRAINAGE-SURFACE:** A system by which the stormwater runoff is conducted to an outlet. This would include the proper grading of parking lots, streets, driveways and yards so that storm runoff is removed without ponding and flows to a drainage swale, open ditch, or a storm sewer.

(o) **DRAINAGE-SWALE:** A natural or constructed waterway, usually broad and shallow, covered with erosion-resistant grasses, used to conduct surface water from a field, diversion, or other site feature.

(p) **DRAINAGE-SYSTEM:** Any combination of surface and/or subsurface drainage components fulfilling all applicable drainage requirements.

(q) **EASEMENT:** A grant by the property owner of the use of a strip of land by the public, a corporation or other legal entity for specified purposes.

- (r) ENGINEER: Any Engineer retained by the Town.
- (s) ERU: Equivalent Residential Unit, equal to the average amount of impervious area found on a typical single-family residential parcel which is 3,942 square feet. Therefore, one ERU equals 3,942 square feet of impervious area.
- (t) IMPERVIOUS AREA: Area within developed land that prevents or significantly impedes the infiltration of stormwater into the soil. Included in this definition are areas that have been paved and/or covered with buildings and materials which include, but are not limited to, concrete, asphalt, gravel, rooftop and blacktop, such that the infiltration of water into the soil is prevented. Excluded from this definition are undisturbed land, lawns and fields.
- (u) INFILTRATION: A complex process of allowing runoff to penetrate the ground surface and flow through the upper soil surface.
- (v) LAND ALTERATION: Any action taken relative to land which either: (1) changes the contour; or (2) increases the runoff rate; or (3) changes the elevation; or (4) decreases the rate of which water is absorbed; or (5) changes the drainage pattern; or (6) creates or changes a drainage facility; or (7) involves construction, enlargement or location of any building on a permanent foundation; or (8) creates an impoundment. Land alteration includes (by way of example and not of limitation) terracing, grading, excavating, constructing earthwork, draining, installing drainage tile, filling and paving.
- (w) MAINTENANCE: The removal of obstructions, deposits, or other materials and making minor repairs in a drainage facility so that it will perform the function for which it was designed and constructed.
- (x) NON-RESIDENTIAL: All properties not encompassed within the definition of Residential Property, including but not limited to: commercial, industrial, residential, retail, multi-family, governmental, institutional, schools, churches, exempt, utility, and agricultural encompassing State Land Use Codes 309 – 399, 401 – 499, and 600 - 699, 801 – 840, and 850 - 899. Non-residential is a specific customer class addressed in Section 9-35(a) of this ordinance.
- (y) NPDES: The National Pollutant Discharge Elimination System, the EPA program initiated to reduce and eliminate pollutants reaching water bodies of all types.
- (z) NPDES PERMIT: Stormwater management permit required of municipalities and certain industries by the EPA pursuant to Section 402 of the Clean Water Act.

(aa) **PEAK DISCHARGE:** The maximum rate of flow of water passing a given point during or after a rainfall event, sometimes called peak flow.

(bb) **PRIVATE STORMWATER FACILITIES:** Various stormwater and drainage works not under the control or ownership of the Town, Hendricks County, the State of Indiana, or the federal government which may include inlets, conduits, pipes, pumping stations, manholes, structures, channels, outlets, retention or detention basins, other structural components and equipment designed to transport, move or regulate stormwater.

(cc) **PROPERTY OWNER:** The individual, partnership, corporation or other legal entity holding the deed or record title to real property.

(dd) **PUBLIC DRAINAGE SYSTEM:** Various storm water and drainage works under the control and/or ownership of the Town, Hendricks County, the State of Indiana, or the federal government which may include inlets, conduits, pipes, pumping stations, manholes, structures, channels, outlets, retention or detention basins, other structural components and equipment designed to transport, move or regulate storm water.

(ee) **RAIL YARD:** A lot or parcel of real estate encompassing State Land Use Code 841 containing improvements used for operating a rail yard or related facilities, excluding the railroad tracks. Rail Yard is a specific customer class addressed in 9-35(a) of this ordinance.

(ff) **RESIDENTIAL:** A lot or parcel of real estate encompassing State Land Use Codes 101, 199, and 510 - 599 on which a building or house trailer is situated which building or house trailer contains a group of rooms forming an inhabitable dwelling unit with facilities which are used or are intended to be used primarily for living, sleeping, cooking and eating. Residential is a specific customer class addressed in Section 9-35(a) of this ordinance.

(gg) **RETENTION:** The holding of stormwater runoff in a constructed basin or pond or in a natural body of water with a controlled release rate.

(hh) **RIGHT-OF-WAY:** Any highway, street, avenue, boulevard, road, lane or alley and includes the entire right-of-way for public use thereof and all surface and subsurface improvements thereon including, without limitation, sidewalks, curbs, shoulders, utility lines and mains.

(ii) **SEWER SEPARATION:** A project intended to reduce the amount or rate of stormwater entering the wastewater treatment plant. Sewer separation projects include, but are not limited to, new sanitary sewer construction with conversion of combined sewer to storm sewer; new storm sewer construction with conversion of

combined sewer to sanitary sewer, combined sewage holding tanks; and equalization tanks at the treatment plant.

(jj) **STATE LAND USE CODES:** The classification system used by Indiana counties for purposes of classification of the assessment of real property. The 2011 Real Property Assessment Manual, prepared by the Indiana Department of Local Government Finance, describes the codes. Appendix A of the manual defines the codes. The manual and codes may be adjusted from time to time.

(kk) **STORM SEWER:** A sewer designed or intended to convey only stormwater, surface runoff, street wash waters and drainage, and not intended for sanitary sewage and industrial wastes. A storm sewer begins at the grating or opening where water enters said sewer, through the sewer and any other conduits to the outlet structure where water enters a channel, natural watercourse or combined sewer.

(ll) **STORMWATER USER FEE:** A charge imposed on users of the stormwater system.

(mm) **STORMWATER SYSTEM:** All constructed facilities, including separate storm sewers and conveyances, structures and natural watercourses owned by or under the jurisdiction of the Town used for collecting and conveying stormwater to, through and from drainage areas to the point of final outlet, including, but not limited to, any and all of the following: inlets, conduits and appurtenant features, creeks, channels, catch basins, ditches, streams, culverts, retention or detention basins and pumping stations.

(nn) **STORMWATER CONVEYANCES:** Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

(oo) **TOWN:** The Town of Avon, Indiana.

SECTION 9-33: BOARD

The Board of Directors for the Department of Storm Water Management is hereby created and shall consist of three (3) members to be appointed by the Town Council President. No more than two of the members shall be of the same political party. For purposes of this article, political party affiliation will be determined by the voting records for the last three primaries. Candidates who have not voted, or who have not voted in the same party primary at least two times, will be considered independents. The initial terms of the Directors shall be as follows: Director One = 2

years; Director Two = 3 years; Director Three = 4 years. All subsequent terms shall be 4 years. After the appointment of Directors, the Directors will conduct an organizational meeting and elect officers. Officers of the Board will be President, Vice President, Secretary and Treasurer. The Town Clerk-Treasurer will serve as the Treasurer, but the Clerk-Treasurer is not a voting member of the Board. After the initial organizational meeting, the Board will conduct a reorganizational meeting each year during the month of January. The Board will also adopt rules of procedure in order to govern the conduct of its meetings.

SECTION 9-34: STORMWATER USER FEE

A stormwater user fee shall be imposed on each and every lot and parcel of land within the Town as identified in Section 9-36 and 9-37, which directly or indirectly contributes to the stormwater system of the Town, which charge shall be assessed against the property owner thereof, who shall be considered the user for the purposes of this chapter. This charge is deemed reasonable and is necessary to pay for the repair, replacement, extension, planning, improvement, operation, regulation and maintenance of the existing and future stormwater system.

SECTION 9-35: STORMWATER USER FEE ESTABLISHMENT PROCEDURES

(a) Stormwater User Fee Per ERU: The Stormwater User fee will be determined by the Board after appropriate study and will be charged per ERU per month according to the following initial customer classes: (1) residential; (2) non-residential; and (3) rail yard. The Board may revise the user fee structure from time to time. For the purpose of this chapter, a month shall be considered 25 through 35 days. Any billings for stormwater service outside this time shall be on a per diem basis.

(b) Basis for Charge: The stormwater user fee is designed to recover the cost of rendering stormwater service to the users of the stormwater system, and shall be the basis for assessment of the stormwater user fee. This user fee is established so as to maintain adequate fund reserves to provide for reasonably expected variations in the cost of providing services, as well as variations in the demand for services.

SECTION 9-36: USER FEE STRUCTURE AND CALCULATION

(a) Generally: For the purposes stated in Section 9-31 and 9-35, there is hereby assessed a stormwater user fee, in an amount determined by the Board, for each property owner owning land situated within the corporate limits of the Town,

served by the Town's stormwater system, and also located within the corporate boundaries of the Town that contributes directly or indirectly to the stormwater system of the Town, in an amount as determined below.

(b) Impervious Area: For any such property, lot, parcel of land, building or premises which contribute directly or indirectly to the stormwater system of the Town, such charge shall be based upon the quantity of impervious area situated thereon as measured on the most recent aerial maps available from the best source, or as amended through the issuance of building permits by the Town. Impervious area of public rights-of-way and railroad lines (which shall not be deemed to include adjacent property, such as a rail yard, operated by a railroad), will not be included in the determination of a stormwater user fee. In addition, the Board shall establish policies and procedures to make determinations whether commonly owned, adjoining properties with separate plat or legal descriptions should be treated as a single parcel of land for purposes of calculating the stormwater user fees to be charged for such properties.

(c) Classification of Property: All properties within the Town, or served by the Town stormwater system, will be assessed a Stormwater User fee based on Equivalent Residential Unit (ERU), or a multiple thereof, with all properties having impervious area assigned at least one ERU (except as otherwise provided in Section (e) herein). Properties shall be classified as determined by the Indiana Department of Local Government Finance 2011 Real Property Assessment Manual, as may be updated periodically. The assessment of ERU shall be as follows:

(1) Residential: A monthly flat-rate charge for stormwater service rendered to Residential and Agricultural Homestead Properties classification shall be assessed to each Residential Property's parcel within the Town limits. This base unit shall apply to all parcels designated by State Property Class Codes 101, 199, and 510 - 599. All Residential Properties are hereby assigned one ERU and a Stormwater User fee as described in this Ordinance and adjusted periodically.

(2) Non-residential: Properties with impervious area in the Non-residential classification will be assigned an ERU multiple based on the total amount of impervious area on the property (measured in square feet and divided by 3,942 square feet. The ERU calculation shall apply to all parcels designated by State Property Class Codes 309 - 399, 401 - 499, 600 - 699, and 801 - 840, and 850 - 899. ERU multiples shall be rounded to the nearest whole integer.

(3) Rail Yard: Properties with impervious area in the Rail Yard classification will be assigned an ERU multiple based on the total amount of impervious area on the property (measured in square feet and

divided by 3,942 square feet. The ERU calculation shall apply to all parcels designated by State Property Class Codes 841. ERU multiples shall be rounded to the nearest whole integer

(d) Land Alterations: The issuance of any building permit or other action which results in a land alteration of a property other than Residential Properties or a property that currently only contains Residential Properties but will no longer be used for such purpose shall be cause for an adjustment of the stormwater user fee determined under this section. The property owner shall have the obligation of informing the Board of any such changes by applying for an Improvement Location Permit.

(e) Exceptions/Exemptions: Agricultural properties with impervious area under State Land Use Codes 100 and 102 - 198, with the exception of those properties that qualify as Residential Property, shall be exempt from the assessment of Stormwater User fees. Except for public rights-of-way, railroad lines and agricultural properties as defined herein, there shall be no exceptions or exemptions from the assignment of gross stormwater ERUs for any property with impervious area except that properties other than single-family residential parcels with impervious area of less than five hundred (500) square feet shall be exempted from the assignment of an ERU.

(f) Discrepancies in Land Use Codes: The Board may consider a determination on parcels that appear to be improperly coded in the County records and make, for the purpose of assessing a stormwater user fee, findings on the proper coding for each such parcel.

SECTION 9-37: BILLINGS; TERMS OF PAYMENT

(a) Billings: All stormwater service bills shall be assessed on a monthly basis unless additional or prorated billing is required to reflect customer changes, initial billings or is otherwise required to adjust billing cycles. Billing cycles shall be established and adjusted periodically by the Board. Charges for miscellaneous services or work performed on behalf of a stormwater customer by the Department shall be assessed at the time the work is completed and shall be included in the customer's next stormwater service bill. Stormwater billing for a new property shall commence with the date the property is assessed for purposes of property taxes, or date of occupancy, whichever shall first occur. Additional stormwater charges for an established service address necessitated by a change in the amount of impervious area at the property shall commence on the date the new certificate of occupancy or compliance is issued. Billing adjustments required to correct impervious area measurements shall be applied retroactively to the date of the customer's initial protest.

(b) Rights and Responsibilities of Property Owner: Charges for stormwater service shall remain the ultimate responsibility of the property owner, including all penalties, recording fees, attorney's fees, interest and court costs. Other than the property owner, no other person shall be permitted to inspect, examine or otherwise obtain confidential information including the social security number of the property owner obtained by the Town for the sole purpose of billing for stormwater system service. Stormwater user fees attach to the property.

(c) Terms of Payment: The stormwater user fees prescribed in Section 9-36 shall be due on the payment date set out on the bill. It shall be a violation of this chapter to fail to pay a stormwater service bill when due. All bills for stormwater services not paid on or before the due date shall be subject to a collection or deferred payment charge of 10% on the outstanding balance. Moving from one location to another in no way absolves the customer from responsibility for any unpaid charges incurred at a previous location.

(d) Bad Check Charge: Checks returned for non-sufficient funds will be subject to reimbursement of the fee the banking institution charges the Town and an administrative charge to be established by the Department not in excess of the amount provided in Indiana Code. A customer submitting a bad check may be prohibited from making future stormwater user fee payments by check.

(e) Collection: The Board may collect delinquent stormwater user fees and penalties by placing a lien on the private property subject to the user fees and penalties. The delinquent fees and penalties shall be collected in the same manner as delinquent taxes and if the fees and penalties remain unpaid, the Board may foreclose on the lien to collect the fees and penalties including reasonable attorney's fees.

SECTION 9-38: RIGHT OF ENTRY AND RIGHT-OF-WAY

Pursuant to Indiana Code §36-9-27-20.6, the Board has, with respect to any drain transferred to the Town of Avon by Hendricks County, the same right of entry and right-of-way powers over and upon private land that are granted to the County Surveyor by Indiana Code §36-9-27-33. This right of entry over and upon private land is the area within seventy-five (75) feet of the drain, measured at right angles to the center line of any tiled drain and measured to the top edge of each bank of an open ditch. The owners of land over which the right-of-way runs may use the land in any manner consistent with Indiana Code §36-9-27 and this section and consistent with the proper operation of the drain. Permanent structures may not be placed in the right-of-way without the written consent of the Administrator. Temporary structures may be placed over the right-of-way without the written consent of the Administrator, but the owner will immediately remove the temporary structure from the right-of-way

when so ordered by the Administrator. Crops grown on a right-of-way are at the risk of the owner, and if necessary in the reconstruction or maintenance of the drain, may be damaged without liability on the part of the Administrator, Board, Town, or their representatives. Trees, shrubs and woody vegetation may not be planted in the right-of-way without written consent of the Administrator and may be removed by the Administrator, Board or their representatives if necessary for the proper operation or maintenance of the drain. In exercising this right of entry and right-of-way powers, the Administrator, the Board or their authorized representatives acting under this section do not commit criminal trespass under Indiana Code §35-43-2-2, as amended.

SECTION 9-39: APPEALS

Any user may appeal to the Board any decision of the Department in the administration of this Chapter. In order to initiate an appeal, the user must deliver to the Administrator a written appeal of a decision or determination. This appeal must be delivered within fifteen (15) days of the decision or determination from which the appeal is taken. Upon receipt of the appeal, the Administrator will notify the Board of the appeal. The Board will schedule a hearing on the appeal and conduct a hearing within thirty (30) days of the receipt of the appeal. The Board will provide to the appealing party notice of the hearing at least ten (10) days prior to the hearing. At the hearing, the appealing party is entitled to present evidence supporting the appeal. The Administrator will then be entitled to present evidence supporting the decision or determination. Within ten (10) days of the hearing, the Board will issue written findings and conclusions. The Board will mail the findings and conclusions to the appealing party upon making the findings and conclusions. The appealing party may appeal the decision of the Board to a court of competent jurisdiction by filing with the court a petition for review within thirty (30) days of the date of the Board's decision.

SECTION 9-40: STORMWATER REVENUE FUND

All revenues earned and fees collected for stormwater service, including but not limited to, stormwater user fees, permit and inspection fees, direct charges and interest earnings on any unused funds shall be deposited in accounts permitted under Indiana Code §8-1.5-5-8, collectively referred to as Town Stormwater Revenue Fund. The monies in the Fund may be used for the operation, maintenance and improvement of the Town's stormwater system, to adequately fund depreciation accounts, and for payments of principal and interest of authorized bonds for the Town's stormwater system. The Fund is a non-reverting fund. Monies in the Fund at the end of any fiscal year will not revert to the General Fund. Warrants for payment may be paid upon the approval of claims by the Board.

SECTION 9-41: DELINQUENT FEES AND PENALTIES AS LIENS; DUPLICATES; COLLECTION

Delinquent charges for stormwater services, and applied penalties, recording fees and user fees constitute a lien upon the property and may be collected in accordance with the provisions of Indiana Code §§ 8-1.5-5-29, 8-1.5-5-30, and 8-1.5-5-31.

SECTION 9-42: VIOLATIONS AND ENFORCEMENT

Failure to pay a stormwater user fee when due shall constitute a violation of this chapter, which shall be enforced by the Town Manager and such deputies as the Town Manager may appoint for such purposes. If it becomes necessary for the Department to collect unpaid user fees or enforce this Chapter for other violations, the Department may collect from the user, in addition to unpaid user fees, late fees, penalties and other rates and charges, the court costs, litigation expenses and reasonable attorney's fee incurred in the collection of the fees and other rates and charges.

SECTION 9-43: SEVERABILITY


(a) If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

(b) All ordinances, resolutions and orders, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby superseded, and this Ordinance shall be in full force and effect from and upon compliance with all procedures required by law.”

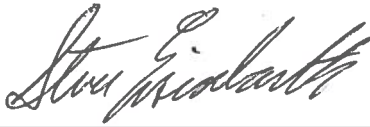
IT IS FURTHER ORDAINED that this ordinance is effective January 1, 2018.

PASSED AND ADOPTED by the Town Council of the Town of Avon, Indiana
this 13th day of July, 2017.

A MAJORITY OF THE AVON TOWN COUNCIL



Aaron Tevebaugh, President



Steve Eisenbarth, Vice President



Beverly Stafford, Member




Marcus Turner, Member



Greg Zusan, Member

ATTEST:



Sharon Howell, Clerk-Treasurer