

NOTICE OF ORDINANCE

Notice is hereby given that on the 23rd day of June, 2014, the City Council of Huntington, after public hearing, adopted an ordinance titled “An Ordinance Of Council Amending, Modifying And Re-Enacting Part Nine Of The Codified Ordinances Of The City Of Huntington, As Revised, Regarding The Creation Of The Huntington Water Quality Board, The Merger Of The Stormwater Division And The Division of Flood Protection of The Department Of Public Works Into The Huntington Stormwater Utility And The Management and Control Of The Huntington Sanitary Board And The Huntington Stormwater Utility Under The Huntington Water Quality Board”. The Ordinance is to be effective from passage. In addition to the actions referenced in the title of the Ordinance, Water Quality Service fees and charges are included in Section 935.06.

This notice is intended to comply with the requirements of *West Virginia Code* §8-13-13 as well as §16-13-16 including notice of Water Quality Service fees and charges set forth in Section 935.06 of the Ordinance. The Ordinance reads as follows:

AN ORDINANCE OF COUNCIL AMENDING, MODIFYING AND RE-ENACTING PART NINE OF THE CODIFIED ORDINANCES OF THE CITY OF HUNTINGTON, AS REVISED, REGARDING THE CREATION OF THE HUNTINGTON WATER QUALITY BOARD, THE MERGER OF THE STORMWATER DIVISION AND THE DIVISION OF FLOOD PROTECTION OF THE DEPARTMENT OF PUBLIC WORKS INTO THE HUNTINGTON STORMWATER UTILITY AND THE MANAGEMENT AND CONTROL OF THE HUNTINGTON SANITARY BOARD AND THE HUNTINGTON STORMWATER UTILITY UNDER THE HUNTINGTON WATER QUALITY BOARD.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF HUNTINGTON, CABELL AND WAYNE COUNTIES, and WEST VIRGINIA, that Part Nine of the Codified Ordinances of the City of Huntington, as revised, is hereby **AMENDED, MODIFIED and RE-ENACTED** to read as follows:

ARTICLE 930
Huntington Water Quality Board

930.01 PURPOSE.

The purpose and intent of this Article is to protect the health, safety, and general welfare of the citizens of the City of Huntington, and protect and enhance the water quality of watercourses and water supplies located in or running through the City by establishing the Huntington Water Quality Board whose duty it will be to supervise and manage the Huntington Sanitary Board established under the provisions of Article 169 and the Huntington Stormwater

Utility established under the provisions of Article 935 of the Codified Ordinances of the City of Huntington.

930.02 CREATION; MEMBERS.

a) Upon the effective date of this ordinance, control and operation of the Huntington Sanitary Board established under the provisions of Article 169 and Article 933 of the Codified Ordinances of the City of Huntington, and control and operation of the Huntington Stormwater Utility established under Article 935 of the Codified Ordinances of the City of Huntington, shall be vested in the Huntington Water Quality Board (the "Board"), created as of the effective date of this ordinance, and appointed and functioning as hereinafter provided.

b) The Board shall consist of the three members of the Huntington Sanitary Board established under the provisions of Article 169 of the Codified Ordinances of the City of Huntington, and *West Virginia Code §16-13-1 et seq.*

930.03 POWERS AND DUTIES.

The Board shall have full and complete supervision, management and control of the stormwater collection, conveyance, storage, treatment, and disposal system (the "Stormwater System") and the sanitary sewage collection, transportation and treatment system (the "Sanitary Sewer System") of the City, including the maintenance, operations, improvements and extensions of each respective system, which shall be combined for operational purposes as a single water quality system (the "System"). Bills for stormwater service and sanitary sewer service may be rendered on the same form where appropriate but revenues and expenses shall be collected and accounted for separately by the Board in the manner and form required by law, the Public Service Commission of West Virginia and/or the ordinances of the City. All disbursements and accounts of the System shall be ordered paid out only upon approval of the Board from the appropriate separate account maintained for the Stormwater System or the Sanitary Sewer System; provided however, that all supervision, management and control of the respective systems and the collection and accounting for bills for stormwater service and sanitary sewer service shall be consistent and in accordance with any ordinance pursuant to which the City may have authorized and issued any bonds from time to time which are outstanding, and which by their terms are payable from and secured by the revenues of either the Stormwater System or the Sanitary Sewer System. The Board shall have the power and authority to make all contracts and agreements, and to take any and all other actions necessary or proper for the full and complete supervision, management and control of the System.

930.04 EXECUTIVE DIRECTOR AND OTHER EMPLOYEES.

The Board shall have power to employ, fix the compensation of and discharge an Executive Director of the System and shall direct, employ, fix the compensation of and discharge all other employees of the System. The Executive Director, upon his appointment and taking office, shall furnish and file with the City Clerk, a bond in the amount of fifty thousand dollars (\$50,000), the cost of such bond to be payable from revenues of the System and such bond shall

be payable to the Board and conditioned as to the faithful performance of the Executive Director's duties as are fixed by the Board.

930.05 STORMWATER SYSTEM AND SANITARY SEWER SYSTEM ACCOUNTS; PERSONNEL POLICIES.

All assets and liabilities of the System, including accounts receivable and accounts payable, shall be under the management and control of the Board. Personnel policies and practices and other matters affecting employees of the Board, except pensions, shall be determined by the Board.

ARTICLE 935 Huntington Stormwater Utility

935.01 PURPOSE.

The purpose and intent of this Article is to combine the services currently provided in several divisions of City government into the Huntington Stormwater Utility under the Huntington Water Quality Board, to engage in stormwater management to protect the health, safety, and general welfare of the citizens of the City, and to protect and enhance the water quality of watercourses and water supplies located in or running through the City, and to enact rules and regulations, pertaining to and funding Stormwater Management.

935.02 ESTABLISHED; POWERS; DUTIES; FEES.

(a) There is hereby established the Huntington Stormwater Utility, which shall be operated as a municipal stormwater system of The City of Huntington (the "City") under Chapter 16, Article 13 of the *West Virginia Code* of 1931, as amended (the "Act"). This utility shall serve the Huntington Urban Watershed, as described hereinafter. The Huntington Stormwater Utility shall provide Stormwater Management to all real property located within the Huntington Sewer Utility's Service area, as defined herein.

(b) The Huntington Stormwater Utility shall protect, to the extent practicable, watercourses and water supplies located in or running through the City from pollution, excessive flows, and other conditions which degrade the water environment, reduce recharging of groundwater, or endanger human, aquatic and benthic life within the Huntington Stormwater Utility's Service area.

(c) The Huntington Stormwater Utility shall have all powers conferred by the Act, specifically including, but not limited to the authority to: plan, acquire, improve, construct, inspect, develop, install, modify, manage, operate, maintain, replace, control, demolish, abandon, regulate, and finance the Stormwater System to serve the Huntington Stormwater Utility's Service area. The Huntington Stormwater 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, reconstruct, improve, and extend the Stormwater System. The Huntington Stormwater Utility is further authorized to charge and collect rates and fees for the operation, maintenance, improvement,

extension and upkeep of the Stormwater System which rates and fees shall be determined by the Council of the City of Huntington. The Utility is further authorized to accept state or federal funds under any state or federal law or program for actions preliminary to construction/reconstruction or for construction/reconstruction of facilities for the Stormwater System.

(d) The City, on behalf of the Huntington Stormwater Utility, is authorized to issue revenue bonds secured by the revenues of and from the Stormwater System to finance in whole or in part the cost of design, acquisition, construction, reconstruction, improvement, betterment or extension of the Stormwater System, to issue refunding revenue bonds to refinance bonds secured by the revenues of the Stormwater System, and to pledge to the punctual payment of said bonds and interest thereon all or any part of the revenues of the Huntington Stormwater Utility.

(e) The Huntington 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, leasing or other acquisition, and the financing thereof, of facilities for the Stormwater System and the maintenance and operation thereof.

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

(g) 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 Huntington Stormwater Utility.

(h) Article 955 of the Huntington City Code relating to the City's floodwall system shall be amended to transfer the functions, assets and duties of the Division of Floodwall Protection within the Department of Public Works to the Huntington Stormwater Utility under the supervision and control of the Huntington Water Quality Board as part of the Stormwater System, as provided by the Act.

(i) Article 969 of the Huntington City Code relating to Illicit Discharge and Detection shall be amended to transfer the responsibilities of the Department of Public Works under Article 969 to the Huntington Stormwater Utility under the supervision and control of the Huntington Water Quality Board.

(j) Article 970 of the Huntington City Code relating to Erosion and Sediment Control shall be amended to transfer the responsibilities of the Department of Public Works under Article 970 to the Huntington Stormwater Utility under the supervision and control of the Huntington Water Quality Board.

(k) All power and authority possessed by the City of Huntington pertaining to Stormwater Management is hereby transferred to the Huntington Stormwater Utility under the supervision and control of the Huntington Water Quality Board.

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

935.03 DEFINITIONS.

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

(a) "**City**" is the City of Huntington, West Virginia, and its duly elected and appointed officers and employees, including the Huntington Water Quality Board, the Huntington Stormwater Utility, and the Huntington Sanitary Board.

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

(c) "**Flat rate charge**" is the charge applicable to any owner of real property containing Impervious area located within the Huntington Stormwater Utility's Service area.

(d) "**Huntington Urban Watershed**" is all areas within the corporate boundaries of the City of Huntington 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 Huntington 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 Huntington 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 Huntington 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) **“Water Quality service charge”** is a charge for services rendered by the Huntington Stormwater Utility, including, but not limited to, fees for permit applications, stormwater management plan review, flood protection activities, inspection, and other services.

(u) **“Water Quality service fee”** is a flat rate charge or a charge based on square feet of impervious land area.

935.04 WATER QUALITY FEES AND SERVICE CHARGES.

(a) Owners of real property with Impervious area located within the Service area shall pay the Water Quality fees and service charges for the operation, maintenance, improvement of, and necessary additions to, the Stormwater System. Therefore, all owners of real property with Impervious area in the Service area shall be charged for the use of the Stormwater System.

(b) The City Council shall, by ordinance, set Water Quality service charges and fees to recover from owners of real property with Impervious area located within the Service area, the cost of the Huntington Stormwater Utility. Such Water Quality fees 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 *West Virginia Code §16-13-1, et seq.*

(c) The City Council may establish and enforce Water Quality service charges.

935.05 PROPERTY AFFECTED.

Except as provided in this Article and/or by regulation, any owners of real property with Impervious area within the Service area shall be subject to the Water Quality service fee regardless of whether such property is privately or publicly owned.

935.06 AUTHORIZED WATER QUALITY SERVICE FEES AND CHARGES.

The monthly Water Quality service fee authorized under Section 935.04 above shall be established as follows:

Residential

\$7.15 per month

Non-Residential

First 3,000 Impervious Sq. ft.
\$7.15 per month

Between 3,000 and up to a
maximum of 1,000,000
Impervious Sq. ft. in the
aggregate

\$1.05 per 1,000 Sq. ft. per month

Minimum monthly charge
\$7.15 per month

Multi-unit property owners are eligible to pay a non-residential service fee based upon the aggregate total square footage of Impervious area owned within the service area. However, said multi-unit property owner will be required to pay a monthly minimum charge on each parcel of real property owned.

The initial Water Quality service fee shall be effective October 1, 2014. Water Quality service fees based upon square feet of Impervious area shall not be implemented until mapping of the Service area has been completed by the Huntington Stormwater Utility.

Returned Check Charge

A service charge of \$25.00 will be imposed upon any customer, property owner or any other person or entity whose check is returned by the bank for any reason.

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.

Delayed Payment Penalty

On all current usage billings not paid in full by the latest pay date, ten percent (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.

The City Council may, from time to time, by ordinance, change the Water Quality service fees or charges.

The Huntington Stormwater Utility shall assign discount credits to those newly constructed properties employing volumetric flow reduction facilities, and to those existing properties employing volume and/or rate of flow reduction practices. A non-residential customer with an aggregate total of impervious area exceeding 1,000,000 square feet shall not be eligible for such discount credit. The credits may be made available only with adequate mapping and research by the Huntington Stormwater Utility, and may be reasonably delayed pending the fulfillment of these prerequisites.

Residential customers who are recipients of Medicaid, food stamps, supplemental security income, federal public housing assistance, low-income home energy assistance program benefits, temporary assistance to needy families benefits, or benefits under other income-related state or federal programs shall be eligible, upon certification being provided to the Huntington Stormwater Utility, shall pay a Water Quality service fee reduced by 65% of the then-applicable Water Quality service fee for Residential customers. Continuation of eligibility for the reduced Water Quality service fee established pursuant to this section shall be subject to annual certification.

935.07 BILLING.

The billing for Water Quality service fees and charges described herein may be combined with the billing for other services provided by the City.

935.08 COLLECTION.

The Huntington Stormwater Utility shall assess interest and penalties upon unpaid and past due Water Quality service fees and service charges, and act as it deems appropriate to enforce collection of unpaid Water Quality service fees and Water Quality charges. Unpaid Water Quality service fees and Water Quality charges shall constitute just cause for disconnection of public water service to the non-paying property. The Huntington Stormwater Utility shall enter into an agreement with the public water provider 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 Water Quality service fees and Water Quality charges or other payment arrangements approved by the Huntington Stormwater Utility. The Huntington Stormwater Utility may also take appropriate legal action to collect unpaid Water Quality service fees or Water Quality 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.

935.09 USE OF FUNDS.

All funds collected by the Huntington Stormwater Utility shall be accounted for separately and shall be used solely for the purposes of the Huntington Stormwater Utility authorized under *West Virginia Code* §16-13-1, *et seq.*, 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.

935.10. 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 Huntington 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 Huntington 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 Huntington 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 this section.

935.11 ILLICIT CONNECTIONS.

It is prohibited to establish, use, maintain or continue illicit connections to the Stormwater System. The provisions of Article 969 of the Huntington City Code, relating to Illicit Discharge and Detection are incorporated by reference herein and the responsibilities of the Department of Public Works previously under Article 969 are hereby transferred to the Huntington Stormwater Utility.

935.12 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. The Huntington Stormwater Utility may require the installation of a spill containment 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.

935.13 DISCHARGE IN VIOLATION OF PERMIT.

Any discharge that would cause a violation of any NPDES permit assigned to the City of Huntington 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 Huntington relating to such discharge as provided by applicable rules of law.

935.14 STORMWATER SYSTEM CONSTRUCTION.

(a) Only parties authorized by the Huntington 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 Huntington 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 Huntington Stormwater Utility for such facility, in its sole discretion.

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

935.15 STORMWATER TAPS.

(a) The Huntington Stormwater Utility or a party authorized by the Huntington 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 Huntington Stormwater Utility. The applicant shall pay the full and actual cost of the tap installation.

(b) The Huntington 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 Huntington Stormwater Utility.

935.16 ENFORCEMENT.

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

(b) Authorized Huntington 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 Huntington Stormwater Utility is authorized to take appropriate legal action to require compliance with this Article.

(e) The Huntington 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 Huntington 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 thirty (30) days of the invoice date, or otherwise make arrangements, acceptable to the Huntington Stormwater Utility, for full payment of the invoiced amount.

935.17 CONCEALMENT.

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

935.18 ADMINISTRATIVE ENFORCEMENT POWERS.

In addition to the other enforcement powers and remedies established by this Article, the Huntington 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.

935.19 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.

935.20 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 Huntington 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.

ARTICLE 955
Floodwall System

Provisions of Article 955 inconsistent with the amendments contained herein are hereby repealed.

955.18 TRANSFER OF RESPONSIBILITY FOR FLOODWALL SYSTEM.

Upon the amendment of this article becoming effective, the Division of Flood Protection of the Department of Public Works created by Section 955.12 of this Article shall be transferred to the Huntington Stormwater Utility established in Article 935 of the Code of City Ordinances of the City of Huntington.

955.19 TRANSFER OF ASSETS TO HUNTINGTON STORMWATER UTILITY.

The Director of Finance is hereby required to transfer on the City's books of account all intangible assets of the Division of Flood Protection of the Department of Public Works held by it as of the original effective date of this section into earmarked and segregated accounts of the Huntington Stormwater Utility established in Article 935 of the Code of City Ordinances of the City of Huntington. The earmarked and segregated accounts shall include but not be limited to, all moneys on hand collected from special assessments from the property owners of the City for floodwall protection and all residues attributable to such special assessments for floodwall maintenance and operation. The City shall continue to operate the funds as segregated accounts until such time as they shall hereafter be exhausted. The moneys in the accounts shall not be appropriated or utilized for any purpose except the operation and maintenance of the Huntington Stormwater Utility.

Likewise, all moneys so collected under the flood protection service fee provided in this article shall be accounted for in separate and readily identifiable revenue accounts which indicate the source of the funds entered in the revenue accounts and transferred to the Huntington Stormwater Utility. The moneys in the accounts shall not be appropriated or utilized for any purpose except the operation and maintenance of the Huntington Stormwater Utility under the direction and control of the Huntington Water Quality Board established in Article 930 of the Code of City Ordinances of the City of Huntington.

The Huntington Stormwater Utility shall establish separate and easily identifiable expense accounts relating to the operation and maintenance of the Huntington Flood Protection System in order that the costs of operating the same may be easily identified in relation to the revenues received from the aforesaid flood protection service fee.

The Director of Finance shall also transfer to the Huntington Stormwater Utility the Emergency Reserve Fund established in Section 955.15 of this Article to be utilized solely for the purpose of paying for equipment and operational needs of the floodwall system.

All real property, easements, and tangible assets of the City related to flood protection shall also be transferred to the Huntington Stormwater Utility and included as part of the Stormwater System, as provided by *West Virginia Code* §16-13-1, *et seq.*

955.20 TRANSFER OF WORK FORCE.

It is hereby specifically provided that the work force of the Division of Flood Protection shall be transferred to the Huntington Stormwater Utility established in Article 935, and that no employee of the Division of Flood Protection becoming an employee of the Huntington Stormwater Utility shall be replaced or succeeded by any person except by one of equivalent work experience and qualifications so as to assure the capability of the Huntington Stormwater Utility to maintain and operate the floodwall system.

This Ordinance shall be effective upon date of adoption.

If thirty percent (30%) of the qualified voters of the City, by petition duly signed by them in their own handwriting and filed with the City Clerk of the City of Huntington, within forty-five (45) days after the date of the passage of the ordinance protest against the Water Quality Service fees and charges set forth in Section 935.06 of the Ordinance as enacted or amended, such Water Quality Service fees and charges set forth in Section 935.06 shall not become effective until such fees and charges are ratified by a majority of the legal votes cast by the qualified voters of the City of Huntington at a regular municipal election or special municipal election, as directed by the City Council. All other provisions of the ordinance will remain effective from passage of the Ordinance.

A copy of the adopted Ordinance is available for public inspection at the Clerk's Office, City Hall, 800 Fifth Avenue, Huntington, West Virginia, during regular business hours of 8:00 a.m. – 4:30 p.m., Monday through Friday.