

AN ORDINANCE OF COUNCIL ENACTING SECTIONS 955.01, 955.02, 955.03, 955.04 AND 955.05 OF THE REVISED CODE OF THE CITY OF HUNTINGTON PROVIDING CRIMINAL PENALTIES FOR TRESPASSING AND OTHER PROHIBITED ACTS WITH RESPECT TO THE FLOODWALL; PROVIDING PROCEDURES FOR PERMITTED USES OF THE FLOODWALL RIGHT-OF-WAY; AND SETTING PENALTIES FOR VIOLATIONS OF THE ORDINANCE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF HUNTINGTON, CABELL AND WAYNE COUNTIES, WEST VIRGINIA, that Sections 955.01, 955.02, 955.03, 955.04 and 955.05 of the Codified Ordinances of the City of Huntington, as revised, are hereby **ENACTED** to read as follows:

ARTICLE 955

FLOODWALL SYSTEM

955.01 RIGHT OF INGRESS AND EGRESS THROUGH FLOODWALL OPENINGS.

(A) It shall be unlawful for any person to trespass over, along, on, or through any real estate which the City of Huntington or the Huntington Stormwater Utility has acquired or may hereafter acquire as a right-of-way and easement for flood protection purposes and on which there has been constructed or may hereafter be constructed a floodwall or levee, or appurtenance thereto. The right of ingress and egress over, on, and through any such easement is confined to the privilege of using any established gate or opening in the floodwall or levee and other crossing officially provided for crossing, for the sole purpose of access to and from the outside of or riverward side thereof.

(B) The privilege herein given may be had and enjoyed subject to the following express reservations and restrictions:

- (1) The Huntington Stormwater Utility reserves the right, without notice, to cancel and annul or to suspend such privilege whenever in its discretion the public interest may so require.
- (2) The privilege shall always be subject and subservient to the public use and enjoyment of the flood protection system and of all the parts hereof and subject and subservient to maintenance, operation, control, and use of the rights-of-way, easements, floodwall, levee, gates, and openings, in the public interest, and for the uses and purposes for which these are intended.
- (3) The privilege shall be limited to the use thereof for access to and from property lying outside of and riverward from the floodwall or levee, and shall not be used as a means of trespass on the rights-of-way, easements, floodwall, levee, gates, or openings or on the lands or property of others.

955.02 PROHIBITED ACTS.

(A) Buildings prohibited. It shall be unlawful for any person to place or construct any building, house, shed, pen, or other structure, paving, or construction of any kind or character,

whether it is of combustible or noncombustible material, on the land or rights-of-way or easements acquired by the City of Huntington for flood control purposes, or at any place on the floodwall, levees, gates, or openings, unless this right was specifically reserved by the grantor in the document transferring the land by deed or easement to the City of Huntington.

(B) Fences and obstructions. It shall be unlawful for any person to place or construct any fences, enclosures, walkways, or other obstructions, or to place or dump rubbish, waste material, or other matter on the land or rights-of-way acquired by deed or easement by the City of Huntington for floodwalls, or on, over, or against the floodwalls or levees or appurtenant works.

(C) Burning of trash. It shall be unlawful for any person to burn rubbish, trash, or any other material or to kindle any fires of any kind on the land or rights-of-way acquired by the City of Huntington for floodwall purposes, or to burn or cause to burn any grass or other growth thereon.

(D) Stock and other animals. It shall be unlawful for any person to tether, hitch, lead on or over, or permit to run at large any horses, mules, goats, sheep, chickens, ducks, geese, or other animals or fowl on the lands or rights-of-way acquired by the City of Huntington flood control purposes, or at any place on the floodwall, levees, gates, or openings.

(E) Digging or excavation in or on the floodwall, levee and rights-of-way is prohibited.

(F) Dumping of trash, rubbish, and any other discarded materials or liquids is prohibited.

(G) Unauthorized vehicles, motorcycles, all terrain vehicles, trucks, cars, etc are prohibited on the levee and floodwall right-of-ways.

(H) Discharge of dust or other air particulate matter onto the floodwall, levee and rights-of-way is prohibited.

955.03 PERMISSION TO CONSTRUCT STRUCTURES OR PERFORM OTHER ACTIVITIES ON LAND OR RIGHTS-OF-WAY.

(A) Upon the submission of written application and any documents and drawings deemed necessary to the Huntington Stormwater Utility, any person may request permission to place or construct structures, utility crossings, or to perform other activities on the lands or rights-of-way acquired by the City of Huntington or Huntington Stormwater Utility for flood walls. Thereafter, the Huntington Stormwater Utility will then consider whether the submission warrants further investigation and preliminary approval. If initial analysis indicates the possibility of approval of the proposed use, the Huntington Stormwater Utility shall require the submission of an application for encroachment on the floodwall and/or right-of-way. Once the application is deemed complete, the proposal will either be approved for further processing or negotiations will take place to determine the method for the installation of the use that best suits the interests of the Huntington Stormwater Utility. Upon preliminary agreement of the parties, the matter must then be submitted by the applicant, and at the applicant's expense, to the United States Army Corps of Engineers. Further, upon preliminary approval and agreement on the plans, the Huntington Stormwater Utility will submit a letter of "no objection" to the Corps of Engineers. If the Corps of Engineers approves the application as submitted and issues a permit, the applicant may proceed under the specific terms set forth in the application and permit. If the Corps approves an application subject to any amendments to the plan, the project may not go forward until the Huntington Stormwater Utility reviews that project application as amended and issues a letter of "no objection." If there is objection to the amended application, the project may not proceed despite any approval and permit of the Corps of Engineers.

(B) All costs and expenses of the Huntington Stormwater Utility incidental to the installation or engineering review or to perform other activities on Floodwall right-of-way, shall be borne by the owner(s) of the private installation or activity. The amount of, and the terms of payment for these costs and expenses shall be determined by the Huntington Stormwater Utility for such structure or activity and submitted to the applicant. The project may not proceed until the costs of the Huntington Stormwater Utility are reimbursed.

(C) With the application, a permit fee of \$1,500.00 shall be paid to the Huntington Stormwater Utility. The application fee is not refundable.

(D) On a yearly basis a right-of-way service fee of \$1,000.00 shall be charged in addition to any other fees and shall be due on January 1 of each year. The fee is to be paid to the Huntington Stormwater Utility for each structure or activity maintained under this article.

955.04 PENALTY.

Any person who violates any of the provisions of §§ 955.01 through 955.03 shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$500, per day, per violation, and may be further sentenced to jail for a period not exceeding 30 days for each offense, and shall be liable to the Huntington Stormwater Utility in a civil action for damages. Each day such violation continues shall constitute a separate offense. Any association or corporation violating the provisions shall be fined not more than \$500, and each day that such violation continues shall constitute a separate and additional offense under this Chapter.

955.05 REPEAL OF ORDINANCES INCONSISTENT HEREWITH.

All ordinances or parts of ordinances inconsistent with the provisions of this Chapter are hereby repealed.

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BE IT FURTHER ORDAINED that all other articles, sections and sub-sections of the Codified Ordinances of the City of Huntington, as revised, shall remain in full force and effect until further Ordinance of this Council.

BE IT FURTHER ORDAINED that 955.01, 955.02, 955.03, 955.04 and 955.05 of the Codified Ordinances of the City of Huntington, as revised, shall become effective upon its adoption by Council and approval by the Mayor.

SPONSORED BY COUNCILWOMAN SARAH WALLING

APPROVED AS TO FORM BY SD

FIRST READING 6/27/2022 - ORDERED ADVERTISED

SECOND READING _____