

Chapter 3-10

STORM WATER DRAINAGE UTILITY

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3-10-1 Purpose and Findings

(A) The purpose of this Ordinance is to establish the Storm Water Drainage Utility, authorize charges, rates and fees for use of, and discharge to, the storm and surface water drainage system; to provide a process for appeals from certain decisions of the City Council relating to such charges; and to provide for collection of delinquent charges.

(B) The City Council finds that the construction, operation and maintenance of the City's storm water system should be funded through user charges imposed for the discharge of storm and surface water to the storm water drainage system, thereby charging those persons and activities using or receiving service from that system.

The City may be required to provide increased quantity or quality controls to mitigate those impacts of pollutants from discharging storm and surface waters into the storm water system. Therefore, it is appropriate to impose a storm and surface water user charge upon all users of property which may discharge, directly or indirectly, into the storm water system.

(Ord. 16-O-2005-2006, Add, 06/19/2006)

3-10-2 Definitions

The following words shall have the following definitions when used in this Ordinance, and any Resolution and Order adopted pursuant hereto, unless the context requires otherwise or unless such word is expressly defined otherwise:

(A) **City.** Shall mean the City of Storm Lake, Buena Vista County, Iowa, and shall include any representative or employee of the City authorized to act, in its behalf.

(B) **Condominium.** Shall mean individual dwelling units contained within a single structure

with multiple owners with each unit having a separate water meter.

(C) Council. Shall mean the City Council of Storm Lake, Iowa.

(D) Connection. The physical act or process of directing or allowing the flow of storm and surface waters to the storm sewer or drainage line, or joining onto a private storm sewer, for the purpose of connecting private impervious surface or other storm and surface water sources or systems to the public storm and surface water system. It shall also include creation or maintenance of impervious surface that causes or is likely to cause an increase in the quantity or decrease in quality or both from the natural state of storm water runoff, and which drains, directly or indirectly, to the storm and surface water system.

(E) Date of Imposition or Imposition Date. Shall mean July 1 of each fiscal year or such other date designated by the Council at which time a charge is imposed and becomes the legal obligation of the user. The obligation may include the cost of services to be provided during the billing period or for services previously provided to the same person under this Ordinance.

(F) Days. Shall mean calendar days unless otherwise specified.

(G) Equivalent Residential Unit or ERU. Means a measurement unit based on the impervious surface area of an average improved single family dwelling lot or parcel within the City (as determined by a statistical sampling performed by the City). Except as provided in Section 5, one equivalent residential unit shall be deemed to be 2,750 square feet of impervious material. See "Section 6, Flat Rate Users" for further clarification.

(H) Impervious Surface Area. Means all land area that has been altered from its natural state such that it does not allow the infiltration and retention of water equivalent to that of undisturbed soil. This shall include, but is not limited to: pavement, buildings, decks, parking areas, and compacted gravel areas. Impervious surface shall not include improved streets, roads and sidewalks within the public right-of-way. Rather such facilities are deemed to be part of the public surface water drainage conveyance system.

(I) Occupant. Shall mean the person residing or doing business on the property. In a family or household situation, the occupant responsible for the obligations herein imposed shall be the adult heads of the household, jointly and severally. In a dwelling or office sharing situation, the adult occupant legally responsible for the management or condition of the property shall be responsible.

(J) Owner. Shall mean the legal owner(s) of records as shown on the tax rolls of Buena Vista County, or where there is a recorded land sale contract, the purchaser thereunder.

(K) Person. Shall mean any individual, public or private corporation, political subdivision, governmental agency, municipality, partnership, association, firm, trust, or any other legal entity whatsoever.

(L) Rule. Shall mean any written standard, directive, interpretation, policy, regulation, procedure or other provision, adopted by the City Council as a Resolution and Order to carry out the provisions of this Ordinance.

(M) Storm and Surface Water Drainage System. Means any combination of publicly owned storm and surface water quantity and quality facilities, pumping, or lift facilities, storm and secondary drain pipes and culverts, curb and gutter, open channels, creeks and rivers, force mains, laterals, manholes, catch basins and inlets, including the grates and covers thereof, detention and retention facilities, laboratory facilities and equipment, and any other publicly owned facilities for the collection, conveyance, treatment and disposal of storm and surface water system within the City, to which sanitary sewage flows are not intentionally admitted.

(N) This Ordinance. Shall include Ordinance Number 16-O-2005-2006, any rule or Resolution and Order adopted pursuant thereto.

(O) User. Shall mean any person who uses property which maintains connection to, discharges to, or otherwise receives services from the City for surface water management. The occupant of occupied property is deemed the user. If the property is not occupied, the person who has the right to occupy it shall be deemed the user.

(Ord. 16-O-2005-2006, Add, 06/19/2006)

3-10-3 Storm Water Utility Established

Pursuant to the authority of Section 384.84, The Iowa Code, as amended, the City Council hereby establishes a storm water utility in the City. The entire City, as increased from time to time, shall constitute a single storm and surface water drainage system district.

(Ord. 16-O-2005-2006, Add, 06/19/2006)

3-10-4 Charges and Fees in General

The Council may adopt by rule, charges, rates, and fees for the use of the City's storm and surface water system, and for services provided by the City relating to that system. Such rules may include delinquency and interest charges and penalties. Such charges and fees shall be just and equitable based upon the actual costs of operation, maintenance, acquisition, extension and replacement of the City's system, the costs of bond repayment, regulation, administration, and services of the City. Except as specifically provided in this Ordinance or by Resolution and Order, all charges and service fees shall be due and payable in advance of provision of service. All billing procedures shall be the same as for water usage and may be billed on the same bill.

(Ord. 16-O-2005-2006, Add, 06/19/2006)

3-10-5 Storm Water Utility User Charge

(A) There hereby is established a Storm Water Utility System User Charge. This charge hereby is imposed on every user within the City of the storm and surface water drainage system on the imposition date. The charge may be required to be paid in advance of the provision of service for the billing period. The charge due for the billing period shall be the obligation of the user of the public storm system on the imposition date, notwithstanding whether the user is the addressee of the bill.

(B) The charge shall be the personal obligation of the user on the imposition date, regardless of whether that person has any ownership interest in the property. This charge shall constitute a debt due the City as of the date of imposition.

(C) There shall be a rebuttable presumption that the owner of the real property, as shown in the records of the County Assessor, is the occupant.

(D) Any person who has paid the full amount due in advance of receiving service shall be entitled to a refund if the person ceases to be the user. The refund shall be effective on the date the property is vacated or sold and based on the number of days remaining in the billing period. The refund is waived unless a written request for refund is file within thirty (30) days of vacating or selling the property. The request shall include documentation reasonably deemed adequate by the Council. Notwithstanding any other provision, the new user shall be responsible for the remaining balance of the service charge, which may be billed immediately or added to the bill for the next period.

(E) The Storm Water Utility User Charge shall be imposed upon any person who uses or discharges to the public storm and surface water drainage system by:

1. Maintaining impervious surface connected to (directly or indirectly) and capable of discharge to the public surface water management systems; or
2. Actually discharging storm or surface water into the system.

(F) Said charge shall be charged for all users of properties within the boundaries of the City. A property containing impervious surface, is presumed to discharge storm water to the storm and surface water drainage system, and to generate a demand for storm and surface water drainage services unless that property has an on-site disposal system which meets the standard of Section 6.5 and any rules adopted thereunder.

(Ord. 16-O-2005-2006, Add, 06/19/2006)

3-10-6 Calculation of Equivalent Residential Units and Amount of Charge

(A) This subsection shall be used to determine the number of Equivalent Residential Units (ERUs) for a property for purposes of determining the amount of Storm Water Utility (SWU) service charges and the water quantity component of the SWU. There are two types of uses: flat rate uses and measured uses. These are defined as follows:

1. "Flat Rate" Uses

Improved properties that qualify under this section as flat rate uses shall be charged at the rate of one (1) ERU per dwelling unit. The following uses shall be defined as "flat rate" uses:

a. Single Family Residence

A residential structure not attached to another residential structure on one or more parcels of land, providing there are not more than two residential structures on one parcel. This definition also includes trailers, mobile homes, and manufactured homes, if on separate parcels. Two separate dwelling units on a single parcel shall be charged one (1) ERU per dwelling unit.

Three or more residential dwelling units on one parcel, whether attached or unattached, shall be considered a multiple family residential use.

b. Duplex

Two dwelling units joined to each other with a common wall, or one above the other, on one or two parcels. The units may be under one ownership, or owned separately. Each dwelling unit of the duplex shall be charged one (1) ERU.

c. Multi-Family Residential Use

Three or more dwelling units joined to each other horizontally or vertically, on one or more parcels. The units may be under one ownership or more. Each dwelling unit shall be charged one (1) ERU. The owner of the taxed land parcel shall be deemed the user; except where multi-family dwelling units are individually metered the occupant of each unit is deemed the user and shall be charged one (1) ERU. A multi-family residential building having three or more stories, with three stories being defined by the latest adopted building code of the City of Storm Lake, shall be billed based as a commercial or industrial user as outlined in Section 2 of Section 3-10-2 of the City Code of the City of Storm Lake Iowa.

d. Condominiums

Each living unit of a condominium shall be charged one (1) ERU. Unit is defined as living units and do not include supporting uses, such as garages, even though they may be on separate parcels.

e. Mobile Home Parks

Includes mobile homes on a single tax lot (even if there are more than two per tax lot) under one ownership, where spaces are leased or rented for a mobile home or trailer to be placed. Each space or a trailer to be placed. Each space in a mobile home park shall be charged one (1) ERU whether or not there is a mobile home on the space. Other impervious areas contained within the boundaries of the mobile home park shall not be measured. The owner of a taxed lot shall be deemed the user.

2. Measured Uses

Properties that are not Flat Rate Uses shall be measured uses. For such uses, the impervious surfaces of the property, as defined by rule, shall be measured. The area shall be estimated using one or more of the following: aerial photographs, assessment records, building permits, construction plans, site visits, ad valorem property tax records, storm and surface water system connection permits, field surveys or other sources deemed reliable by the City connection permits, field surveys or other sources deemed reliable by the City.

This area shall then be divided by 2,750 square feet of one (1) Equivalent Residential Unit within the City. The ERU for all of the uses in this subsection shall be determined by measuring the impervious area. All values shall be rounded to the next lowest whole number, but not less than one (1) ERU.

Properties that are three stories or more with a story being defined by the latest adopted Building Code of the City of Storm Lake and having multiple meters within the property shall have their bill based on the total impervious surface area of the property as defined by this section of the City Code. The total ERU'S for the property will be divided to the next lowest whole number, but not less the one (1) ERU per meter.

a. Commercial, Industrial. Institutional

These categories include the entire range of office, manufacturing service, sales restaurant, day care, nursery, warehouse, churches, schools, utilities, public service buildings, parks, hospital, nursing home, rest home, retirement home, and other similar uses. This category includes land with an impervious surface with no building improvements.

3. General Policies

a. No Limit on Charge for a Measured Use

If a use is a measured use, its charge shall not be limited.

b. Minimum Charge

The minimum charge for any parcel with impervious areas subject to the SWU charge shall be one (1) ERU.

c. Community Facilities

The flat rate category includes typical residential uses within a parcel or single ownership, as defined above. If a community or neighborhood recreation center or similar facility exists within a subdivision, even if associated with the single family or duplex properties, that property shall be measured and charged separately to the user of that property.

d. Seasonal Impervious Area

Properties which have areas that are impervious for only a portion of the year shall constitute seasonal impervious area. If an impervious area is in place for more than three (3) months per year, it shall be subject to the SWU charge.

e. Miscellaneous

- 1) No credits, exemptions, or reductions shall be given for impervious surfaces that are submerged for a portion of the year.
- 2) If impervious areas are so small they cannot be detected on aerial maps at a scale of 1" = 50', then they shall not be included in the total impervious area.
- 3) A residence of any kind and a garage for that residence, shall be charged one (1) ERU, even if on two adjacent parcels.
- 4) Swimming pools are exempted from SWU fees providing the filter drains are connected to the sanitary sewer system.
- 5) No waiver shall be given for small impervious areas on a large pervious property.

4. Exclusion from Impervious Surface Measurement

a. Roads

- 1) Public roads shall not be included in the measurement of impervious surface areas.
- 2) All private roads are to be included in the measurement of impervious surface areas, except private roads that serve flat rate uses. Private roads are defined as all roads and driveways which have not been dedicated to the public and accepted for public use, and which are defined as an impervious surface under other City rules.

b. Determination of Impervious Surfaces - Roadways

All roadways, whether dirt, gravel, or paved, shall be considered impervious, and unless a part of an exempted category of road, or a part of a flat rate use, shall be included in the impervious area measurement. A "roadway" is defined as an area intended for the purpose of providing access for motor vehicles. Motor vehicles shall include automobile. Roadways shall include such things as roads, streets, alleys and driveways.

c. Determination of Impervious Surfaces - Parking and Storage Areas

- 1) All parking and storage areas, whether dirt, gravel or paved, shall be deemed impervious. A parking area is defined as an area where motor vehicles are parked temporarily. This shall include such areas as public and private parking lots (regardless of frequency of use), and storage areas.
- 2) A dirt or gravel area that is not accessed by motor vehicles, or is not otherwise highly compacted, shall be considered not impervious. This shall include such uses as landscaping, and gravel or dirt areas accessed only by foot traffic, or small vehicles, as defined above.

b. Railroad Facilities

Railroad facilities shall be included in the measurement of impervious area, but the rail grade itself shall be excluded as being pervious.

5. Exemption from SWU Service Charges

- a. Users of properties for which all storm water is disposed of on-site, as defined by City standards, may request an exemption from SWU service charges. No partial exemptions for disposal of only a portion of the storm and surface waters on-site, shall be allowed. In order to qualify for service charge exemption, the user must design, construct and maintain an on-site facility that keeps all storm and surface water for the full range of storms during the year. This applicant for exemption must pay an initial inspection/review fee.

For the purpose of this Section, the term "property" means a parcel of land, or a group of adjacent parcels working in cooperation. The term "on-site disposal" means on the parcel, or on another parcel in the near vicinity of the parcel requesting the exemption.

In order to qualify for the exemption, the on-site system must encompass the entire property (except for incidental impervious areas as defined below), must be completely separated from the public system, and must provide adequate on-site disposal. Incidental area such as sidewalks, decks, and driveway aprons, shall not exceed ten percent (10%) of the total impervious area.

On-site disposal facilities that may qualify are dry wells, injection wells, retention basins with percolation/evaporation capacity, and retention basins with capacity large enough to accommodate the total of all storms through the year. Many of these may have a possible adverse effect on ground water, and some techniques may require approval of State, Federal and local agencies.

- b. To qualify, an applicant must submit a request to the City for a waiver of monthly service charges relating to the property. This request shall include a certification from an engineer, or other evidence acceptable to the City, that shows the system is separate and will dispose of the full range and volume of storm water through the year on-site. The applicant shall also submit a maintenance plan for assuring the system will function as designed. The application must be signed by the property owner.

An inspection/review fee shall be paid at the time of application.

A decision denying an exemption may be appealed. If approved, the waiver will be effective for the next billing cycle.

- c. The City retains the right to inspect the on-site measures to assure they are functioning as designed. If at any time the measures are found to not be effective, the exemption shall cease.

(B) RATES. The rates for the service charge shall be established in accordance with Section 13.18.030 and is on a fiscal year basis, the estimated storm water utility system actual costs, less other projected revenue, divided by the estimated total number of ERUs connected to the City storm water utility system. The rate of service charge shall be \$4.00 per ERU effective May 1, 2013.

All ERU records for all properties within the City of Storm Lake shall be kept on file in the City Clerk's office and shall be available during normal office hours for examination.

(C) DEPOSIT. All users of the storm water utility shall be subject to the provisions of the combined utility deposit set forth in Section 3-9-2.

(Ord. 06-O-2012-2013, Amended, 03/04/2013; Ord. 11-O-2010-2011, Amended, 04/18/2011; Ord. 13-O-2009-2010, Amended, 04/05/2010; Ord. 09-O-2008-2009, Amended, 04/20/2009; Ord. 16-O-2005-2006, Add, 06/19/2006)

3-10-7 Billing

(A) The City shall send a bill for the amount due by regular mail to every user in the City. Mailing to the owner of record as shown in the assessor records or to the occupant with a water account, as determined appropriate by the City, shall satisfy this requirement. The billing period shall be the same as for the water usage. The bill may be made part of the regular billing for a water account or a separate billing as determined by the City.

(B) The recipient of the first billing after the imposition has twenty (20) days after receipt of the first billing to notify the City of Storm Lake the recipient is not the responsible party and to provide information on the relationship of the recipient to the property and the occupant of the property as of the imposition date. Failure to file notice within twenty (20) days after the receipt of the initial billing shall be deemed to establish the original addressee as the user on the imposition date.

(C) Upon receipt of the notice, the City shall determine who is obligated for payment. Based on this determination, the City shall:

1. Issue a new bill to the occupant if the property was occupied by someone other than the original recipient;
2. Reissue the bill to the recipient if it is found that the person was the occupant;
3. Issue a bill to the owner as the user, if the property was not occupied.

The City may take into account any reasonably reliable information available to it, including utility or water district records.

(D) Notwithstanding any other provision of this Ordinance, any person may agree in writing to be responsible for payment of the charge. Upon filing of such a writing with the City, subsequent bills shall be sent to that person, and that person shall be deemed to be the user.

(E) It shall be a violation of this Ordinance to knowingly provide false information to the City regarding any fact related to billing of a storm water utility service charge or other charge to the city.
(Ord. 16-O-2005-2006, Add, 06/19/2006)

3-10-8 Delinquency, Collection, Interest and Penalties

(A) Charges imposed under this Ordinance are deemed delinquent when not paid in full by the due date provided in a billing for the charge.

(B) It shall be unlawful and a violation of this Ordinance for any person to discharge wastewater into the City's Storm Water Utility System. It is also unlawful and a violation of this Ordinance to maintain a connection to or use the City's Storm Water Utility System without paying the appropriate charges and fees established in this Section or any rule adopted pursuant hereto. Even if no billing is received, such charges shall be due and owing and the user is obligated to pay any charges in a timely fashion.

(C) Payment and Penalty: All users shall be billed monthly. Billing for any particular month shall be made within thirty (30) days after the end of that month. Payments are due when the billings are made. Any payment not received within fifteen (15) days after the billing is made shall be delinquent. There will be an additional ten percent (10%) charge for storm water charges not paid within fifteen (15) days after the same becomes due and payable.

(D) Lien: The City shall have a lien upon the property served by the storm water utility for all delinquent rates and charges. The City Clerk shall certify within ten (10) days of the following dates, to the County Auditor for collection with and in the same manner as property taxes and to establish the

property lines, all rates and charges which be delinquent over thirty (30) days on the first of March, June, September, and December.

(E) Combined Utility Deposit: A combined utility deposit will apply according to 3-9 of the City Code. (Ord. 16-O-2005-2006, Add, 06/19/2006)

3-10-9 Request for Service; Disconnection from Service; Use Reclassification, Termination of User Charges

(A) The issuance of a storm water utility system connection permit relating to impervious surface on a property or parcel shall be deemed to be a specific request for provision of storm and surface water service to that property.

(B) Any user of the public storm water utility system may disconnect property served by the system from service and terminate further user charges by utilizing the procedure in this Section.

(C) Any user of the public storm water utility may remove all or part of the impervious surface on the property served by the system and apply for use reclassification by utilizing the procedure in this Section.

(D) A person desiring to disconnect property from the system shall make application on a form provided by the City and pay the fee established therefore. The application shall be signed by the owner of the property; shall provide evidence of demolition or removal of any impervious surface on the property, or of installation of an approved on-site storm and surface water retention or infiltration system serving the property. Such on-site system shall be designed and operated to retain or dispose of on-site all storm and surface waters generated by the property, through the full range of storm events prescribed by City rule. The Council may by rule, adopt additional criteria and administrative procedures to provide for disconnection from storm water utility service, and suspension or termination of user charges.

(E) Upon receipt of a complete application for disconnection or reclassification, and verification of information thereon, and installation of the on-site system or demolition of impervious area as provided in subsection C. of this Section, the City shall issue a permit for disconnection or reclassification. Whether performed by the City or other person, the City shall inspect the disconnection.

(F) The City may inspect the on-site system at any time. If at any time the system fails to perform to the standard specified in subsection C. above, the City shall notify the owner to correct the system. If the system is not corrected to meet on site retention or infiltration standards within thirty (30) days of such notice, the City may treat such deficiency as a reconnection to the storm water utility system and as a specific request for storm water utility service. Service fees shall then relate back to the earliest date on which the system failed to meet applicable performance standards for on-site retention or disposal.

(G) If at any time after reclassification an impervious surface is added to the property, the City shall consider such an addition as a reconnection to the storm water utility and as a specific request for storm water utility service.

(Ord. 16-O-2005-2006, Add, 06/19/2006)

3-10-10 Appeals

(A) Appeals.

1. The following may be appealed in accordance with the provisions of this section.
 - a. A determination that the person is obligated to pay the service charge imposed herein.
 - b. A dispute as to the proper calculation of the amount due from the person. This shall not include, however, an objection to the overall establishment of the storm water utility charge or the charge per ERU established by the City Council or the establishment of classes of impervious surface area.
 - c. A discretionary decision implementing a rule adopted by the Council if an appeal is provided in the action adopting the rule.
2. The initial appeal shall be filed in writing and addressed to the City Clerk. The appeal must be received in the office of the City Clerk no later than the thirtieth (30th) day after the action that is being appealed. The thirty (30) days shall be calculated from the due date of a bill, or a reissued bill, whichever is later.
3. The appeal filed in the office of the City Clerk shall be heard by the City Administrator. The appellant shall be provided a reasonable opportunity to submit written and oral support for the appellant's position. The City Administrator shall issue a written decision within thirty (30) days after the receipt of the appeal, or ten (10) days after receipt of the last information by the appellant in support of the appellant's position, whichever is later.
4. The written decision of the City Administrator may be appealed to the City Council. The appeal must clearly state the basis on which the appeal of the City Administrator's decision is being filed. Any appeal to the City Council must be filed in the office of the City Clerk within fifteen (15) days after the date of the written determination by the City Administrator. The appeal to the City Council shall be heard in an informal proceeding. The appellant shall be provided a reasonable opportunity to submit additional written or oral support for the appellant's position. The City Council shall issue a written decision within forty-five (45) days of the date the appeal is filed in the office of the City Clerk.
5. The written decision of the City Council may be appealed to District Court. Failure to properly exhaust the administrative remedies provided in this section shall constitute a bar to judicial relief
(Ord. 16-O-2005-2006, Add, 06/19/2006)

3-10-11 Severability Clause

If any section, subsection, provision, clause or paragraph of this Ordinance, or rules adopted pursuant hereto, shall be adjudged or declared to be unconstitutional or invalid by any court of competent jurisdiction, such judgment shall not affect the validity of the remaining portions of this Ordinance or such rules; and every other portion thereof shall remain in full force and effect.

(Ord. 16-O-2005-2006, Add, 06/19/2006)