

## Chapter 6

### Municipal Stormwater Utility

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#### 9-6-1 FINDINGS

The City of Menasha Common Council finds that the management of storm water and other surface water discharges within the City limits is a matter that affects the public health, safety, and welfare of the City, its citizens and businesses, and others in the surrounding area. Failure to manage the storm water and other surface water discharges may cause, among other things, land erosion, property damage, and other environmental damage. In addition, the City is required by the Wisconsin Department of Natural Resources (DNR) Administrative Code Section 216 to improve the quality of storm water discharged from the City into Waters of the State. For Menasha, the immediate Waters of the State are Little Lake Butte des Morts, the Fox River, and Lake Winnebago. The City owns, operates, and maintains a storm sewer collection system that provides collection and regulation of storm water and other surface water discharge for all real property owners within the City. The costs of operating and maintaining this system and financing necessary plans, studies, repairs, replacements, improvements, and extensions thereof should, to the extent practicable, be allocated in relationship to the services received from the system.

#### 9-6-2 ESTABLISHMENT

In order to protect the health, safety, and welfare of the public, there is hereby established a storm water utility in the City of Menasha.

#### 9-6-3 AUTHORITY

- (1) This ordinance is adopted under authority granted by Wisconsin Statutes 62.04, 62.11, 62.16, 62.175, 62.18, 66.0101, 66.0621, 66.0627, 66.0809, 66.0811, and 66.0821.
- (2) The city, acting through the stormwater utility, may acquire, construct, lease, own, operate, maintain, extend, expand, replace, clean, dredge, repair, conduct, manage and finance such facilities, operations and activities, as are deemed by the city to be

proper and reasonably necessary for a system of storm and surface water drainage facilities, sewers, watercourses, retaining walls, ponds, streets, roads, ditches and such other facilities as will support a stormwater management system.

- (3) The Common Council hereby designates the Director of Public Works to administer and enforce the provisions of this ordinance.

#### 9-6-4 INTERPRETATION

In their interpretation and application, the provisions of this ordinance shall be interpreted liberally to secure the ends sought hereby and shall not be deemed a limitation or repeal of any other power granted to the city by the Wisconsin Statutes.

#### 9-6-5 SEVERABILITY OF ORDINANCE PROVISIONS

If any section, provisions or portion of this ordinance is found to be unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

#### 9-6-6 DEFINITIONS

- (1) “Administering authority” means the governmental employees or their designees empowered under S. 62.234, Wisconsin Statutes to administer this ordinance. For the purpose of this ordinance the administering authority is the Director of Public Works under the guidance of the Board of Public Works.
- (2) “Duplex” means a residential dwelling having two side-by-side units or one lower level unit and one upper level unit, including zero-lot line condominiums.
- (3) “ERU” means Equivalent Runoff Unit and indicates the computed average impervious surface of a single-family home within the City of Menasha.
- (4) “Impervious surface” means a surface that has been compacted or covered with a layer of material so that it is highly resistant to infiltration by rainwater. The term includes, without limitation due to enumeration, all areas covered by structures, decks, roof extensions, patios, porches, driveways, sidewalks, parking lots, pavement, gravel, compacted clay, and loading docks, all as measured on a horizontal plane.
- (5) “Land Disturbing Activity” means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities, and soil stockpiling.
- (6) “Multi-family” means a residential property comprised of three or more attached living units, including but not limited to manufactured home parks, apartments, flats, and condominiums.
- (7) “Non-residential” means a lot or parcel of land, with improvements such as a building, paving, or impervious areas as defined in Sec. 9-6-6(4), grading or substantial landscaping, which is not exclusively residential as defined herein, including, but not limited to, commercial, industrial, institutional, mixed-use, and governmental property.
- (8) “Other surface water discharge” means a discharge to the storm sewer system created by some process other than storm water runoff.
- (9) “Runoff” or “Storm water runoff” means that portion of the precipitation falling during a rainfall event, or that portion of snowmelt, or irrigation water that runs off the surface of the land and into the natural or artificial conveyance or drainage network.
- (10) “Storm sewer system” means a conveyance or system of conveyances including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains which is designed for collecting water or conveying storm water.

- (11) “Undeveloped” means property that is not developed by the addition of an improvement such as a building, structure, other impervious area as defined in Sec. 9-6-6(4), grading of more than 4,000 square feet, or other land disturbing activity which increases stormwater runoff. For the purposes of this ordinance, a property shall be considered developed upon issuance of a building permit.
- (12) “Unimproved” means lots within a subdivision or certified survey map, or units within a condominium plat which do not abut an improved street.
- (13) “Waters of the State” means those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within Wisconsin or its jurisdiction.

#### 9-6-7 BASIS OF CHARGE

- (1) By this ordinance, the Common Council is establishing the rate classification and basis for computation of charges for stormwater services for each lot within the City of Menasha. The actual charges to be imposed pursuant to these rate classifications, and any future changes in the charges, shall be made by resolution. A schedule of current rates, following approval by the common council, shall be maintained and on file in the office of the Director of Public Works.
- (2) The rate classifications used to distribute the costs of the Stormwater Program among utility customers shall be based on the Equivalent Runoff Unit (ERU). The charge assigned to each developed parcel shall be assessed based upon the impervious areas or living units as reasonably determined by the city. Undeveloped properties shall be assessed a fraction of an ERU based on proportionate costs of administration and operating costs. For the purposes of this section, undeveloped, unimproved property shall be aggregated, and a single ERU charge shall be assigned to the aggregated lots. Public right-of-way and undeveloped properties which are predominantly classified as “Wetlands” as defined by Section 23.32(1) of the Wisconsin Statutes and/or “Protective Areas” as defined by Wis. Admin. Code NR 151.12(5)(d)1. Where such classifications render the property undevelopable shall be exempt from the utility charge.

#### 9-6-8 CUSTOMER CLASSIFICATION

- (1) Customer Classes. For the purposes of imposing the stormwater charges, all lots and parcels within the city are classified into the following six (6) customer classes.
  - (a) Residential, Single Family
  - (b) Residential, Duplex (Two-Family)
  - (c) Residential, Multi-Family
  - (d) Residential, Riparian
  - (e) Non-residential
  - (f) Undeveloped
  - (g) Right-of-way
- (2) Parcel Classification. The Director of Public Works shall assign a customer classification to each lot and parcel within the City of Menasha.
- (3) ERU. The ERU is established to be 2,980 square feet.

#### 9-6-9 CHARGE FORMULAS

- (1) Residential, Single Family. The charges imposed for residential properties comprised of a single living unit including housing units located within manufactured housing communities shall be the charge for one ERU, i.e.

Residential parcel charge = one ERU fee

For the purposes of this ordinance a lot located within a manufactured housing community shall be considered a parcel.

- (2) Residential, Duplex (Two-Family). The charges imposed for residential properties comprised of two attached living units, either side-by-side or one lower level unit and one upper level unit shall be the fee of one ERU per living unit existing on the property, i.e.

Duplex (Two-Family) parcel charge = 1.0 ERU fee x number of dwelling units

- (3) Residential, Multi-Family. The charges imposed for residential properties with three (3) or more attached living units shall be the charge for one ERU times the numerical factor obtained by dividing the total square footage of impervious area of the property by the square footage of one ERU. The factor shall be rounded down to the nearest one-tenth (0.1), i.e.

Multi-Family parcel charge = ERU charge x parcel impervious area ÷ 2,980 square feet

- (4) Residential, Riparian. The charges imposed for residential properties adjacent to the Fox River, US Government Canal, Lake Winnebago, and Little Lake Butte des Morts shall be the fee of 0.80 of one ERU per living unit existing on the property, i.e.

Residential Riparian charge = 0.80 ERU fee x number of dwelling units

- (5) Non-Residential. The charges imposed for non-residential properties shall be the charge for one ERU times the numerical factor obtained by dividing the total square footage of impervious area of the property by the square footage of one ERU. The factor shall be rounded down to the nearest one-tenth (0.1), i.e.

Non-residential parcel charge = ERU charge x parcel impervious area ÷ 2,980 square feet

- (6) Undeveloped. The charges imposed for undeveloped parcels as defined herein shall be the fee of 0.40 of one ERU, i.e.

Undeveloped parcel charge = 0.40 x ERU fee

- (7) Right-of-Way. Public highway, road, and rail right-of-way shall be exempt from the stormwater utility charge.
- (8) Minimum Charge. The minimum charges for any customer assessed a charge shall be equal to the charge for undeveloped parcels.
- (9) New Construction. For parcels other than single family and duplex, the owner shall be responsible for storm water charges related to an increase in ERU's for the construction of new or expanded buildings, driveways, and/or other structures. The City will recalculate ERU's upon completion of the new construction.
- (10) Impervious Area Measurement. The Director of Public Works or designee shall be responsible for determining the impervious area of nonresidential parcels based on best available information, including, but not limited to, data supplied by the city assessor, city building inspector, aerial photography, property owner, tenant, or developer. The

Director of Public Works or designee may require additional information as necessary to make the determination. The number of ERU's shall be updated by the Director of Public Works or designee based on any additions to the impervious area as approved through the building permit process.

#### 9-6-10 CREDITS AND ADJUSTMENTS

- (1) Credits.
  - (a) Eligibility. A customer may be eligible for a credit, in the form of a reduced ERU multiplier for properties where all of the following conditions apply:
    1. The city's cost of providing service or making service available to the property has been lessened.
    2. The property conforms to all applicable ordinances and standards of the City of Menasha.
    3. The property has been assigned a multi-family or nonresidential user classification.
  - (b) Maximum Credit. The maximum aggregate credit for any individual property is a percentage of its ERU charge as determined annually based on actual operations.
  - (c) Credit Types. The following credits may be available to customers for properties that meet all of the eligibility criteria of Sec. 9-6-10(1)(a).
    1. Zero Discharge Credit. Credits may be considered for properties that discharge stormwater directly into a water body not maintained in any way by the city, or directly into a water body downstream of where it is maintained by the city, or is otherwise contained entirely upon the property.
    2. Peak Discharge Control Credit. Credits may be considered for customers who own and maintain stormwater management facilities such as retention or detention basins that exceed state and local peak discharge rate requirements applicable to the site.
    3. Water Quality Credit. Credits may be considered for customers who own and maintain stormwater management facilities that improve the quality of runoff from the property to a degree that exceeds state and local water quality requirements applicable to the site.
- (2) Adjustments and Incentives: A customer may be eligible for incentives, or have the number of ERU's assigned to their property adjusted under the conditions described below:
  - (a) Nonresidential Property. Nonresidential customers who believe the number of ERU's assigned to their property to be incorrect may submit an adjustment request to the Director of Public Works. The allocated ERU's may be adjusted if the owner can provide information stamped by a certified engineer or surveyor, showing the square footage calculation as determined in Sec. 9-6-9 is incorrect.
  - (b) Residential Property. The Common Council may, via separate resolution, create such incentives as it deems appropriate, to encourage on-site stormwater management practices on residential properties.
- (4) Review Procedure.
  - (a) Within thirty (30) days of submission of a request to the Director of Public Works for a credit, adjustment or reimbursement, the Director of Public Works shall issue a written notice as to whether the request has been granted, denied, or granted in part. The written notice shall also set forth the reason or reasons for the decision and shall be sent to the customer by mail.

- (5) Effective Date. Any ERU adjustment granted shall thereafter be used to calculate the customer's user charges. The reduction shall only apply for the period of time subsequent to the filing of the request for adjustment. There shall be no retroactive adjustment for user charges imposed prior to the filing of the request.

#### 9-6-11 BUDGET-EXCESS REVENUES

The city shall separately account for the stormwater utility finances. The Director of Public Works shall prepare an annual budget, which is to include capital, borrowing and other costs related to the operation of the utility. The budget is subject to approval by the common council. Any excess of revenues over expenditures in a year will be deposited in a stormwater maintenance fund, which shall only be used to defer the costs of capital improvements, retire debt or other stormwater management expenses approved by the Director of Public Works.

#### 9-6-12 BILLING AND COLLECTION

- (1) Billing. Stormwater utility charges shall be billed not less than annually and payable within 25 days of issuance. The property owner shall be ultimately responsible for payment of the Stormwater Utility charge.
- (2) Late Payment. Failure to pay the charges when due will be subject to a late payment charge of one and a half (1.5) percent per month that will be added to bills not paid within 25 days of issuance.
- (3) Unpaid Charges. Unpaid charges shall be assessed as a lien against the property and placed on the property tax bill pursuant to Wis. Stat. § 66.0821.

#### 9-6-13 METHOD OF APPEAL

- (1) If a property has been denied a credit or adjustment, the decision may be appealed by submitting an appeal with the Director of Public Works.
- (2) Within sixty (60) days of the submission of an appeal, the Director of Public Works shall issue a written recommendation as to whether the appeal should be granted, denied or granted in part. A hearing shall be scheduled before the Board of Public Works. The written recommendation shall also set forth the reason or reasons for such recommendation. The recommendation and notice of hearing shall be sent to the customer by mail, and shall be provided to the Board of Public Works.
- (3) The Board of Public Works shall allow the customer to present evidence at the hearing. Upon review, the Board of Public Works shall determine whether the recommendation should be approved, rejected, or modified. The final determination of the Board of Public Works shall be in writing and set forth the reason or reasons for its decision. No further city appeal will be allowed.
- (4) In reviewing a recommendation, the Board of Public Works shall apply the considerations set forth in Wis. Stat. § 66.0821(4)(c).
- (5) Any appeal granted shall thereafter be used to calculate the customer's user charges. The reduction shall only apply for the period of time subsequent to the filing of the request for appeal. There shall be no retroactive adjustment for user charges imposed prior to the filing of the request.

#### 9-6-14 ALTERNATIVE COLLECTION METHODS

In addition to any other method for collection of the charges established under this Section, or by subsequent resolution, such charges may be levied and imposed on a property as a special charge pursuant to Sec. 66.0627, Wis. Stats. The mailing of the bill for stormwater utility charges to a property owner shall serve as notice to the property owner that failure to pay the charges when due may result in the charges being imposed pursuant to the authority of Sec. 66.0627, Wis.

Stats. The procedures contained in Sec. 66.0627, Wis. Stats., shall govern such notice and further collection procedures.

9-6-15 BILLING FOR SINGLE-FAMILY TO FOUR-FAMILY DWELLINGS

Storm water billings for Single-Family to Four-Family dwellings should be sent to the occupant/tenant.