

37.05 - THE PUBLIC STORMWATER SYSTEM.

- (1) Purpose and Necessity. The Common Council of the City of Madison finds that the management of stormwater and other surface water discharges within and beyond the Yahara River, the Sugar River, Door Creek and other bodies of water within the City is a matter that affects the health, safety, welfare and well-being of the City, its residents and businesses and others in the surrounding area. Failure to effectively manage stormwater affects the sanitary sewer utility operations of the City by, among other things, increasing the likelihood of infiltration and inflow into the sanitary sewer system. Surface water runoff may cause erosion of lands, threaten residences and businesses with water damage, and create environmental damage to the rivers, streams, and other bodies of water within and adjacent to the City. A system for the collection and disposal of stormwater provides benefits to all properties within the City and surrounding areas, including those properties not currently served by the system. Beyond designated initial Capital Expenses for system improvements, the cost of operating and maintaining the City stormwater management system and financing necessary repairs, replacements, improvements and extensions thereof should, to the extent practicable, be allocated in relationship to the services received from the system.

In order to protect the health, safety and welfare of the public, the Common Council hereby exercises its authority to establish a stormwater utility and establish the rates for stormwater management services. Nothing in the foregoing shall affect the determination of the Common Council to provide for the payment of designated initial capital expenses for system improvements by other necessary and convenient means. In promulgating the regulations contained in this section, the City is acting pursuant to authority granted by Wis. Stat. chs. 62 and 66 including, but not limited to, Secs. 62.04, 62.11(5), 62.16(2), 62.18, 62.23(6), 66.0809, 66.0811, 66.0813, 66.0821, and 66.0627.

- (2) Creation and Supervision. The purpose of this section is to state the intention of the City to provide and maintain a public stormwater system capable of conveying stormwater from public lands and rights-of-way and to dispose of such water in a manner that the health, safety and welfare of the public shall be protected. There is hereby established a stormwater utility within the purview of Wis. Stats § 66.0821. The Administrative Authority shall be responsible for the maintenance and management of the public stormwater system under the direction of the Board of Public Works.
- (3) Authority. 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 utilities, operations and activities, as are deemed by the City to be proper and reasonably necessary for a system of storm and surface water management. These facilities may include, without limitation due to enumeration, surface and underground drainage facilities, sewers, watercourses, retaining walls, ponds, streets, roads, ditches and such other facilities relating to collection, runoff and retention. This includes facilities that will support a

stormwater management system, whether such facilities are owned and operated directly by the City or are provided under statutory or contractual provisions and furnishing of which facilities create or impose a cost or charge upon the City for the services afforded by such facilities.

(4) Rates and Charges.

- (a) It is hereby determined and declared to be necessary and conducive for the protection of the health, safety, and welfare of the public to charge and collect charges or fees upon all lots, lands and premises served or benefited by the stormwater system of the City.
- (b) There shall be established a charge for stormwater services to all lots and parcels of land within the municipal boundaries of the City. The charge schedule shall be made up of a Customer Charge, an Impervious Area Charge, and a Pervious Area Charge.
- (c) Measurement of Impervious Area and Pervious Area. The Administrative Authority shall measure the total area, impervious area, and pervious area of each lot or parcel of land within the City using aerial photography, site or building plans submitted by the property owner, actual on-site surveys, or, in the case of single family and duplex residential lots, using information from the data base of the City Assessor and formulas.

Individual property owners may submit site and building surveys to the Administrative Authority, which more accurately determine the total area, impervious area and/or pervious area. Property owners may appeal the measurements of the Administrative Authority to the Board of Public Works.

- (d) Credits and Adjustments to the Measured Impervious and Pervious Areas. Individual property owners may submit, to the Administrative Authority, site and building surveys or documentation of mitigation or treatment measures which more accurately determine or reflect the total area, impervious area and/or pervious area. The Administrative Authority may reduce the measured impervious area and/or pervious area after taking into consideration the volume or peaking of stormwater or surface water discharge that is caused by the area of impervious surfaces, topography, and other surface characteristics, and the extent and reliability of mitigation or treatment measures that demonstrably and materially reduce treatment, conveyance, construction or mitigation costs to the Stormwater Utility.

It shall be the burden of the property owner to demonstrate by a preponderance of the evidence that a fee adjustment and/or credit is warranted. Any such adjustments and/or credits shall be made in accordance with the Rate Adjustment and Credit Policy, which policy shall be established by the Administrative Authority and approved by the Board of Public Works.

- (e) Appeals. The appeal process is as provided in Sec. 37.13 of this ordinance. The pendency of an appeal of a decision or determination of the Administrative Authority shall not excuse payment of any stormwater charge. If a decision or determination of the

Administrative Authority is reversed or modified, the Board of Public Works may grant a refund to the aggrieved party, prorated and retroactive to the date on which an application for fee adjustment was filed with the Administrative Authority.

- (f) Rate Structure. The City Engineer shall, consistent with the standards set forth in Wis. Stat. Sec. 66.0821(4), annually set the Customer Charge, Impervious Area Charge and Pervious Area Charge rates. These rates shall be set annually, and will go into effect upon approval by the Board of Public Works and the Common Council.
- (g) Collection of Customer Charge, Impervious Area Charge and Pervious Area Charge. The Administrative Authority shall divide the City into sections for billing purposes, which shall coincide with the billing schedule of the Water Utility. The Customer Charge, Impervious Area Charge and Pervious Area Charge shall be payable to the City Treasurer at the same time that the Water Utility bills are payable. All charges established by this Ordinance shall be a lien on the property served pursuant to Wis. Stat. §§ 66.0809, 66.0811, 66.0813 and 66.0821.
- (h) The bills for stormwater services shall be dated and issued to users. Except as otherwise provided by resolution of the Council, a late payment charge of one percent (1%) of any unpaid balance shall be assessed and added to the bill for such services if the amount of the bill is not paid within twenty (20) days thereafter (the "due date") and an additional late payment charge of one percent (1%) of the unpaid balance of the bill plus any previously assessed late payment charge remaining due at the end of every monthly anniversary of the due date shall be assessed and added to bills then remaining unpaid.
(Am. by ORD-20-00060, 6-29-20)

(5) Transfer of Assets and Outstanding Debt.

- (a) The land rights and improvements of the City, or such rights determined to exist, for the following components of the public stormwater system are hereby transferred to the land assets of the Madison Stormwater Utility.
 - 1. Storm sewers;
 - 2. Inlets, catch basins, retention ponds, and related appurtenances;
 - 3. Access structures;
 - 4. Greenways.
- (b) Effective January 1, 2001, the Stormwater Utility shall assume the responsibility for debt service on all outstanding general obligation debt issued for storm drainage purposes.

(6) Additions to the Public Stormwater System.

- (a) Additions to and reconstruction of the Public Stormwater System shall be financed by the Stormwater Utility except as follows:
 - 1. Inlets, inlet leads, curb and gutter, manholes not located on trunk system, temporary corrugated facilities, and temporary ditching, unless said construction is incidental to

Administrative Authority may proceed in accord with Sec. 27.05, MGO, and order the owner of the property causing the problem to correct the situation. It is noted here that for this scenario to be utilized the drainage problem must be clearly limited to one property affecting other properties. In the more common case, of drainage problems on multiple properties affecting the drainage for the area, paragraph 4. below will apply.

4. Where, in the opinion of the Administrative Authority, the situation is such that drainage problems are caused by a poorly maintained drainage system throughout the area, and it is only possible to correct the situation through regional improvements made on multiple properties, the Administrative Authority may propose an assessment improvement district to correct the situation or may proceed to improve the drainage via the Rural to Urban street improvement program.

(10) Public Harvesting of Foliage or Seeds from Storm Utility Lands.

- (a) Request to Harvest Plant Materials. A City of Madison resident or volunteer may make a written request to the Administrative Authority for the harvesting of foliage or gathering of wildflower or prairie seeds from lands owned and operated by the City of Madison stormwater utility. Each instance or location must be made as a separate request, reviewed, and approved prior to any harvesting or gathering activities. Harvested materials must be used for non-profit purposes and cannot be resold. The person or persons allowed to harvest materials from City of Madison stormwater utility lands must also complete a City of Madison volunteer waiver. Any damage caused by harvesting activities other than removal of the proscribed plant or seed materials must be repaired to the satisfaction of the Administrative Authority.

(Cr. by ORD-20-00051, 6-10-20)

37.13 - APPEALS AND VARIANCES.

(1) Appeals.

- (a) Any person aggrieved or any officer, department, board or commission of the City affected by the order, requirement, decision or determination made by the Administrative Authority pursuant to this ordinance may appeal. Where the Administrative Authority is the City Engineer the appeal shall be made to the Board of Public Works as provided herein. Where the Administrative Authority is the Director of the Building Inspection Division the appeal shall be made to the Building Code, Fire Code, Conveyance Code and Licensing Appeals Board. For the purpose of this ordinance, "aggrieved person" shall include applicants and property owners who own land that is subject to this ordinance.

Such an appeal shall be taken within fifteen (15) days after the challenged decision. Notice of Appeal setting forth the specific grounds for the appeal shall be filed with the Administrative Authority.

- (b) The Boards shall fix a reasonable time for the hearing of the appeal and give due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or attorney.
- (c) The Boards may, in conformity with the provisions of this ordinance, reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and shall have all the powers of the officer from whom the appeal is taken.
- (d) The concurring vote of a majority of the Board shall be necessary to reverse the decision of the Administrative Authority. The Board's action shall be considered a final action.

(2) Variances.

- (a) An applicant may include in the application a request for a variance from the requirements of Sec. 37.08 or 37.09. No variance shall be granted unless applicant demonstrates and the Administrative Authority finds that all of the following conditions are present:
 - 1. Enforcement of the standards set forth in this ordinance will result in unnecessary hardship to the landowner;
 - 2. The hardship is due to exceptional physical conditions unique to the property;
 - 3. Granting the variance will not adversely affect the public health, safety or welfare, nor be contrary to the spirit, purpose and intent of this ordinance;
 - 4. The project will have no adverse impact upon any of the stated purposes of this ordinance as set forth in Sec. 37.02 or 37.05.
 - 5. The applicant has proposed an alternative to the requirement from which the variance is sought that will provide equivalent protection of the public health, safety and welfare, the environment and public and private property.
 - 6. The net cumulative effect of the variance will not impact downstream conditions; and
 - 7. Existing regional facilities are shown to meet the performance standards of this ordinance.
- (b) If all of the conditions set forth in Sec. 37.13(2)(a) are met, a variance may only be granted to the minimum extent necessary to afford relief from the unnecessary hardship, with primary consideration to water quality.
- (c) A variance from the provisions of Sec. 37.09(3)(a), (b) and (f) may only be granted if:
 - 1. The applicant has met the requirements of Sec. 37.13(1)(c); and
 - 2. The applicant will be denied all reasonable and beneficial use of the property if the