

City of Madison, Wisconsin Stormwater Utility Credit Policy (Rate Adjustment Policy) and Fee Correction

I Stormwater Utility Credit Policy

1.0 Purpose and History.

The City established its Stormwater Utility in November, 2000. Under Madison General Ordinances Sec. 37.05(4)(d), property owners are able to submit information to the City Engineer seeking an adjustment in total area, impervious area and pervious area of their properties, and an adjustment of their stormwater utility fees consistent with the City's approved Rate Adjustment and Credit Policy. The City's initial rate adjustment and credit policy was approved in March, 2002. On March 15, 2011, the Common Council revised the rate adjustment policy (RES-11-00213, Legistar File No. 20850), phasing out some earlier adjustments and establishing a more equitable and uniform adjustment policy.

The City Engineer has determined that it is necessary to update the City's Rate Adjustment and Credit Policy. Updating this policy will allow for a more fair and equitable distribution of the costs of the City's Stormwater Management Program among its customers, and rewards actions that incrementally reduce the City's costs for proper stormwater management. This updated policy will supersede and replace the previous policies applicable to this issue.

In general, the purpose of this updated Credit Policy is:

- 1) To conform generally to State of Wisconsin Public Service Commission (PSC) legal decisions regarding stormwater utilities.
- 2) To recognize differing ground conditions that affect a property's rainfall runoff characteristics (i.e., how much water leaves a property) and connectivity to the municipal storm drain system, and adjust charges to reflect those conditions.
- 3) To reduce charges for agricultural land uses as defined herein which have active conservation plans in place.
- 4) To reduce charges for properties that have implemented on-site stormwater management practices that help the City of Madison reach its runoff reduction or pollution reduction goals.

For the purposes of this policy, the definitions set forth in MGO Sec. 37.04 shall apply.

2.0 General Conditions.

2.1 This document establishes an updated Credit Policy for the City of Madison Stormwater Utility consistent with MGO Sec. 37.05(4)(d). Stormwater Utility Fees may be adjusted through the mechanisms as defined below which, along with their qualifying criteria, are described in Sections 3 and 4 of this document (see Section 4 for more information).

2.2 **Credit:** One or more of the following credits may be issued by the City to a customer if properly documented in accordance with the criteria described in this policy:

- a) Stormwater Management Credit. The customer is eligible for this credit if they have implemented, and properly documented, structural stormwater control measure(s) that meet the requirements and criteria defined in this policy.
- b) Riparian Discharge Credit. A customer is eligible for this credit if they have demonstrated that

runoff from the customer's property generally does not enter the City's stormwater conveyance system or certain waterbodies of the state.

- c) Land Cover Condition Credit. A customer is eligible for this credit if their property contains agricultural lands, wetlands, forested lands, or conservation conditions, as defined in this document.
- d) Rural Property Credit. A customer is eligible for this credit if their property drains to a ditched system that is not maintained by the City of Madison and does not enter into a system that is, at any point, actively managed by the City of Madison.
- e) Multi-Property Stormwater Management Credit. A customer is eligible for this credit if their property drains off site to another property that has management practices on it that control stormwater in accord with one of the Stormwater Management Credits and there is an agreement in place between the property owners to allow for management of one property's drainage on the others.

2.3 Applicability

- a) All properties within the City of Madison shall be eligible for the Fee Corrections and/or Credits described in this policy. Forms provided by the City of Madison will define the information requirements, steps necessary, and other requirements for a residential and a non-residential application.
- b) No credit shall be granted for stormwater management measures required for compliance under the provisions of MGO 37.09(1).

3.0 Regulatory Guidance.

The rules and procedures of a stormwater utility fee adjustment policy are not subject to approval by the Wisconsin PSC. The PSC does review complaints and can require a municipality to change its credit policy if they find the utility policy to be unreasonable. This policy has been developed after consideration of past PSC decisions. Certain decisions of the Stormwater Utility related to the implementation of ordinances and policies may be appealed to the City's Board of Public Works as provided for by MGO Sec. 37.13.

4.0 Credit Policy.

4.1 Stormwater Program Budget Categories

Following Common Council approval of the annual Stormwater Utility budget, the City Engineer shall allocate the operating and capital costs to the categories listed below. The distribution of expenses among the categories varies from year to year depending upon the stormwater management needs of the City. The percent of the budget allocated to each category is updated annually and posted on the Engineering Department's website.

- a) Customer Charge. This category shall be for administrative costs relating to the calculation, processing, and collection of the bills to customers to recover the cost of the service, including interest and depreciation. This is a fixed charge and not subject to a credit.
- b) Stormwater Pollution Reduction. This category includes the cost of City services related to stormwater pollution reduction, such as municipal street sweeping, regulatory compliance, and

the development, construction and maintenance of facilities and practices to remove pollutants from stormwater. This category includes costs associated with land acquisition, legal services, engineering design services, capital costs, interest, and depreciation, street sweeping, and the operational costs associated with maintaining those systems such as cleaning catch basins and removing sediment and pollutants from ponds. The costs in this category largely include those expenses incurred by the City in order to comply with the City's municipal separate storm sewer system (MS4) permit issued by the State of Wisconsin Department of Natural Resources.

- c) Shoreline Protection. This category includes those costs, including interest and depreciation, attributable to activities that protect the shorelines of the City's lakes and streams from erosion.
- d) Stormwater Conveyance System. This category includes those costs incurred to design, maintain, repair and construct the public stormwater system, including interest and depreciation, but excluding those costs attributed to the previous categories. Examples of municipal activities under this category include, but are not limited to, watershed studies, construction, repair, and maintenance of storm sewers, greenways, road ditches, street curb and gutters, street inlets, and flood control structures.

4.2 Application Forms

All applications for stormwater utility credits shall be submitted to the City of Madison Engineering Division on the form(s) provided by the City. Applications for riparian discharge credits (See Section 4.4), multi-property credits (See Section 4.3(e)), and for separate stormwater pollution reduction credits for non-residential properties (Sections 4.3(b) and (c)), may require additional information for review.

4.3 Stormwater Management Credit:

- a) Customers may, upon application, be entitled to a reduction in their stormwater utility fees if they submit proper documentation of the installation and proper operation of a structural stormwater control measure or measures. This credit shall be recalculated annually as part of the rate structure described in Section 4.1, which shall be maintained on file with the City Engineer.
- b) The Stormwater Management Credit consists of two components, a pollution reduction component and/or a conveyance system component. The pollution reduction component shall be based on Total Suspended Solids (TSS) reduction and the conveyance system component shall be based on volume reduction, as generally set forth in the table below. The credits are pro-rated based on the structure's TSS removal or runoff volume containment capabilities.

Metric	Applicable Stormwater Program Budget Categories	Credit
% of 80% TSS reduction from baseline achieved	Stormwater Pollution Reduction	Credit for Stormwater Pollution charge (4.1.b) area draining to treatment structure(s)
% of 10 year, 24 hour storm managed	Stormwater Conveyance System	Credit for Stormwater Conveyance System charge (4.1.d) area draining to treatment structure(s)

- c) Stormwater Management Measures Eligible for a Stormwater Management Credit:

- i. Rain gardens reviewed and approved by the Administrative Authority with two feet of engineered soil depth per the specification, shall receive both a percent of the 80% pollution reduction charge credit and conveyance system credit based on the percent of the 10 year 24 hour storm managed and the amount of TSS captured on an average annual basis.
 - ii. Rain gardens reviewed and approved by the Administrative Authority without engineered soil shall receive a conveyance system credit based on the percent of the 10 year 24 hour storm managed.
 - iii. Rainwater harvesting (rain barrel) systems shall be eligible for a conveyance system credit based on the size of the rain barrel and roof area captured. The formula for this credit is a reduction in contributing area by 1 SF for every 2.5 gallons of storage.
- d) Structural stormwater management measures must meet the following criteria in order to eligible for the credit:
 - i. The structure(s) is owned, operated, and properly maintained by the customer or their agents.
 - ii. At least every 10-years, the current owner must submit photo documentation to City Engineering that the practice is still in place and functional.
 - iii. Fee reductions shall apply only to the areas that drain to the stormwater management measure(s).
- e) Multi-Property Stormwater Management Credit:
 - i. Customers who maintain structural stormwater management measures that control stormwater runoff from other private properties (i.e., "off-site" from the property on which the measure(s) is located) are eligible to receive stormwater pollution reduction and conveyance system credits on the property where the structural stormwater control measure is located. The credit shall account for the control of stormwater from the off-site private properties, up to a maximum of 50% of the applicable stormwater fees for the property on which the measure(s) is located.
 - ii. The off-site Customers benefiting from a multi-property structural stormwater management measure are eligible to receive stormwater pollution reduction and conveyance system credits, provided that the maximum combined credits associated with the multi-property structural stormwater control measure shall not exceed 100% of the stormwater pollution reduction, shoreline protection, and stormwater conveyance system charges assessed for the property on which the practice(s) is located. The Stormwater Utility shall not provide a fee refund for credits gained from treatment of off-site runoff.
 - iii. Credit will not be given for the control of stormwater runoff from off-site properties that are publicly owned.
 - iv. In addition to the requirements under para. (d) above, as a condition of eligibility for the multi-property stormwater management credit, the Customers will need to provide the City Engineer with a copy of a recorded agreement between the involved property owners assigning legal rights and responsibilities for the structural stormwater management measures.

4.4 Riparian Credit: Customers may, upon application, be entitled to a reduction of up to 100% of the portion of their impervious and pervious area charges related to the stormwater conveyance system expenses if they meet one of the criteria below. The area of the parcel, both impervious/pervious, that drains directly to the waterbody shall be credited the conveyance reduction. The amount of the fee reduction based on conveyance shall be recalculated annually with the new rate structure based on the percent of the budget that conveyance items make up as part of the Stormwater Utility budget. This percentage shall be maintained on file with the City Engineer.

- a) The customer demonstrates that runoff from the customer's property generally does not enter the City's stormwater conveyance system, at any point, before entering directly the main stem of any of the following water bodies: Lake Mendota, Lake Wingra, Lake Monona, the Yahara River, Wingra (Murphy) Creek, Nine Springs Creek, Door Creek or Starkweather Creek. This shall not include actively managed greenway segments of these waterbodies that are often shown as intermittent streams on USGS quadrangle maps.
- b) Additionally, the City may issue a credit if a customer demonstrates both:
 - i. That runoff from the customer's property does not enter the Public Stormwater System at any point within the City's municipal boundary; and,
 - ii. That the receiving system does not re-enter the Public Stormwater system at any subsequent downstream point.

4.5 Land Cover Condition Credits:

a) Agricultural Condition Credit:

- i. Customers who own a parcel or contiguous parcels of land zoned for and presently used for Animal Husbandry Agriculture or Cultivation Agriculture, as defined in MGO Chapter 28, Section 28.211¹, with a total combined area greater than 5 acres, may request an Agricultural Condition credit. An application for an Agricultural Condition credit must specify the area(s) within which the defined agricultural activities occur and must identify all areas of the parcel(s) that are not in active agricultural use.
- ii. Adjoining agricultural parcels under the same ownership that were attached automatically to the City of Madison under the terms of a cooperative plan, including those parcels that were separated by a former Town right-of-way, shall, for purposes of application of this credit, have all Stormwater Utility charges on all but the largest parcel reduced to zero (0) excepting the Stormwater Utility Administrative charge for each parcel.
- iii. Customers will pay the normal fee for all impervious areas on the properties regardless of the amount of impervious area. If the amount of impervious area exceeds 5 acres, the customer will only be charged for impervious area. If the amount of impervious area is less than 5 acres then the maximum chargeable area shall be the total of the impervious areas plus sufficient pervious area to reach a total of 5 acres.
- iv. Customers must comply with Dane County Ordinance: Chapter 49.08 (1) – (4) Performance Standards and Prohibitions on all areas of the parcel(s) in active animal

¹ Agriculture, Cultivation. The sue of land for growing or producing field crops, including field crops for consumption by animals located off-site or for tree farming or nursery operations.

Agriculture, Animal Husbandry. All operations primarily oriented to the on-site raising and/or use of animals, at an intensity of less than one animal unit per acre. Fish farms are considered animal husbandry land uses.

husbandry agriculture or cultivation agriculture use to receive this credit.

- v. Once an agricultural credit is approved by the City, the credit shall be in effect from the time the credit is granted until such time as the land use changes, or the parcel no longer meets Dane County standards for erosion control as defined under (iv) above. Every two years, applicants shall, upon request, provide the City with written verification of the property's continued eligible agricultural use, and compliance with applicable Dane County Standards, to continue the credit. Any fees required for Dane County certification shall be the responsibility of the applicant.
- b) **Wetland Credit:** Customers owning parcels or portions of parcels mapped as wetlands on the Wisconsin DNR Wisconsin Wetland Inventory Map, or which have been designated as wetland through a field delineation prepared by an assured wetland delineator, may, upon request, be entitled to a credit equivalent to the full area within the defined wetland, for both pollution and conveyance.
- c) **Credit for Conservation Actions:** Customers who own parcels of land, exceeding ½ acre in size, on which active conservation or native vegetation restoration practices have been implemented, or that have special or unique runoff circumstances, may apply for credits based on unique site conditions. Applicants shall provide delineations of pervious and impervious surfaces, and appropriate engineering calculations to document the anticipated runoff from the site during a 10-year event. Credit calculations shall be completed by a Professional Engineer licensed in the State of Wisconsin and shall estimate the amount of runoff from a conventional lawn system and compare that to the runoff from the actual site. If the existing site reduces runoff in the 10 year event to 0 the site shall be given a 100 % Stormwater Conveyance System and 100% Stormwater Pollution Reduction. Percentages of that credit shall be granted for lesser reductions.

4.6 Rural Property Credit: Properties shall receive a 100% credit towards the stormwater conveyance system charge if all of the following conditions apply:

- a) The property drains to a ditch or ditches, without improved storm sewer facilities;
- b) The ditch does not drain to a stormwater system that is actively managed by the City of Madison Stormwater Utility.

5.0 Administration.

5.1 The customer shall be responsible for the preparation of a stormwater credit application on forms provided by the City Engineer. Applications for credits for all properties, except 1 & 2 family residential sites and agricultural lands, shall be prepared by or under the direction of a professional engineer registered in the State of Wisconsin who shall certify that the application meets the applicable criteria. Applications for residential properties as defined in this document, or for agricultural use credits under 4.5(a), may be prepared and certified by the landowner.

5.2 Customers shall promptly report any changes to site conditions affecting any credit calculation or fee correction, to the City Engineer. In the event the City determines that changes to site conditions were not duly reported and would have affected credit calculations, fee corrections, or approvals, the City shall be entitled to recover any and all fees that would have applied, for up to two years prior to the City's determination or the date site conditions were modified, whichever time period is less.

5.3 In the event any misrepresentation, or non-compliance with any credit issued pursuant to this policy, is determined, the City may recover any and all credits that were wrongfully applied and may assess penalties in accordance with MGO Section 37.12(8).

II Stormwater Utility Fee Correction Policy

1.0 Purpose. This policy establishes a Fee Correction Policy for the City of Madison Stormwater Utility when utility bills are not accurate and do not correlate with the actual pervious and impervious areas that exist on the property.

2.0 Fee Correction.

A customer's fee may be corrected if the customer demonstrates that the measurements associated with the pervious and impervious areas on a property are not correct.

Section 37.05(4)(d) of the Madison General Ordinances provides as follows:

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.

3.0 Administration.

The customer shall be responsible for the preparation of a fee correction or credit application on forms provided by the City.

III Appeals

1.0 Under MGO Secs. 37.05(4)(e) and 37.13, a property owner may appeal the determinations of the City Engineer made under this Policy to the Board of Public Works. The property owner must file a Notice of Appeal setting forth the specific grounds for the appeal with the City Engineer within fifteen (15) days of the City Engineer's decision.