

Chapter 15.06
STORMWATER MANAGEMENT PROGRAM AND UTILITY

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15.06.010 Definitions.

In addition to the words, terms and phrases elsewhere defined in this ordinance, the following words, terms and phrases, as used in this ordinance, shall have the following meanings:

"Bonds" means obligations of the City, for which the principal of and the interest on is paid in whole or in part from special assessments, user fees, sales tax, general ad valorem taxes, or any available City or Storm Water Utility revenues heretofore or hereafter issued to finance the Costs of Capital Improvements.

"City" means the City of Overland Park, Kansas.

"City Manager" means the City Manager of the City or the City Manager's designee.

"Costs of Capital Improvements" means costs incurred by the Storm Water Utility in providing capital improvements as part of the Storm Water Management Program, including, without limitation, alteration, enlargement, extension, improvement, construction, reconstruction, and development of the Public Storm Sewers, professional services and studies connected therewith; principal and interest on Bonds heretofore or hereafter issued, including payment of any delinquencies; studies related to the operation of the system; costs related to water quality enhancements, costs related to complying with federal, state or local regulations; acquisition of real and personal property by purchase, lease, donation, condemnation or otherwise; and for the costs associated with purchasing equipment, computers, furniture and all other items necessary or convenient for the operations of the of the Storm Water Utility.

"Debt Service" means an amount equal to the sum of all interest payable on Bonds during any fiscal year or years, and any principal installments payable on the Bonds during such fiscal year or years.

"Director" means the Director of the City's Public Works Department or the Director's designee.

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"Dwelling Unit" means an enclosure containing sleeping, kitchen and bathroom facilities designed for and used or held ready for use as a permanent residence by one Family, as defined in Title 18 of the Overland Park Municipal Code.

"Equivalent Residential Unit" or "ERU" means a unit of measure that is equal to the average Impervious Area per Dwelling Unit located on Residential Property within the City limits.

"Equivalent Residential Unit Rate" or "ERU Rate" means the amount charged for each ERU in calculating the Storm Water Utility User Fee.

"Exempt Property" means public right-of-way, public trails, public streets, public alleys, public sidewalks, and public lands and/or easements in or upon which the Public Storm Sewers are constructed and/or located.

"Fiscal Year" means a twelve-month period commencing on the first day of January of any year.

"Governing Body" means the governing body of the City.

"Impervious Area" means the total number of square feet of hard surface area on a given property that either prevents or retards the entry of water into the soil matrix, or causes water to run off the surface in greater quantities or at an increased rate of flow, than it would enter under conditions similar to those on undeveloped land. "Impervious Area" includes but is not limited to, roofs, roof extensions, driveways, pavement and athletic courts.

"Nonresidential Property" means all property other than Residential Property.

"Operating Budget" means the annual budget established for the Storm Water Utility for the succeeding Fiscal Year.

"Operations and Maintenance" means, without limitation, the current expenses, paid or secured, by the Storm Water Utility, for operation, maintenance and repair and minor replacement of the Public Storm Sewers or for implementing the Storm Water Management Program, as calculated in accordance with generally accepted accounting practices, and includes, without limiting the generality of the foregoing, insurance premiums, administrative expenses including professional services, equipment costs, labor costs, and the cost of materials and supplies used for current operations.

"Public Storm Sewers" means all storm sewers within the City, and all appurtenances and ancillary structures thereto, which have been dedicated to and accepted by the City for ownership and maintenance or otherwise owned by the City.

"Residential Property" means property used primarily for one-family, two-family or multi-family Dwelling Units.

"Storm Water Management Program" means all aspects of work necessary to perform and provide storm and surface water services in the City, including but not limited to administration, planning, engineering, operations, maintenance, best management practices, control measures, public education, citizen participation, regulation and enforcement, protection, and capital improvement of Storm Water Management Systems, plus such non-operating expenses as reserves and bond debt service coverage as are associated with provision of the Storm Water Management Program.

"Storm Water Management System," means surface water and storm sewers and all appurtenances necessary in the maintenance, operation, regulation, and improvement of the same, including, but not limited to, pumping stations; enclosed storm sewers; outfall sewers; surface drains; street, curb and alley improvements associated with storm or surface water improvements; natural and manmade wetlands; channels; ditches; rivers; streams; detention and retention facilities; and other flood control facilities and works for the collection, conveyance, pumping, infiltration, treating, controlling, managing and disposing of water carried pollutants or storm or surface water.

"Storm Water Utility" means the utility created by this ordinance for the purpose of implementing and funding the Storm Water Management Program.

"Storm Water Utility User Fee" means a fee authorized by Charter Ordinance No. Seventy-Nine and this ordinance, charged to owners of property served and benefited by the Storm Water Utility.

"Undeveloped Land" means land that has not been built upon or altered from its natural condition in a manner that disturbed or altered the topography or soils on the property to the degree that the entrance of water into the soil matrix is prevented or retarded.

(History: Ord. SWU-2315 ' 1, 2001)

15.06.020 Findings and Statements of Policy.

A. The City of Overland Park, Kansas, desires to create a Storm Water Management Program pursuant to Charter Ordinance No. Seventy-Nine.

B. A Storm Water Management Program will provide both general and specific benefits to all property within the City and will include the provision of adequate systems of collection, conveyance, detention, retention, treatment and release of storm water; the reduction of hazards to property and life resulting from storm water runoff; improvement in general health and welfare through reduction of undesirable storm water conditions; improvement of water quality in the Storm Water Management System and its receiving waters; the provision of a planned and orderly system for managing and mitigating the effects of new development on storm water and appropriate balancing between development and preservation of the natural environment.

C. The Storm Water Management Program will also initiate innovative and proactive approaches to storm water management within the City to address problems in areas of the City that currently are

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prone to flooding, protect against replication of these types of problems and the creation of similar problems in newly developing areas of the City, protect property in the City from stream bank erosion and the attendant loss of natural resources and the reduction of property values, conserve natural stream assets within the City, enhance water quality, and assist in meeting the mandates of the National Pollutant Discharge Elimination System as created under the Federal Clean Water Act and associated state and federal laws and their supporting regulations.

D. Both standard and innovative storm water management is necessary in the interest of the public health, safety and general welfare of the residents, businesses and visitors of the City.

E. Implementation of the Storm Water Management Program will require the expenditure of significant amounts of public money.

F. All developed property in the City will benefit from the Storm Water Management Program.

G. The City desires to fairly distribute costs of the Storm Water Management Program implementation among all developed property which generates the need therefor.

H. The City has determined that the establishment of a Storm Water Utility is an appropriate method of funding certain portions of the costs of implementing the Storm Water Management Program.

I. The City has adopted Charter Ordinance No. Seventy-Nine, which grants to the City the authority to adopt, by ordinance, rules and regulations providing for the management and operation of a Storm Water Utility, fixing Storm Water Utility User Fees, requiring security for the payment thereof, providing methods and rules relating to the calculation and collection of the fees and for credits against the fees, and providing for the disposition of the revenues derived therefrom.

J. The City commissioned a study that was prepared by Camp Dresser & McKee Inc., to assist the City in developing the Storm Water Utility and to recommend an ERU and an ERU Rate.

K. The Governing Body has evaluated the study and recommendations and hereby determines that the fees set forth herein are reasonable and necessary and should be implemented.

L. The Storm Water Utility User Fee imposed by this Ordinance, is calculated by a formula that reasonably relates classes of property within the City to their anticipated use of or benefit from the Storm Water Management System, and such fee is neither a tax nor a special assessment, but a charge (in the nature of tolls, fees or rents) for services rendered or available.

M. The City has researched collection options and hereby determines that in order to promote

efficiency, eliminate duplication of services, and utilize the most economically feasible method of fee collection, the Storm Water Utility User Fee should be included on Overland Park ad valorem real property tax bills issued by Johnson County, in accordance with an agreement to be negotiated with the County, which will be placed on file in the office of the city clerk.

(History: Ord. SWU-2315 ' 2, 2001)

15.06.030 Creation of a Storm Water Management Program; Establishment of a Storm Water Utility.

Pursuant to City Charter Ordinance No. Seventy-Nine, the City's general home rule authority, its nuisance abatement authority, its police powers and all other authority, the Overland Park Governing Body does hereby create a Storm Water Management Program and does hereby establish a Storm Water Utility and declares its intention to operate the same.

(History: Ord. SWU-2315 ' 3, 2001)

15.06.040 Administration.

The Storm Water Utility, under the supervision of the Director, and not in contravention of any City ordinance, resolution or regulation, shall have the power to undertake the following activities to implement the Storm Water Management Program:

- A. Advise the Governing Body on matters relating to the Storm Water Management Program and to make recommendations to the Governing Body concerning the adoption of ordinances, resolutions, policies, guidelines and regulations in furtherance of the objectives of the Storm Water Management Program.
- B. To undertake studies, acquire data, prepare master plans, analyze policies or undertake such other planning and analyses as may be needed to address concerns related to storm water within the City and to further the objectives of the Storm Water Management Program, and to undertake activities designed to communicate, educate and involve the public and citizens in addressing these issues or in understanding and abiding by the elements of the Storm Water Management Program.
- C. Acquire, design, construct, operate, maintain, expand, or replace any element or elements of the Public Storm Sewers, including funding the acquisition of easements by eminent domain, and obtaining title or easements other than by eminent domain, over any real or personal property that is part of, will become part of or will protect the Public Storm Sewers, or is necessary or convenient for the implementation of the Storm Water Management Program.
- D. Regulate, establish standards, review, and inspect the design, construction or operation and maintenance of any Storm Water Management System that is under the control of private owners, whether or not such systems are required or intended for dedication to the Public Storm Sewer system, when such systems have the potential to impact, enhance, damage, obstruct or affect the operation and maintenance of the Public Storm Sewers or the implementation of the Storm Water Management Program.
- E. Regulate, establish standards, review and inspect land use or property owner activities

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when such activities have the potential to affect the quantity, timing, velocity, erosive forces, quality, environmental value or other characteristics of storm water which would flow into the Storm Water Management System or in any way effect the implementation of the Storm Water Management Program.

F. Undertake any activities related to storm water management when such activities are recommended by applicable federal, state or local agencies or when such activities are required by any permit, regulation, ordinance, or statute governing storm water or water quality concerns.

G. Analyze the cost of services and benefits provided by the Storm Water Utility and the structure of fees, service charges, credits, and other revenues on an annual basis and make recommendations to the Governing Body regarding the same.

H. Undertake expenditures as required to implement these activities, including all Costs of Capital Improvements, Operations and Maintenance, Debt Service, and other costs as required.
(History: Ord. SWU-2315 ' 4, 2001)

15.06.050 Budget.

The City shall, as part of its annual budget process, adopt capital and operating budgets for the Storm Water Utility. The operating budget shall conform with State law, City policy and generally accepted accounting practices. The initial operating budget will commence January 1, 2002, and ends December 31, 2002.

(History: Ord. SWU-2315 ' 5, 2001)

15.06.060 Storm Water Utility User Fee.

A. User Fee Established. Subject to the provisions of this ordinance, there is imposed on each Residential Property and Nonresidential Property, other than Exempt Property, property not served or benefited by the Storm Water Management Program or property consisting exclusively of Undeveloped Land, a Storm Water Utility User Fee. This fee is hereby imposed for the year 2001, and each subsequent year on all such property.

B. Equivalent Residential Unit. The Equivalent Residential Unit (ERU) is hereby established for purposes of calculating the Storm Water Utility User Fee. The ERU is hereby established to be 2,485 square feet of Impervious Area.

C. Equivalent Residential Unit Rate. The ERU rate to be used for calculating Storm Water Utility User Fees for each ERU is hereby established to be \$24.00 per year.

D. Storm Water Utility User Fee for Residential Property. Subject to subparagraph G below, the Storm Water Utility User Fee for Residential Property shall be the ERU Rate multiplied by the number of individual Dwelling Units existing on the property.

E. Storm Water Utility User Fee for Nonresidential Property. Subject to subparagraph G below, the Storm Water Utility User Fee for Nonresidential Property shall be the ERU Rate multiplied by a numerical factor calculated by dividing the total Impervious Area of the property by the number of

square feet in one ERU. In performing this calculation, the numerical factor shall be rounded to the nearest whole number. For Nonresidential Property with joint users of common Impervious Areas, the Director shall calculate and allocate the pro rata Storm Water Utility User Fee among the users.

F. Dwelling Unit and Impervious Surface Calculation. The Director shall make the initial calculations in accordance with the methods established in this section to determine the number of ERUs located on all Residential Property and Nonresidential Property and may from time to time change this calculation from the information and data deemed pertinent. With respect to new construction, the Director may require that the applicant for development approval submit square footage Impervious Area calculations and/or Dwelling Unit calculations. Any increase or decrease in the ERU calculation for a Residential Property or Nonresidential Property associated with new construction shall commence upon the issuance of the temporary certificate of occupancy, certificate of occupancy or certificate of compliance, whichever is first issued. The Storm Water Utility User Fee shall be based on the status of the property on January 1, 2001, for the year 2001 and upon the status of the property on May 31, for all subsequent years.

G. Storm Water Utility User Fee Credits. The Governing Body may, by ordinance, establish a system of credits, which may reduce the Storm Water Utility User Fee that is imposed in Section 15.06.060A., above.

H. Storm Water Utility User Fee Request for Recalculation. If the owner of Residential Property or Nonresidential Property, for which a Storm Water Utility User Fee has been imposed disagrees with the calculation of the Storm Water Utility User Fee imposed upon such owner's property, the owner may request a recalculation of the fee.

I. Procedure. Requests for credit or recalculation must be submitted, in writing, by the owner of Residential Property or Nonresidential Property, for which a Storm Water Utility User Fee has been imposed, to the Director on or before 5:00 p.m. on November 30 of the year for which the credit or recalculation is requested. The owner shall provide information substantiating the request, including detailed calculations of the amount of credit requested and the basis therefor or evidence of a mistake in initial fee calculation. The Director shall issue a determination in writing within 15 days of the receipt of the request.

(History: Ord. SWU-2315 '6, 2001)

15.06.070 Appeal Procedure.

Owners of Residential Property or Nonresidential Property, for which a Storm Water Utility User Fee has been imposed, who disagree: (1) with the calculation of the Storm Water Utility User Fee; or (2) with the decision that their property is entitled to a credit or the continuation of a credit or on the amount of a credit, may appeal the calculation or finding to the City Manager. The owner must file a written notice of appeal with the City Clerk on or before 5:00 p.m. on December 31 of the current year being appealed. The owner, by the date set in writing by the Director, which shall not be less than seven days, shall provide information concerning the basis of the appeal, including a land survey prepared by a registered surveyor showing Dwelling Units, total property area, type of surface material and Impervious

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Area, as appropriate, and any other information that the Director shall request in writing to the owner. The Director may waive the submission of a land survey, if the Director determines that the survey is not necessary to make a determination on the appeal. The owner shall be afforded a hearing on the matter before the City Manager within sixty (60) days of filing the appeal. The burden of proof shall be on the owner to demonstrate, by clear and convincing evidence, that the determination of the Director, from which the appeal is being taken, is erroneous. Based on information provided in writing and at the hearing, the City Manager shall make a determination as to whether the Storm Water Utility User Fee and/or the credit should be adjusted or eliminated for the subject property. The City Manager shall notify the owner in writing of the decision.

The filing of a notice of appeal shall not stay the imposition, calculation or duty to pay the fee. The owner shall pay the Storm Water Utility User Fee, as stated in the billing, to the Johnson County, Kansas, Treasurer. If the City Manager determines that the owner should not pay a fee, pay a fee amount less than the amount appealed from, or receive a credit, the City shall issue a check to the owner in the appropriate amount within 10 business days of the date of the applicable written decision, which in no event shall be more than the amount of the fee paid by the owner as of the date the check is issued. If the credit is larger than the amount paid and additional fees are due for the same year, the City will issue the remaining credit within 10 business days after the remaining fees have been paid in full. All refunds shall be without interest.

The decision of the City Manager shall be final.
(History: Ord. SWU-2315 ' 7, 2001)

15.06.080 Storm Water Utility User Fee Collection.

The Storm Water Utility User Fee shall be billed by the Johnson County, Kansas, Clerk and collected by the Johnson County, Kansas, Treasurer. The Storm Water Utility User Fee shall be shown as a separate item on the County's annual ad valorem real property tax statement, in accordance with the procedures established in an agreement, pursuant to K.S.A. 12-2908, between the City and the County, as hereby authorized. The payment of Storm Water Utility User Fee bills for any given property shall be the responsibility of the owner of the property.

To the extent permitted by applicable law, Storm Water Utility User Fees shall be subject to interest for late payment at a rate that is the same as the rate prescribed in K.S.A. 79-2004, as amended and K.S.A. 79-2968, as amended, shall constitute a lien on the applicable property, and shall be collected in the same manner as ad valorem real property taxes collected by the County, regardless of whether the Storm Water Utility User Fees were incurred when a property owner was in possession of the property or a non-owner was in possession of the property.
(History: Ord. SWU-2315 ' 8, 2001)

15.06.90 Storm Water Utility Fund.

Storm Water Utility User Fees, dedicated ad valorem taxes and other available revenues shall be paid into a fund that is hereby created and shall be known as the "Storm Water Utility Fund." This fund shall be used for the purpose of paying Costs of Capital Improvements, Operations and Maintenance, Debt
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Service and any other costs associated with the implementation and operation of the Storm Water Management Program.

(History: Ord. SWU-2315 '9, 2001)

15.06.100 Severability.

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

(History: Ord. SWU-2315 '10, 2001)

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