

By Colvin Roy, Goodman, Benson and Zimmermann

Amending Title 19 of the Minneapolis Code of Ordinances relating to Water, Sewers and Sewage Disposal by adding a new Chapter 510 relating to Stormwater Management System and the Operation of a Stormwater Utility.

The City Council of The City of Minneapolis do ordain as follows:

Section 1. That the Minneapolis Code of Ordinances be amended by adding thereto a new Chapter 510 to read as follows:

CHAPTER 510. STORMWATER MANAGEMENT SYSTEM AND OPERATION OF A STORMWATER UTILITY

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

Bonds means revenue or general obligation bonds, notes, loans or other debt obligations heretofore or hereafter issued to finance the costs of improvements and/or operations and maintenance.

Building permit means a permit issued by the director of inspections that permits construction of a structure.

City means City of Minneapolis, Minnesota.

City council means governing body of the city.

Costs of capital improvements means costs incurred in providing capital improvements to the stormwater management system or any portion thereof including, without limitation, the cost of alteration, enlargement, extension, improvement, construction, reconstruction, testing and development of the stormwater management system; insurance premiums for insurance taken out and maintained during construction, professional services and studies connected thereto; principal and interest on bonds heretofore or hereafter issued, acquisition of real and personal property by purchase, lease, donation, condemnation or otherwise for the stormwater management system or for its protection; and costs associated with purchasing equipment, computers, furniture, etc., that are necessary for the operation of the system or the utility.

Debt service means an amount equal to the sum of (i) all interest payable on bonds during a fiscal year, plus (ii) any principal installments payable on the bonds during that fiscal year.

Developed property means real property, other than undisturbed property; provided that, property used for agricultural uses, upon which no dwelling unit is located, shall not constitute developed property for purposes of this chapter.

Director means the city engineer/director of the public works department for the City of Minneapolis or the director's designee.

Dwelling unit means one or more rooms, designed, occupied or intended for occupancy as a separate living quarter, with a single complete kitchen facility, sleeping area and bathroom provided within the unit for the exclusive use of a single household.

Equivalent Stormwater Unit (ESU) means a unit of measure that is equal to the average impervious area of single-family residential developed property that falls within the medium class, with a single-family detached dwelling unit located thereon and within the city's limits, as established by city council resolution or ordinance, as provided for herein.

Equivalent Stormwater Unit rate or *ESU rate* means the storm sewer charge imposed on single-family residential developed property within the medium class, as established by city council resolution or ordinance, as provided herein.

Exempt property means public rights-of-way, public trails, public streets, public alleys, public sidewalks, railroad tracks that are not in railroad yards, and also means public lands and/or easements upon which the stormwater management system is constructed and/or located.

Fiscal year means a twelve-month period commencing on the first day of January of any year or such other twelve (12) month period adopted as the fiscal year of the city.

Impervious area means the number of square feet of hard surface areas that either prevent or retard the entry of water into the soil matrix, as it entered under natural conditions as undisturbed property, and/or cause water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions as undisturbed property, including, but not limited to, roofs, roof extensions, driveways, pavement and athletic courts.

Other residential developed property means developed property upon which two (2) or more family and/or multi-family dwellings are located.

Non-residential developed property means developed property other than single residential developed property and other residential developed property.

Operating budget means the annual stormwater utility operating budget adopted by the city for the succeeding fiscal year.

Operations and maintenance means, without limitation, the current expenses, paid or secured, of operation, maintenance, repair and minor replacement of the system, as calculated in accordance with generally accepted accounting practice. This shall include, without limiting the generality of the foregoing, cost of studies related to the operation of the system; costs of the study performed heretofore in relation to establishing storm sewer charges for the stormwater utility and other start up costs of

the stormwater utility; costs related to the national pollutant discharge elimination system permit study, application, negotiation and implementation, including public education and outreach, as mandated by federal and state laws and regulations and the costs of obtaining and complying with all other permits required by law, insurance premiums, administrative expenses, equipment costs, including professional services, labor costs and the cost of materials and supplies used for current operations.

Revenues means all rates, fees, assessments, rentals or other charges or other income received by the stormwater utility in connection with the management and operation of the system, including amounts received from the investment or deposit of monies in any fund or account, as calculated in accordance with generally accepted accounting practices.

Runoff coefficients means those numbers approved by the city council that are used to estimate the impervious area for each non-single family classified property. A list of the coefficients used for the city is found in Table 1 that is incorporated herein.

Single family residential developed property means developed property upon which single-family detached dwellings are located.

Stormwater charge means a charge authorized by this chapter, Minnesota Statutes 2004, Section 444.075, and other applicable law, and further as set forth in resolution or ordinance heretofore or hereafter adopted or hereafter amended by the city council, which is established to pay operation and maintenance, costs of capital improvements, debt service associated with the stormwater management system and other costs included in the operating budget.

Stormwater management system, sewer system or system means storm sewers that exist at the time the ordinance codified in this chapter is adopted or that are hereafter established and all appurtenances necessary in the maintaining and operating 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; wet and dry bottom basins; pocket ponds; multiple pond systems; settling basins; infiltration trenches or basins; filter systems; bioretention areas; dry or wet swales; grass channels; roof top detention; skimming devices; grit chambers and other flood control facilities; and works for the collection, transportation, conveyance, pumping, treatment, controlling, storing, managing, and disposing storm or surface water or pollutants originating from or carried by storm or surface water.

Stormwater utility or utility means the utility created by this chapter to operate, maintain and improve the stormwater management system and for all other purposes set forth in this chapter.

Undisturbed property means real property that has not been 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.

Vacant land means real property upon which there is no structure, as shown in the records of the city assessor's office, which is not designed for or regularly used for commercial or residential purposes, and which is not used in connection with another piece of property, Vacant land includes undisturbed property and land with no building used as a community garden.

510.20. Creation of stormwater utility. Pursuant to the provisions of Minnesota Statutes 2004, Section 444.075, the city's general home rule powers, its nuisance powers, police powers and all other authorized powers, the city council does establish a stormwater utility and stormwater management system and declares its intention to operate, construct, maintain, repair and replace the stormwater management system and operate the stormwater utility.

510.30. Findings and determinations. The city finds that the elements of the stormwater management system that provides for the collection, conveyance, detention/retention, treatment and release of stormwater, the reduction of hazard to property and life resulting from stormwater runoff, improvement in general health and welfare through reduction of undesirable stormwater conditions and improvement to the water quality in the storm and surface water system and its receiving waters are of benefit and provide services to all property within the city. It is further found, determined and declared that this chapter is in furtherance of and implements the goals and strategies of the local surface water management plan, the annual Combined Sewer Overflow (CSO) report and the city's National Pollutant Discharge Elimination System (NPDES) permit.

510.40. Administration. The stormwater utility, under the supervision of the director, shall have the power to:

- (1) Administer the acquisition, design, construction, maintenance, operation, extension and replacement of the stormwater management system, including real and personal property that is or will become a part of or protect the system.
- (2) Prepare regulations, as needed, to implement this chapter, and forward those regulations to the city council for consideration and adoption, and adopt those procedures, as are desirable, to implement adopted regulations or to carry out other responsibilities of the utility.
- (3) Administer and enforce this chapter and all regulations, guidelines and procedures adopted relating to the design, construction, maintenance, operation and alteration of the stormwater management system, including, but not limited to, the flow rate, volume, quality and/or velocity of the stormwater conveyed thereby.
 - a. Advise the city council on matters relating to the stormwater management system.

- b. Develop and review plans concerning creation, design, construction, extension and replacement of the system and make recommendations to the city council related thereto.
- c. Inspect private systems, as necessary, to determine the compliance of those systems with this chapter and any regulations adopted pursuant hereto.
- d. Make recommendations to the city council concerning the adoption of ordinances, resolutions, guidelines and regulations to protect and maintain water quality within the stormwater management system in compliance with water quality standards established by state, county, regional and/or federal agencies, as now adopted or hereafter adopted or amended.
- e. Analyze the cost of services and benefits provided by the stormwater management system and the structure of fees, service charges, fines and other revenues of the stormwater utility at least once each year.
- f. Make recommendations to the city council concerning the cost of service and benefits provided by the stormwater management system and structure of fees, service charges, fines and other revenues of the stormwater utility.
- g. Analyze the appropriateness of providing credits against the stormwater charge for owners of property who employ structural or non-structural best management practices or other stormwater management practices on-site that significantly reduce the quantity or improve the quality of stormwater run-off from their property that enters the system and make recommendations to the city council regarding the provision of these credits.
- h. Administer programs established pursuant hereto or pursuant to ordinances, resolutions, regulations or guidelines hereafter adopted by the city council that provide for credits and/or incentives that reduce stormwater charges imposed against properties.

510.50. Operating budget. The city shall, as part of its annual budget process, adopt an operating budget for the stormwater utility for the next following fiscal year. The operating budget shall be prepared in conformance with the state budget law, city policy and generally accepted accounting practices. The initial operating budget commences January 1, 2005, and ends December 31, 2005.

510.60. Stormwater charge. (a) Stormwater Charge Established. Subject to the provisions of this chapter, there is imposed on each and every Single-Family Residential Developed Property, Other Residential Developed Property and Non-Residential Developed Property, and vacant property, other than Exempt Property, and the owner and non-owner users thereof, a Stormwater Charge. In the event the owner and non-owner user of a particular Developed Property are not the same, the liability for the owner and non-owner user for the Stormwater Charge attributable to the Developed Property shall be joint and several liability. This Stormwater Charge shall be determined and set by the provisions of this chapter in accordance with the ESU and ESU Rate,

which is established by ordinance or resolution of the City Council and which may be amended from time to time by the City Council.

(1) Stormwater Charge for Single-Family Residential Developed Property. Three classes of Single-Family Residential Developed Property are established to account for the wide range of the amount of Impervious Area that exists on individual Single-Family Residential Developed Properties in the City. The three Single-Family customer classes are based on statistical sampling of estimated impervious area as developed from the City Assessor's Single-Family Residential Developed real estate property records which includes: foundation square footage, garage stalls, estimation of driveway square footage and foundation square footage of any outbuildings/other improvements. Classification of the Single-Family Residential Developed customer class properties into the three customer classes is made based on estimated impervious area. Single-Family Residential Developed properties will be assigned to one of three Single-Family Residential customer classes. The three Single Family Residential customer classes are as follows:

- a. Single-Family Residential Developed Property/High – greater than 1,578 square feet of estimated impervious area.
- b. Single-Family Residential Developed Property/Medium – equal to or greater than 1,485 square feet and less than or equal to 1,578 square feet of estimated impervious area.
- c. Single-Family Residential Developed Property/Low – less than 1,485 square feet of estimated impervious area.

The stormwater charge for each of these classes shall be as follows:

High --	1.25 % of a ESU
Medium –	1 ESU
Low –	.75 % of a ESU

In the event of a newly constructed dwelling unit, the charge for the stormwater charge attributable to that dwelling unit shall commence upon the issuance of the building permit for that dwelling unit.

(2) *Stormwater charge for other residential developed property.* The stormwater charge for other residential developed property shall be the ESU rate multiplied by the numerical factor obtained by multiplying the gross area of a property by the runoff coefficient for the other residential developed property, as set forth in Table 1 (the actual coefficient will be defined at the time of the annual rate adoption) and then dividing the above product by the ESU, as this ESU is established by City Council resolution or ordinance ((gross square footage X runoff coefficient)/ESU = ## ESU). In the event of a newly constructed dwelling unit, the stormwater charge attributable to that dwelling unit shall commence upon the issuance of the building permit for that dwelling unit.

- (3) *Stormwater charge for non-residential developed property.* The stormwater charge for non-residential developed property shall be the ESU rate multiplied by the number of ESU's for each individual non-residential developed property. The number of ESU's for each individual non-residential developed property shall be obtained by multiplying the gross area of each individual property by the runoff coefficient for the customer class that is the most similar to the use to which that individual non-residential developed property is currently being put, as set forth in Table 1 (the actual coefficient will be defined at the time of the annual rate adoption) and then dividing the above product by the ESU, as this ESU is established by City Council resolution or ordinance ($(\text{gross square footage} \times \text{runoff coefficient}) / \text{ESU} = \text{## ESU}$). The minimum stormwater charge for any non-residential developed property shall be in an amount equal to that of one ESU. In the event of newly developed non-residential developed property, the stormwater charge attributable to that development shall commence upon the issuance of the building permit. In the event of additional development to property that is already developed property, the charge for the stormwater charge attributable to that additional development shall commence upon the issuance of the building permit.
- (4) *Stormwater charge for vacant property.* The stormwater charge for vacant property shall be the ESU rate multiplied by the number of ESU's for each individual vacant property. The number of ESU's for each individual vacant property shall be obtained by multiplying the gross area of each individual property by the runoff coefficient for the vacant property class, as set forth in Table 1 (the actual coefficient will be defined at the time of the annual rate adoption) and then dividing the above product by the ESU, as this ESU is established by City Council resolution or ordinance ($(\text{gross square footage} \times \text{runoff coefficient}) / \text{ESU} = \text{## ESU}$). There is no minimum stormwater charge for vacant property.

(b) *Stormwater charge calculation.* The director shall initially, and from time to time, determine the class of residential developed property into which each individual residential developed property falls to establish the stormwater charge, based on the impervious area of the parcel as shown in the single-family records maintained by the city assessor's office. The stormwater charge for other residential developed property, for non-residential developed property, and for vacant property in the city shall be calculated as provided for subsection (a)(2), (3) & (4). The director shall make the initial calculation with respect to existing other residential developed property, non-residential developed property, and vacant property and may from time to time change this calculation from the information and data deemed pertinent by the director. With respect to property proposed to be non-residential developed property, the applicant for development approval shall submit square footage impervious area calculations, in accordance with the submission requirements for the application being submitted, as set forth in the applicable section of Title 20 of this Code.

(c) *Stormwater charge credit.* A system of credits, which may reduce the stormwater charge that is imposed, as provided for above, is hereby established. A credit shall be granted for developed or undeveloped property pursuant to the rules provided for

herein. The director shall, pursuant to the rules provided for herein, grant a credit to those owners or non-owner users of properties, against which stormwater charges are imposed, who employ structural or non-structural best management practices or other stormwater management practices on-site that significantly reduce the quantity or significantly improve the quality of stormwater run-off from their property that enters the system. The director shall propose rules providing guidelines for the awarding of credits. The Council shall approve, or approve as modified, these rules for the awarding of credits. The rules shall be consistent with this section. A credit also shall be granted in a percentage amount set by said city council pursuant to the rules for properties with respect to which a final plan or final plat has been approved or other final development approval has been granted by the city, on or before the effective date of this ordinance, which requires the construction of an on-site structural or non-structural best management practices or other stormwater management practices that significantly reduce the quantity or improve the quality of stormwater run-off from their property that enters the system, provided that, the practices are constructed and/or operational within one (1) year from the date of the applicable final approval. The credit shall begin in the fiscal year that the practice becomes operational. The credit for the first year, however, shall be prorated to reflect the number of months of the first fiscal year that the practices are operational, where appropriate.

510.70. Appeal procedure. (a) Owners of residential developed property, non-residential developed property or vacant property, with respect to which a stormwater charge has been imposed, that disagree:

- (1) with the class into which their single-family residential developed property is placed;
- (2) with the calculation of the stormwater charge;
- (3) with whether their property is benefited by the stormwater utility; or
- (4) with whether 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 a designee of the director by giving written notice of the appeal to the director at the director's customary offices within the (10) days of notice of that determination.

The director's designee assigned to hear such appeal shall not be a person that is regularly assigned to utility billing or the stormwater utility. Appeals from the calculation or finding to the designee of the director, as delineated herein above are separate and distinct from the billing complaint procedures established by Sections 509.920 and 509.930 of this Code.

(b) The director's designee shall give written notice of the time and place for the review requested, pursuant to subsection (a) hereof, to the appealing owner or non-owner user. The review shall be held within fifteen (15) days of receipt by the director of the written appeal. In addition to any oral presentation, appellant shall state all grounds

supporting the appeal in writing, attaching any exhibits, such as photographs, drawings or maps and affidavits that support the claim. In addition, the appellant shall submit a land survey prepared by a registered surveyor showing dwelling units, total property area, type of surface material and impervious area, as appropriate, and any other information that the director shall designate in writing to the appellant. The director may waive the submission of a land survey, if director determines that the survey is not necessary to make a determination on the appeal.

(c) The burden of proof shall be on the appellant to demonstrate, by clear and convincing evidence, that the determination of the director, from which the appeal is being taken, is erroneous.

(d) The filing of a notice of appeal shall not stay the imposition, calculation or duty to pay the stormwater charge. The appellant shall pay the stormwater charge, as stated in the billing.

(e) Within fifteen (15) days of the review, the director's designee shall send a written copy of the designee's decision to the appellant with a copy to the director.

(f) If the appellant believes this decision is in error, the appellant may file a written request for a review by the city council based on the written record by filing a request with the city clerk with a copy to the director. The request for review shall be reviewed based on the written record by a committee or subcommittee of the city council, or by a person appointed by the city council, or any designated combination thereof, within thirty (30) days of the filing of the request. The report of the committee, subcommittee and/or other reviewer shall be referred to the full council and be acted upon by the full council within thirty (30) days of the review. The decision of the city council on appeal is subject to judicial review, as provided by the laws of the state.

(g) If the director's designee's determines, upon appeal, that appellant should not pay a charge, pay a charge amount less than the amount appealed from, receive a credit or receive a greater credit than the credit appealed from or the city council, upon appeal, so determines, the city shall issue a check to the appellant in the appropriate amount within ten (10) days of the date of the applicable decision, provided the charge has, as required herein, been paid by the appellant.

510.80. Stormwater charge collection. (a) The stormwater charge shall be billed and collected by the city. The stormwater charge shall be shown as a separate item on the billing from the sewer utility charge levied and assessed pursuant to Section 511.290. In the event the owner and non-owner of a particular developed property are not the same, the liability for the owner and non-owner user for the stormwater charge attributable to the developed property shall be joint and severable. The same administrative procedures for special assessments shall be applied to the stormwater charge, as are applied for water use under Chapter 509 of this Code.

(b) Pursuant to Minnesota Laws 1973, Chapter 320, whenever payment remains in default for a stormwater charge, the city council may annually levy an assessment equal

to the unpaid costs, including penalty and interest against each developed property that is not exempt property and upon which the stormwater charge is unpaid.

510.90. Stormwater fund. Stormwater charges collected by the city shall be paid into a fund that is hereby created and shall be known as the "Stormwater Fund." This fund shall be used for the purpose of paying costs of capital improvements, administration of the stormwater utility, operation and maintenance and debt service of the stormwater management system and to carry out all other purposes of the utility.

510.100. Equivalent stormwater unit (ESU) rate. The ESU and the ESU rate that is used to determine the charge for each class of residential developed property, other residential developed property, non-residential developed property, and vacant property shall be as established in an ordinance or a resolution heretofore adopted or hereafter adopted by the city council, and as thereafter amended.

510.110. Severability. In the event that any portion or section of this chapter is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, the decision shall in no manner affect the remaining portions or sections of this chapter, which shall remain in full force and effect.

Table 1 - Ordinance

Approved 1/24/05

LANDUSE	Coefficient
Bar- Rest.- Entertainment	.75
Car Sales Lot	.95
Cemetery w/Monuments	.20
Central Business District	1.00
Common Area	.20
Garage or Misc. Res.	.55
Group Residence	.75
Ind. Warehouse- Factory	.90
Industrial Railway	.85
Institution- Sch.- Church	.90
Misc. Commercial	.90
Mixed Comm.- Res- Apt	.75
Multi-Family Apartment	.75
Multi-Family Residential	.75
Office	.91
Parks & Playgrounds	.20
Public Accommodations	.91
Retail	.91
Single Family Attached	.75
Single Family Detached	ESU
Sport or Rec. Facility	.20
Utility	.90
Vacant Land Use	.20
Vehicle Related Use	.90