

## CHAPTER 100

# STORMWATER MANAGEMENT AND DRAINAGE SYSTEMS UTILITY

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### 100.01 PURPOSE.

1. The purpose of this chapter is to establish a policy and procedure for managing and controlling the quantity and quality of stormwater runoff, within the City limits. The management shall include the establishment of a stormwater utility to provide revenues for whatever aspects of this requirement are deemed appropriate by the City.
2. The City finds, determines, and declares that the stormwater drainage system provides benefits and services to all property within the City limits. Such benefits include, but are not limited to: the provision of adequate systems for collection, conveyance, detention, treatment, and release of stormwater for quality and quantity management that minimize impacts on receiving waters.
3. The City may be required to provide increased quantity or quality controls to mitigate those impacts of pollutants from discharging storm and surface waters into the stormwater system. Therefore it is appropriate to impose a storm and surface water user charge upon all users of property which may discharge, directly or indirectly, into the stormwater system.
4. In order to manage additions and improvements to the City stormwater systems, the City must have adequate and stable funding for its stormwater management program operating and capital investment needs.

### 100.02 CREATION OF A STORMWATER MANAGEMENT AND DRAINAGE SYSTEMS UTILITY.

1. The function of the Stormwater Management and Drainage Systems Utility (hereinafter referred to as "stormwater utility") within the Public Works Department is to provide for the safe and efficient capture of stormwater runoff, mitigate the damaging effects of stormwater runoff, correction of stormwater problems, to fund activities of stormwater management, and include design, planning, regulations, education, coordination, construction, operations, maintenance, inspection, and enforcement activities.
2. There is hereby established a stormwater utility within the City which shall be responsible for creating revenue for stormwater management throughout the City's corporate limits, and shall provide for the management, protection, control, regulation,

use, and enhancement of stormwater systems and facilities. Such utility shall be under the operational direction of the City Administrator/Clerk. The corporate limits of the City, as increased from time to time, shall constitute the boundaries of the stormwater utility district.

3. The City shall establish a Stormwater Utility Fund in the City budget and accounting system, separate and apart from its General Fund, for the purpose of dedicating and protecting all funding applicable to the purposes and responsibilities of the utility.

**100.03 DEFINITIONS.** The following words shall have the following definitions when used in this chapter, and any resolution and order adopted pursuant hereto, unless the context requires otherwise or unless such word is expressly defined otherwise:

1. “Bonds” means revenue bonds, notes, loans, or other debt obligations issued or incurred to finance the costs of construction.

2. “City Administrator” means the city official designated by the Council to manage the stormwater utility for the City.

3. “Collection agent” means the agent, entity, or firm designated by the Council to coordinate bills and receive revenues on behalf of the stormwater management utility.

4. “Contributor” or “User” means any person, firm, corporation, or other entity or organization responsible for the direct or indirect discharge of stormwater, or surface or subsurface waters into the City’s stormwater drainage system.

5. “Cost of construction” means the cost reasonably incurred in connection with providing capital improvements to the system, or any portion thereof, including but not limited to the costs of:

A. Acquisition of all property, real or personal, and all interests in connection therewith including all rights-of-way and easements therefore;

B. Physical construction, installation, and testing including the costs of labor, services, materials, supplies, and utility services used in connection therewith;

C. Architectural, engineering, legal, and other professional services;

D. Insurance premiums taken out and maintained during construction, to the extent not paid for by a contractor for construction and installation;

E. Any taxes or other charges which become due during construction;

F. Expenses incurred by the City or on its behalf with its approval in seeking to enforce any remedy against any contractor or subcontractor in respect of any default under a contract relating to construction;

G. Principal and interest on any bonds, notes, loans, or other debt obligations; and

H. Miscellaneous expenses incidental thereto.

6. “Connection” means the physical act or process of directing or allowing the flow of storm and surface waters to the storm sewer or drainage line, or joining onto an existing side sewer, for the purpose of connecting private impervious surface or other storm and surface water sources or systems to the public storm and surface water system. It shall also include creation or maintenance of impervious surface that causes

or is likely to cause an increase in the quantity or decrease in quality or both from the natural state of stormwater runoff, and which drains, directly or indirectly, to the storm and surface water system.

7. "Date of imposition" or "imposition date" means July 1 of each fiscal year or such other date designated by the Council at which time a charge is imposed and becomes the legal obligation of the user. The obligation may include the cost of services to be provided during the billing period or for services previously provided to the same person under this chapter.

8. "Days" means calendar days unless otherwise specified.

9. "Debt service" means the amount of money necessary annually to pay the interest on outstanding debt and pay the principal of maturing bonded debt.

10. "Developed property" means the real property upon which a structure or impervious surface has been placed or constructed, thus increasing the amount of rain water or surface water runoff.

11. "Director" means the City Administrator or their designee.

12. "Dwelling unit" means a singular unit or apartment providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation.

13. "Exempt property" means public rights-of-way, streets, alleys, and sidewalks, public and private cemeteries, and public parks, including publicly owned property used for public recreation owned by the City within the City corporate boundaries.

14. "Extensions and replacements" means costs of extensions, additions, and capital improvements to, or the renewal and replacement of capital assets of, or purchasing and installing new equipment for the system, or land acquisition for the system, and any related costs thereto, or paying extraordinary maintenance and repair, including the costs of construction, or any other expenses which are not costs of operation and maintenance or debt service.

15. "Fiscal year" means the twelve month period beginning on the first day of July of any year, and ending on June 30 of the succeeding year.

16. "Improved single dwelling parcel" means a lot of parcel or which a single family dwelling exists at any time during the same year as the imposition of the charge.

17. "Multi-family residential property" means a residential structure designed with two or more dwelling units to accommodate two or more families or groups of individuals living separately and not sharing the same living space.

18. "Non-operating revenue" means the revenue derived from activities other than the basic operations of the stormwater management system, but excluding interest income on bond proceeds and on contributed capital.

19. "Non-residential property" means any property developed for commercial, industrial, governmental, or institutional use, including churches, hospitals, and other eleemosynary institutions, and including multi-use properties incorporating residential uses, but excluding undeveloped property or property used exclusively for agricultural purposes.

20. "Occupant" means the person residing or doing business on the property.

21. "Operating budget" means the annual operating budget for the stormwater management utility adopted by the Council for the succeeding fiscal year.
22. "Operation and maintenance expenses" means the current expenses paid or accrued, of operation, maintenance and current repair of the system, as calculated in accordance with sound accounting practice, and includes, without limiting the generality of the foregoing, insurance premiums, administrative expenses including record keeping, labor, executive compensation, the cost of materials and supplies used for current operations, and charges for the accumulation of appropriate reserves for current expenses not annually incurred, but which are such as may reasonably be expected to be incurred in accordance with sound accounting practice.
23. "Owner" means the legal owners of record as shown on the assessor and tax rolls of Clarke County, or, where there is a recorded land sale contract, the purchaser thereunder.
24. "Revenues" means all rates, fee assessments, rentals, or other charges or other income received by the utility, in connection with the management and operation of the system, including amounts received from the investment or deposit of moneys in any fund or account and any amounts contributed by the City, all as calculated in accordance with sound accounting practice.
25. "Rule" means any written standard, directive, interpretation, policy, regulation, procedure, or other provision, adopted by the Council as a resolution to carry out the provisions of this chapter.
26. "Stormwater management charge" means the charge authorized by Iowa law and this chapter which is established to pay for the operations and maintenance, extension and replacement of debt service of the stormwater utility.
27. "Stormwater management utility" or "utility" means the enterprise fund utility hereby created to operate, maintain, and improve the system and for such other purposes as stated in this chapter.
28. "Storm and surface water drainage system" means any combination of publicly owned storm and surface water quantity and quality facilities; pumping or lift facilities; storm and secondary drain pipes and culverts; open channels, creeks, and rivers; force mains; laterals; manholes; catch basins and inlets, including the grates and covers thereof; detention and retention facilities for the collection, conveyance, treatment, and disposal of storm and surface water system within the City, to which sanitary sewage flows are not intentionally admitted.
29. "Total annual revenue requirements" means the total amount of revenue required in one year to meet all expenditures incurred during that year for the financing of construction and for the operations and maintenance (including administration and renewal and replacements funding) of the stormwater drainage system, including facilities for the collection, transportation, and treatment of stormwater, and of the flood control protection system, including river levees, detention basins, and stormwater pumping stations.
30. "Undeveloped property" means real property that has no impervious area.

**100.04 STORMWATER UTILITY FUND.**

1. Funding for the stormwater utility's activities may include, but are not limited to: stormwater service charges; stormwater permits and inspection fees; other funds or income obtained from federal, State, local, and private grants, or loans.
2. All service charges and all sources of revenue generated by or on behalf of the stormwater utility shall be deposited in a stormwater utility fund and used exclusively for management of the stormwater utility.

**100.05 ESTABLISHMENT OF STORMWATER MANAGEMENT UTILITY CHARGE.**

1. All parcels will be assigned charges per Clarke County Assessor's classification.
2. Except as hereinafter provided every contributor owning or occupying a single family residential property, multi-family residential property, or non-residential property, other than exempt property, shall pay to the City, at the office of the designated collection agent at the time the payment is due, a stormwater management charge to be determined and billed as herein provided. In the event the owner and the occupant of a particular property are not the same, the liability for payment of the stormwater management charge attributable to the property shall be joint and several as to the owner and occupant. The stormwater management charge shall be a monthly service charge and shall be determined by the provisions of this chapter which is herein established and from time to time adjusted as hereinafter provided.
3. The stormwater management charges shall be set by the City Council and shall be applied and computed for each contributor during the designated billing period from and after the passage and publication of this ordinance. Adjustments to the charges shall only be changed by ordinance.
4. The City shall adopt an operating and capital budget for the stormwater utility each fiscal year. The budget shall set forth revenues for such fiscal year and estimated expenditures for operations, maintenance, improvements, replacement, and debt service. No revenues generated by the stormwater utility shall be used for any other purpose other than stormwater expenses.

**100.06 STORMWATER MANAGEMENT CHARGE.** Any property, lot, parcel of land, building, or premises that is tributary directly or indirectly to the stormwater system of the City, shall be subject to a charge. This charge is not related to the water or sewer service and does not rely on occupancy of the premises to be in effect. The rate shall be based on the following schedule:

1. Fiscal year 2021-2022 \$5.36 per month
2. Fiscal year 2022-2023 \$5.39 per month
3. Fiscal year 2023-2024 \$5.55 per month
4. Fiscal year 2024-2025 \$5.72 per month
5. Fiscal year 2025-2026 \$5.89 per month

**100.07 POWERS OF DIRECTOR OF THE STORMWATER UTILITY.** Stormwater service charges incurred pursuant to this ordinance may be collected by the stormwater utility

director or designee who is also responsible for the regulation, collection, rebating, and refunding of such stormwater charges.

**100.08 POWERS AND DUTIES OF THE CITY.** The City shall have the following powers, duties, and responsibilities with respect to the stormwater utility:

1. Administer the design, construction, maintenance, and operation of the utility system, including capital improvements designated in the comprehensive drainage plan.
2. 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 management. These facilities may include, but are not limited to, surface and underground drainage facilities, storm sewers, watercourses, ponds, ditches, and such other facilities relating to collection, runoff, treatment, and retention as will support a stormwater management system.
3. The City shall separately account for the stormwater utility finances. The stormwater utility shall prepare an annual budget, which is to include all operation and maintenance costs and costs of borrowing. The budget is subject to approval by the Council. Any excess of revenues over expenditures in a year shall be retained in a segregated fund, which shall be used for stormwater utility expenses in subsequent years. Stormwater utility fees collected shall be deposited in the stormwater utility fund and shall be used for no other purpose.

**100.09 RESPONSIBILITY FOR THE STORMWATER MANAGEMENT AND DRAINAGE SYSTEM.**

1. The City stormwater management and drainage system consists of all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage ways, channels, ditches, swales, storm sewers, culverts, inlets, catch basins, pipes, head walls, and other structures, natural or man-made, within the political boundaries of the City which control or convey stormwater through which the City intentionally diverts surface waters from its public streets and properties. The City owns or has legal access for purposes of operation, maintenance, and improvements to those segments of this system which are:
  - A. Located within public streets, rights-of-way, and easements;
  - B. Subject to easements of rights-of-entry, rights-of-access, rights-of-use, or other permanent provisions for adequate access for operation, maintenance, and improvement of systems and facilities; or
  - C. Located on public lands to which the City has adequate access for operation, maintenance, and improvement of systems and facilities. Operation and maintenance of stormwater systems and facilities which are located on private property or public property not owned by the City and for which there has been no public dedication of such systems and facilities for operation, maintenance, and improvement of the systems and facilities shall be and remain the legal responsibility of the property owner.
2. It is the intent of this section to protect the public health, safety, and general welfare of all properties and persons in general, but not to create any special duty or relationship with an individual person or to any specified property within or without the boundaries of the City. The City expressly reserves the right to assert all available

immunities and defenses in any action seeking to impose monetary damages upon the City, its officers, employees, and agents arising out of any alleged failure or breach of duty or relationship as may now exist or hereafter be created.

#### **100.10 REQUIREMENTS FOR ON-SITE STORMWATER SYSTEMS, ENFORCEMENT, AND INSPECTIONS.**

1. All property owners and developers of developed real property and undeveloped property within the City shall provide manage, maintain, and operate on-site stormwater systems sufficient to collect, convey, detain, and discharge stormwater in a safe manner consistent with all City, State, and federal laws and regulations.
2. Pursuant to Section 364.12(3) of the *Code of Iowa* or successor section of the State Code, any failure to meet this obligation may constitute a nuisance and may be subject to an abatement action filed by the City. In the event a nuisance is found to exist, which the owner fails to properly abate within such reasonable time as allowed by the City, the City may enter upon the property and cause such work as is reasonably necessary to be performed, with the actual cost thereof assessed against the owner in the same manner as a tax levied against the property. The City shall have the right, pursuant to the authority of this section, for its designated officers and employees to enter upon private and public property owned by entities other than the City, upon reasonable notice to the owner thereof, to inspect the property and conduct surveys and engineering tests thereon in order to assure compliance.

**100.11 RIGHT TO APPEAL.** Any customer who believes the provisions of this chapter have been applied in error may appeal in the following manner:

1. An appeal must be filed in writing with the City Administrator/Clerk. In the case of service charge appeals, the appeal shall include a survey prepared by a registered Iowa land surveyor or professional engineer containing information on the total property area, the impervious surface area and any other features or conditions which influence the hydrologic response of the property to rainfall events.
2. Using the information provided by the appellant, the City Engineer shall conduct a technical review of the conditions on the property and respond to the appeal in writing within 30 days.
3. In response to an appeal, the City Administrator/Clerk may adjust the stormwater service charge applicable to a property in conformance with the general purpose and intent of this chapter.
4. A decision of the City Administrator/Clerk which is adverse to an appellant may be further appealed to the Council within 30 days of receipt of notice of the adverse decision. Notice of the appeal shall be served on the Council by the appellant, stating the grounds for the appeal. The Council shall schedule a public hearing within 30 days. All decisions of the Council shall be served on the appellant by registered mail, sent to the billing address of the appellant.
5. All decisions of the Council shall be final.

#### **100.12 BILLING.**

1. Fees will be billed and made payable at the same time as City water, sanitary sewer and garbage fees and shall be shown as a separate item on the bill. Properties with no monthly City utility fees will be billed on a monthly basis. To determine the

user of these properties, the City shall send a bill for the amount due by regular mail to these parcel owners in the City. Mailing to the owner of record as shown on the County Assessor's records shall satisfy this requirement.

2. The recipient has 15 days from the billing date to file a notice of non-occupancy. The notice shall indicate the relationship of the recipient to the property (e.g., owner, lessor, mortgagee, contract holder), whether on the imposition date the property was occupied, and if so, by whom.

3. Upon receipt of the notice, the City shall determine who is obligated for payment. Based on this determination, the City shall:

A. Issue a new bill to the occupant if the property was occupied by someone other than the original recipient;

B. Reissue the bill to the recipient if it is found that the person was the occupant;

C. Issue a bill to the owner as the user, if the property was not occupied. The City may take into account any reasonably reliable information available to it, including utility or water district records.

4. Failure to file the notice so that it is actually received by the City within the 30 days of the mailing date of the bill shall conclusively establish that the original addressee was the user on the imposition date.

5. It shall be a violation of this chapter to knowingly provide false information to the City regarding any fact related billing of a stormwater utility service charge or other charge of the City.

#### **100.13 DELINQUENCY, COLLECTION, INTEREST, AND PENALTIES.**

1. Collection and delinquency procedures and rules shall be the same as for other City utility services.

2. It shall be unlawful and a violation of this chapter for any person to discharge wastewater into the City's stormwater management system. It is also unlawful and a violation of this chapter to maintain a connection to or use the City's stormwater management system without paying the appropriate charges and fees established in this section or any rule adopted pursuant hereto. Even if no billing is received, such charges shall be due and owing and the user is obligated to pay any charges in a timely fashion.

3. Delinquent charges may be collected pursuant to the same procedure as with delinquent water and sanitary sewer bills by the City, with the assistance of City legal counsel, without further action or authorization of the Council. A penalty of one and one-half percent per month late charge shall be billed based on the unpaid balance of any stormwater utility service charge that becomes delinquent.

4. In addition to the remedies provided for collection of a debt, the City may seek temporary or permanent injunction prohibiting continued occupancy of premises, requiring disconnection of the premises from the public stormwater utility system, and termination of water and sewer service to the user's premises.

5. In a collection action under this chapter, the City shall be entitled to its costs and reasonable attorney fees, including at trial and on appeal, if it is the prevailing party.



6. In addition to the right of the City to bring a civil action to collect any delinquent charges or enforce any provisions of this chapter, the City may take any of the following actions to secure payment:

A. The City may refuse to issue any permit to any person who is delinquent in any payment due under this chapter;

B. The City may terminate provision of storm and surface water service to premises used by the user;

C. The City may terminate water and sanitary sewer service to premises used by the user. Termination of service pursuant to this subsection shall be according to procedures adopted under Section 100.11 of this Code of Ordinances. If the City terminates the service as provided in this section, the cost of such disconnection shall be added to the amount of any other delinquent charges and shall be recoverable in the same manner as are such charges.

7. Where a lien against the property can be imposed when the owner is liable, it shall exist from the date the bill was last brought current in the same manner as with a lien for water and sanitary sewer service.

**100.14 JUDICIAL REVIEW.** Final decisions of the Council, or its designated review authority under this chapter, shall be reviewed solely and exclusively under the provisions of this Code of Ordinances. In the absence of any provisions for review, the *Code of Iowa* shall apply.

**100.15 PUBLIC INTEREST.** This chapter is being adopted by the Council in the public interest of the citizens of the City to truly reflect the overall costs associated with the operation and maintenance of a stormwater utility and to fund it accordingly through the monthly billing cycles of the City.

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