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CHAPTER 34 SOUTH MILWAUKEE STORM WATER UTILITY

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34.01 Operation and Director. The Storm Water Utility will be operated as part of the Engineering Department. The operation of the Storm Water Utility shall be under the supervision of the Common Council. The director of the Storm Water Utility will be the City Engineer.

34.02 The City, acting through the Storm Water Utility, may without limitation due to enumeration, do all those acts permitted to a storm water utility under Wis. Stats. Sections 66.0621, 66.0627, 66.0809, and 66.0821 including the following:

- A. Acquire, construct, lease, own, operate, maintain, extend, expand, replace, clean, dredge, repair, manage and finance such facilities as are deemed by the City to be proper and necessary for storm and surface water management. These facilities may include, without limitation due to enumeration, surface and underground drainage facilities, sewers, water course, retaining walls, ponds, streets, roads, ditches and such other natural or manmade facilities as will support a storm water management system.
- B. Undertake operations or activities, or provide any services deemed by the City to be proper and necessary for storm and surface water management; and
- C. Maintain compliance with all regulatory requirements for storm and surface water management.

34.03 DEFINITIONS. For the purpose of this Ordinance, the following definitions shall apply: words used in the singular shall include the plural; words used in the present tense shall include the future tense; the word “shall” is mandatory and not discretionary; the word “may” is permissive. Words not defined herein shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster’s Dictionary.

- A. Appropriate Fee. Any or all of the fee components as established by the Common Council.
- B. Director. The City Engineer or his/her designee.
- C. Developed Parcel. A parcel shall be considered developed pursuant to this Ordinance if it has measurable impervious surfaces and:
 - (1) Upon issuance of a Certificate of Occupancy, or upon completion of construction or final inspection if no such certificate is issued or;
 - (2) Where construction is at least 50% complete and construction is halted for a period of three (3) months.
- D. Dwelling Unit. Any residential space identified for habitation by the City Building Code.
- E. Equivalent Runoff Unit (ERU). The statistical average horizontal impervious area of a representative sample of developed “single family” and “two family” properties within the City of South Milwaukee.
- F. Impervious Area or Impervious Surface. A horizontal surface that has been compacted or covered with a layer of material so that it is highly resistant to infiltration by rainwater. This includes, but is not limited to, semi-impervious surfaces such as compacted gravel, stone or clay, as well as streets, roofs, sidewalks, parking lots and other similar surfaces.
- G. Multifamily Parcel. Any residential lot or parcel identified for habitation with three or more dwelling units under single ownership including manufactured home parks and apartments.
- H. Non-residential Development. Any developed lot or parcel not exclusively residential as defined herein, including, but not limited to, transient rentals (such as hotels and motels), commercial, industrial, institutional, governmental property, parking lots, and other properties containing impervious surfaces.
- I. Residential Development. Any developed lot or parcel exclusively for residential purposes including, but not limited to, single family homes, two family homes, manufactured homes, condominiums, and multifamily apartment buildings.
- J. Single Family Parcel. Any residential lot or parcel identified for habitation with exactly one dwelling unit.

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- K. Two Family Parcel. Any residential lot or parcel identified for habitation with exactly two dwelling units.
- L. Undeveloped Parcel. Any lot or parcel that has not been altered from its natural state by the addition of any impervious surfaces.

34.04 APPLICABILITY. This ordinance is applicable to all lands, lots or parcels within the City of South Milwaukee and lands outside the City of South Milwaukee by written agreement approved by the Common Council which include the acceptance of storm water utility fees as established from time to time pursuant to the terms of this ordinance.

34.05 CUSTOMER CLASSIFICATION. For purposes of imposing the storm water charges, all applicable lands, lots and parcels shall be assigned a customer classification by the Director.

- A. Customer Classification Establishment. The following five (5) customer classifications are established:
 - (1) Residential – Single Family and Two Family
 - (2) Residential – Multifamily
 - (3) Residential – Condominiums
 - (4) Non-residential
 - (5) Undeveloped
- B. Customer Classification Modification. The City Common Council may, by ordinance, modify the aforementioned customer classifications or establish additional customer classifications to provide a fair and reasonable distribution of the costs of the Storm Water Utility.

34.06 CHARGE METHODOLOGY. The following Charge Methodology is established for the purpose of imposing storm water charges:

- A. Charge Component Establishment. There shall be three charge components that may be used to share the costs of the Storm Water Utility. These charge components are:
 - (1) Base Charge (BC). The BC may be imposed on all lands, lots and parcels in the City. The Base Charge will be designed to reflect the fact that all property benefits from the storm water management activities of the City and/or that all property contributes storm water runoff (quantity burden) and pollution (quality burden) that must be managed by the City (unless otherwise demonstrated by the parcel owner). The BC may be

designed to collect the administrative costs and other appropriate expenses of the storm water utility operations and maintenance. The BC may be based on the size of a parcel of property, impervious area, or other method.

(2) Equivalent Charge (EC). The EC may be imposed on all parcels with impervious area. The EC will be designed on an ERU comparative basis.

(3) Special Charge (SC). The SC may be imposed on parcels that are in an area specially benefited and served by a particular storm water management facility or service. This charge will be developed to reflect the relative burden of each parcel in a particular area that may not be appropriate to allocate to all parcels throughout the City. The SC will be calculated on an ERU comparative basis unless dictated otherwise by resolution or ordinance.

B. Charge Component Modification. The City Common Council may, by ordinance, modify the aforementioned charge components or establish additional charge components to provide a fair and reasonable distribution of the costs of the Storm Water Utility.

C. ERU Establishment. The value one (1) ERU is established to be equivalent to 2,964 square feet of impervious area.

D. Impervious Area Determination. The Director shall be responsible for determining the impervious area of parcels as necessary to establish and maintain this storm water utility, based on the best available information, including, but not limited to, data supplied by the City Assessor, aerial photography, the property owner, tenant or developer. The Director may require additional information as necessary to make the determination.

E. Storm Water Fees. The City Common Council may, by resolution, set or adjust the Base Charge, Equivalent Charge and the Special Charge fees to recover the cost of the storm water management program. Storm water fees will be kept on file with the City Clerk and the Director. The fee for any individual parcel shall be the sum of all applicable charge components.

F. Billing Methodology. The fee applicable to a parcel as established hereunder shall be billed to the parcel owner in the same manner as other fees placed on the property tax bill. The property owner shall be responsible for payment of the Storm Water Utility fee. A bill may be sent to a property that is not receiving other services from the City of South Milwaukee. Late payment, failure to pay, and checks returned for insufficient funds, shall be subject to the same penalties as established and documented by the City of South Milwaukee for other fees. Unpaid charges may be assessed as a lien against the property pursuant to Sections 66.0821(4)(d) and 66.0809, Wisconsin Statutes.

34.07 ADJUSTMENTS AND CREDITS. The City Common Council shall adopt, by resolution, the criteria for providing adjustments and credits.

A. Adjustments. Adjustments may be considered at the request of property owners to correct the amount of impervious area upon which the bill is based, correct or update the parcel customer classifications, or other items of consequence, upon the presentation of better information.

(1) Adjustment Procedure. Any property owner may apply for an adjustment to update or correct the information assigned to the property. If the property owner believes there to be some information that is inaccurate. The following procedure for applying for an adjustment is established.

(a) A request for an adjustment may be submitted at any time. All such requests shall be submitted to the Director on forms provided by the City, together with all supporting information and an application fee.

(b) The Director may require the property owner, at property owner's expense, to provide supplemental information.

(2) Granting of Adjustments. When an application for an adjustment is deemed complete by the Director, the Director shall have sixty (60) days from the date that the complete application is accepted to:

1. Grant the adjustment in whole;
2. Grant the adjustment in part; or,
3. Deny the adjustment.

Adjustments applied for and granted in whole or in part, shall apply from the first day of the calendar month immediately following the date on which a complete application for the adjustment has been filed with the City of South Milwaukee. The Director shall provide a letter to the owner documenting the award or denial of the adjustment as well as the grounds upon which the decision was based. The applicants may appeal such determination following the appeals process described in Sec. 34.08.

B. Credits. Credits may be considered for parcels that either receive a reduced level of storm water management service or result from privately owned and properly constructed and maintained storm water mitigating measures that allow the City of South Milwaukee to realize a cost savings in some portion of their storm water management program.

(1) Technical and Procedural Criteria. The Director shall establish specified technical and procedural criteria by which credits will be granted. Copies of such technical and procedural criteria will be maintained by and be available from the Engineering Department.

(2) Credit Procedure. Any property owner may apply for credit if, based on a review of available Technical and Procedural Criteria, the property owner believes there to be ground for receiving credit to their storm water fee. The following procedure for applying for credit is established:

- (a) Property owners must make application to the Director on forms provided by the Director for such purpose.
- (b) Property owners must apply for any credits that they believe are applicable.
- (c) The application for any credit must be in writing and must include the information necessary to document the eligibility for the credit, accompanied by any application fee, and be in the format established by the Director. Incomplete applications will not be accepted by the Director.
- (d) Storm Water Utility fees may be adjusted retroactively to the date the completed application is received.
- (e) Where applicable as a condition for granting credits, applicants must have an approved maintenance agreement on file with the Director.

(3) Granting of Credits. When an application for a credit is deemed complete by the Director, the Director shall have thirty (30) days from the date that the complete application is accepted to:

1. Grant the credit in whole;
2. Grant the credit in part; or,
3. Deny the credit.

Credits applied for and granted in whole or in part, shall apply from the first day of the calendar month immediately following the date on which a complete application for the credit has been filed with the City of South Milwaukee. The Director shall provide a letter to the owner documenting the award or denial of the adjustment as well as the grounds upon which the decision was based. The applicants may appeal such determination following the appeals process.

(4) Annual Review of Credit. The Director shall review the credit and the basis thereof each year, and may terminate the credit if grounds are found. If such credit is terminated, the property owner will be notified in writing of the grounds for revoking the credit by first class mail. The owner may appeal such determination following the appeals process or, may, if possible, correct the deficiencies that caused the termination and reapply for the credit.

C. Application Fees. The application fee schedule for Adjustments and Credits will be established by the City Common Council through resolution.

34.08 APPEALS. The following procedure for appealing Adjustment and Credit determinations is established.

A. Appeal to the Public Works and Public Property Committee (hereinafter referred to as Board). Within thirty (30) calendar days after the date of the mailing of the Director's decision, the property owner may file a written appeal to the Board together with an application fee, with the City Clerk. The written appeal shall specify the grounds for the challenge and state the amount of storm water charge that the appellant considers to be appropriate. The appeal must specifically address the Director's conclusions and not merely repeat the basis for the initial request. Failure to timely and properly appeal shall deprive the Board of jurisdiction to hear the appeal. The Application Fee Schedule shall be established by resolution of the City Common Council.

B. Hearing. The Board shall conduct a hearing at such time and place as designated in a hearing notice to the appellant, providing a minimum of five (5) business days notice to the appellant. In considering an appeal, the Board shall determine whether the fee determined by the Director is fair and equitable based upon the evidence presented at the hearing and the criteria applicable to fees. The Board shall notify the appellant in writing of its determination by first class mail addressed to the individual at the address listed within the appeal. Service is conclusive upon mailing.

C. Appeal to the Common Council. Within thirty (30) calendar days after the date of the mailing of the Board's decision, the property owner may file a written appeal to the Common Council. Such appeal must specifically address the Board's conclusion and not merely repeat the basis for the initial request.

D. Consideration by City Common Council. The Common Council shall consider the appeal pursuant to its rules in existence at the time of consideration. The City Clerk shall provide written notice to the owner of the time and place of the Common Council's consideration of the appeal at least five (5) business days prior to the date on which the Common Council will consider the matter. Notice shall be provided by first class mail to the address provided by the owner on the application. Service is conclusive upon mailing. In considering an appeal, the Common Council shall determine whether decision of the Public Works Committee is based on the appropriate criteria. The Common Council shall base its decision upon the written decision of the Public Works Committee and the appeal filed by the appellant. The City Clerk shall notify the appellant in writing of the Common Council's determination by first class mail.

E. Payment of Charges. As a condition precedent to any adjustment or credit request, or any appeal, a property owner must pay in full all storm water charges currently due to the City.

F. Application of Adjustment or Credit. If an adjustment or credit request is granted, Storm Water Utility charges shall be adjusted on a retroactive basis to the date of the receipt of the completed application.

34.09 BUDGET EXCESS REVENUES. The City shall separately account for the Storm Water Utility finances. The Storm Water Utility shall prepare an annual budget, which is to include all operation and maintenance costs, costs of borrowing, capital costs, and other costs related to the operation of the sewer utility. The budget is subject to approval by the City Common Council. Any excess storm water revenues over expenditures in a year will be retained by the Fund for subsequent years' needs of the storm water utility.

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34.10 LIBERAL INTERPRETATION. This ordinance shall be interpreted liberally to secure the ends sought hereby.

34.11 SEVERABILITY. If any provision of this ordinance is found to be unlawful or unenforceable, the remaining provisions shall remain in effect.

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