

## ARTICLE V. STORMWATER MANAGEMENT SERVICES

### DIVISION 1. GENERAL PROVISIONS

#### Sec. 20-226. Findings and necessity.

The City of Appleton finds that the management of stormwater and other surface water discharge within and beyond the Fox River is a matter that affects the health, safety and welfare of the City, its citizens and businesses and others in the surrounding area. Failure to effectively manage stormwater affects the sanitary sewer utility operations of the City by, among other things, increasing the likelihood of infiltration and inflow in the sanitary sewer. In addition, surface water runoff may create erosion of lands, threaten businesses and residences with water damage and create sedimentation and other environmental damage in the Fox River. Those elements of the system which provide for the collection of and disposal of stormwater and regulation of groundwater are of benefit and provide services to all property within the City of Appleton, including property not presently served by the storm elements of the system. The cost of operating and maintaining the City stormwater management system and financing necessary repairs, replacements, improvements and extension thereof should, to the extent practicable, be allocated in relationship to the benefits enjoyed and services received therefrom. In order to protect the health, safety and welfare of the public, the Common Council is exercising its authority to establish a stormwater utility and set the rates for stormwater management services. The City is acting under the authority of Chapters 62 and 66 of the Wisconsin Statutes, and particularly at least the following statutes: §62.04, §62.11, §62.16(2), §62.18, §66.0621, §66.0809 and §66.0821.

#### Sec. 20-227. Establishment.

There is hereby established a City of Appleton Stormwater Utility. The operation of the Stormwater Utility shall be under the supervision of the Common Council. The Director of Public Works will be in charge of the Stormwater Utility.

#### Sec. 20-228. Authority.

The City, through the Stormwater Utility, may acquire, construct, lease, own, operate, maintain, extend, expand, replace, clean, dredge, repair, conduct, manage and finance such facilities 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, without limitation by enumeration, surface and underground drainage facilities, sewers, watercourses, retaining walls and ponds and such other facilities as will support a stormwater management system.

#### Sec. 20-229. Definitions.

For the purpose of this ordinance, the following definitions shall apply; words used in the singular shall include the plural, and the plural, the singular; words used in the present tense shall include the future tense; the work “shall” is mandatory and not discretionary; the work “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.

**Director.** The term “Director” means the Director of Public Works or his designee.

**Equivalent Runoff Unit (ERU).** The term “ERU” means the statistical average horizontal impervious area of “single family homes” (single family and mobile homes) within the City of Appleton on the date of adoption of this ordinance. The horizontal impervious area includes, but is not limited to all areas covered by structures, roof extensions, patios, porches, driveways and sidewalks.

**Impervious Area or Impervious Surface.** These terms mean a horizontal surface which has been compacted or covered with a layer of material so that it is highly resistant to infiltration by rain water. It includes, but is not limited to, semi-impervious surfaces such as compacted clay, as well as streets, roofs, sidewalks, parking lots and other similar surfaces.

**Duplex unit.** The term “duplex unit” means any residential space identified for habitation by members of the same family attached to only one other residential space or as classified by the City Building Code.

**Dwelling unit.** The term “dwelling unit” means any residential space identified for habitation by members of the same family or as classified by the City Building Code. A dwelling unit includes, but is not limited to, all duplexes, apartments, residential condominiums and townhouse living units.

**Multifamily unit.** The term “multifamily unit” means any residential space identified for habitation by members of the same family or as classified by the City Building Code. A dwelling unit includes, but is not limited to, all duplexes, apartments, residential condominiums and townhouse living units.

**Residential property.** The term “residential property” means any lot or parcel developed exclusively for residential purposes including, but not limited to, single family homes, manufactured homes, multifamily apartment buildings and condominiums.

**Non-residential property.** The term “non-residential property” means 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 and parking lots.

**Undeveloped property.** The term “undeveloped property” means that which has not been altered from its natural state by the addition of any improvements such as a building, structure, impervious surface, change of grade or landscaping. For new construction, a property shall be considered developed pursuant to this ordinance (a) upon issuance of a Certificate of Occupancy, or upon completion of construction or final inspection if no such certificate is issued or (b) where construction is at least fifty percent (50%) complete and construction is halted for a period of three (3) months.

**Sec. 20-230. Connection.**

(a) Property owners shall be required to connect to the City’s mini-sewer or storm sewer lateral within twelve (12) months of installation, pursuant to the provisions of §4-270.  
(Ord 16-97, §1, 3-5-97)

**Secs. 20-231 – 20-235. Reserved.**

**DIVISION 2. RATES AND CHARGES**

**Sec. 20-236. Rate charges.**

(a) By this ordinance, the Common Council is establishing the rate charge upon each lot and parcel within the City of Appleton for services and facilities provided by the Stormwater Utility. The actual charges to be imposed, the establishment of formulas for calculations of the charges, the establishment of specific customer classifications and any future changes in those rates, formulas, rate charges, and customer classifications, may be made by resolution. All rates established pursuant to this ordinance will be fair and reasonable. The current rates will be on file with the City Clerk.

(b) Rate charges shall be issued to share the costs of the Stormwater Utility. These rate charges may include:

- (1) **Base Charge (BC)** – The base charge may be imposed on all property in the city. The base charge will be designed to reflect the fact that all properties benefit from the stormwater management activities of the City and that all property contribute in some way to the stormwater discharge that must be managed by the City. The BC will be designed to collect the administrative costs of the storm sewer utility and the portion of capital costs not covered by special assessments. The BC may be based on the size of a parcel of property.
- (2) **Equivalent Runoff Unit Charge (ERU)** – This charge may be imposed on all property that has any developed impervious area. The ERU will be designed on the basis of a typical residential unit of property. Other units of property will be charged multiples of the ERU based on the impervious area contributing to surface water runoff.
- (3) **Special Charge (SC)** – This charge may be imposed on property that is in an area specially benefited by a particular stormwater management facility. The SC will be developed to reflect the benefits/services in a particular area that may not be appropriate to spread to property throughout the City. The SC will be calculated on an ERU basis.

(c) The Council may make such other and customer classifications as will be likely to provide reasonable and fair distribution of the costs of the Stormwater Utility. In so doing, the Council may provide credits against certain of the charges set forth above for facilities installed and

maintained by the property owner for the purpose of lessening the stormwater flow from that given property.

(d) The City Department of Finance is hereby appointed as the collection agency for the City Stormwater Utility. Bills shall be prepared by the Department of Finance and sent to the owner or occupant of each premise served. The Department of Finance shall allocate the actual cost of billing and collecting.

(e) The bills for Stormwater Utility charges shall be mailed to the designated utility bill recipient, but this mailing shall not relieve the owner of the property from liability for rental property in the event payment is not made as required in this article. The owner of any property served which is occupied by tenants shall have the right to examine collection records of the City for the purpose of determining whether such rates and charges have been paid for such tenants, provided that such examination shall be made at the office at which the records are kept and during the hours that such office is open for business.

(f) Stormwater Utility charges shall not be payable in installments. If Stormwater Utility charges remain unpaid after a period of twenty (20) days from the date of utility bill, such bill shall become a delinquent special charge and shall become a lien as provided in W.S.A. §66.66(15). Said charges shall automatically be extended upon the current or next tax roll as a delinquent tax against the property, and all proceedings in relation to the collection, return and sale of property for delinquent real estate taxes shall apply to such special charges. Unpaid charges shall be assessed a one and one-half percent (1½%) per month late payment charge to bills not paid within twenty (20) days of issuance.

(g) All delinquent special charges shall be subject to a ten percent (10%) penalty in addition to all other charges and prior penalties or interest when the delinquent special charge is extended upon the tax roll.

**Sec. 20-237. Customer classification.**

(a) For purposes of imposing the stormwater charges, all lots and parcels within the City are classified as follows:

ERUs imposed		
Classification	Public Road	Private Road
Single Family	1	1
Detached Individual Condominiums	1	1
Duplex	.5/unit	1/unit
Duplex Condominiums	.5/unit	1/unit

ERUs imposed		
Classification	Public Road	Private Road
Multifamily Condominiums	Actual impervious area of the property using aerial photography	
Mobile Homes	.5/unit	1/unit
Bed & Breakfast (fewer than 5 units)	1	1
Bed & Breakfast (5 units or more)	.5/unit	1/unit
Multifamily rental	Actual impervious area of the property using aerial photography	
Non-Residential and Multi-Use	One (1) ERU, multiplied by the numerical factor obtained by dividing the total impervious area of a non-residential property by the square footage of one (1) ERU, rounded down to the nearest one-tenth (0.1), i.e.:  ERU rate x <u>impervious area</u> ERU	One (1) ERU, multiplied by the numerical factor obtained by dividing the total impervious area of a non-residential property by the square footage of one (1) ERU, rounded down to the nearest one-tenth (0.1), i.e.:  ERU rate x <u>impervious area</u> ERU
Undeveloped	One (1) ERU multiplied by a factor established by resolution then divided by the square footage for one (1) ERU established by resolution	One (1) ERU multiplied by a factor established by resolution then divided by the square footage for one (1) ERU established by resolution

(b) The Director shall prepare a list of lots and parcels within the City of Appleton and assign a classification to each lot or parcel.

(c) The average square footage of impervious area of ERU is established to be equivalent to 2,368 square feet.

(d) The Director shall be responsible for determining the impervious area 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. The billing amount shall be updated by the Director based on the building permit process and/or best available information.

(e) All unoccupied developed lots and parcels shall be subject to the stormwater utility charges. (Ord 123-07, §1, 8-7-07; Ord 136-08, §1, 10-7-08; Ord 23-11, §1, 1-11-11, Ord 100-13, §1, 1-1-15, Ord 51-15, §1, 6-

9-15; Ord 43-16, §1, 5-1-16; Ord 14-18, §1, 1-23-2018)

**Sec. 20-238. New construction.**

(a) The property owner shall be responsible for completing the stormwater utility service application form any time a building permit is issued, exclusive of those issued to existing single family residences, or a site plan review is conducted. The form shall be provided by the Division of Inspections with each application for a building permit (exclusive of building permits for single family residences) or application for site plan review. Failure to submit a completed stormwater utility service application form or providing false information on said form, shall result in the penalty as provided in §1-18 of the Municipal Code.

(Ord 129-95, §1, 12-9-95; Ord 132-96, §1, 12-18-96)

(b) The owner shall also be liable for stormwater charges, under this ordinance, for the improvement from the date construction of the improvement began.

**Sec. 20-239. Method of appeal.**

(a) The Stormwater Utility charge may be appealed as follows:

- (1) A written appeal shall be filed with the City Clerk prior to the utility charge due date; or
- (2) Within thirty (30) days of payment, a written challenge to the stormwater charge must be filed with the City Clerk on behalf of the customer, specifying all bases for the challenge and the amount of the stormwater charge the customer asserts is appropriate. Failure to file a challenge within thirty (30) days of payment waives all rights to later challenge the charge.

(b) The committee of jurisdiction will determine whether the stormwater charge is fair and reasonable, or whether a refund is due the customer. The committee may act with or without a hearing, and will inform the customer in writing of its decision.

(c) The customer has thirty (30) days from the decision of the committee to file a written appeal to the Common Council.

(d) If the Council or the committee determine that a refund is due the customer, the refund will be applied as a credit on the customer's next quarterly stormwater billing, if the refund will not exceed the customer's next quarterly stormwater billing, or will be refunded at the discretion of the Director of Finance.

(e) The period for determining a refund pursuant to

this section shall be limited to up to the customer's prior four (4) quarters of stormwater billings.  
(Ord 96-18, §1, 10-23-18)

**Sec. 20-240. Special assessment authority.**

In addition to any other method for collection of the charges established pursuant to this ordinance for stormwater utility costs, the Common Council finds that these charges may be levied on property as a special charge pursuant to §66.0627, Wis. Stats. The charges established hereunder reasonably reflect the benefits conferred on property and may be assessed as special charges. The mailing of the bill for such charges to the owner will serve as notice to the owner that failure to pay the charges when due may result in them being charged pursuant to the authority of §66.0627, Stats. In addition, the City may provide notice each September of any unpaid charges to the Stormwater Utility, which charges, if not paid by November 15, may be placed upon the tax roll under §66.0627, Stats.

**Sec. 20-241. Budget excess revenues.**

The stormwater utility finances shall be accounted for in a separate Stormwater Enterprise Fund by the City. The Utility shall prepare an annual budget, which is to include all operation and maintenance costs, debt service and other costs related to the operation of the stormwater utility. The budget is subject to approval by the Common Council. The costs shall be spread over the rate classifications as determined by the Council. Any excess of revenues over expenditures in a year will be retained by the Stormwater Enterprise Fund for subsequent years' needs.

**Sec. 20-242. Severability.**

If any provision of this ordinance be found illegal, the remaining provisions shall remain in effect.  
(Ord 128-95, §1, 12-6-95)