

TOWN OF CLAYTON

STORM WATER UTILITY ORDINANCE

CHAPTER 6 PUBLIC WORKS

SECTION 6.7 STORM WATER MANAGEMENT UTILITY

6.7.1 PURPOSE:

1) Findings and Necessity:

- a) The Town of Clayton finds that the management of storm water and other surface water discharged within the Town is a matter that affects the health, safety and welfare of the Town's residents, businesses and others in the surrounding area. Failure to effectively manage storm water affects surface water runoff and may create erosion of lands, threaten businesses and residences with water damage, and create sedimentation and other environmental damage in the Town's drainage systems. Those elements of the system which provide for the collection and disposal of storm water are of benefit and provide services to all properties within the Town of Clayton. The cost of operating and maintaining the Town's Storm Water Management System and the costs of financing necessary repairs, replacements, improvements and extensions thereof should, to the extent practicable, be allocated in relationship to the benefits enjoyed and services received. In order to protect the health, safety and welfare of the public, the Town Board is exercising its authority, under Chapters 60 and 66 of the Wisconsin Statutes, to establish a Storm Water Utility and set the rates for Storm Water Management Services.

2) Creation:

- a) The Town Board for the Town of Clayton does hereby establish a Storm Water Utility. The operation of the Storm Water Utility shall be under the supervision of the Town Board. Control of the day-to-day operations of the Storm Water Utility shall be assigned to the Town Administrator and the Public Works Department.

6.7.2 AUTHORITY:

This ordinance is adopted under the authority granted by § 60.77(5), 66.0821 and 66.0827 of the Wisconsin Statutes and shall be known as the Town of Clayton Storm Water Utility Ordinance.

- 1) The Town of Clayton Board of Supervisors shall serve as the Storm Water Utility Commission and exercise due authority pursuant to § 60.74 through 60.79 of the Wisconsin Statutes. This includes the authority to fix and collect charges, to levy special assessments, to lease or acquire any real and personal property that may be needed for the purposes of storm

water management, and to enact and enforce ordinances to implement this authority. The Town Chairman shall serve as the President of the Storm Water Utility Commission, and the Town Supervisors shall serve as Commissioners.

- 2) The Storm Water Utility may 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 Storm Water Utility Commission to be proper and reasonably necessary for a system of storm and surface water drainage facilities, sewers, watercourses, retaining walls, ponds, streets, roads, ditches and such other facilities for purposes of supporting a storm water management system.
- 3) The Board of Supervisors hereby designates the Town Administrator to administer and enforce the provisions of this ordinance.

6.7.3 **INTERPRETATION:**

In their interpretation and application, the provisions of this ordinance shall be interpreted liberally to secure the ends sought hereby and shall not be deemed a limitation or repeal of any other power granted to the Town by the Wisconsin Statutes.

6.7.4 **DEFINITIONS:**

For the purposes of this Ordinance, the following definitions shall apply: words used in the singular shall include the plural, and words used in the plural shall include the singular; words used in the present tense shall include the past and future tense; the word 'shall' is mandatory and not discretionary; the word 'may' is permissive and discretionary. Words not defined herein shall be construed to have the meaning given by common and ordinary usage.

- 1) **Agricultural Property:**
Lands used for the planting, growing, cultivating, and harvesting of crops and/or trees; or for the grazing of livestock.
- 2) **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 rain water. It includes, but is not limited to, semi-impervious surfaces such as compacted clay or gravel, streets, roofs, sidewalks, parking lots and other similar surfaces.
- 3) **Duplex Unit:**
Any residential space identified for habitation by two separate family units and or classified by the Town Building and County Zoning Codes as a Duplex.
- 4) **Dwelling Unit:**
A residential building, or portion thereof, intended for occupancy by a single family, or as classified by the Town Building Code and Zoning Code of Ordinances in effect. A dwelling

unit includes, but is not limited to, single family homes, manufactured homes, duplexes, multi-family apartments, residential condominiums and townhouse living units.

5) Equivalent Runoff Unit (ERU):

The statistical average horizontal impervious area of “single family homes” within the Town of Clayton on the date of adoption of this ordinance. The horizontal impervious areas include, but are not limited to, all areas covered by structures, roof extensions, patios, porches, driveways and sidewalks. A copy of the Engineering Study generation of the ERU area is kept on file in the Clerk’s Office of the Town of Clayton.

6) Multifamily Unit:

Any structure comprised of five or more dwelling units.

7) Non-residential Property:

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 properties and parking lots.

8) Residential Property:

Any lot or parcel developed exclusively for residential purposes including, but not limited to, single family homes, manufactured homes, duplexes, multi-family apartments, residential condominiums and townhouses.

9) Undeveloped Property:

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 under the following conditions:

- a) Upon issuance of a Certificate of Occupancy.
- b) Upon completion of construction or final inspection if no such certificate is issued.
- c) Where construction is at least fifty (50%) percent complete and construction is halted for a period of three (3) months.

6.7.5 **RATES AND CHARGES:**

1) Rate Charges:

- a) By this Ordinance, the Town Board is establishing the rate Classification and basis for computation of charges for storm water services for each lot and parcel within the Town of Clayton for services and facilities provided by the Storm Water 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, 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 Town Clerk.

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

i) Equivalent Runoff Unit Charge (ERU Charge):

This charge may be imposed on all properties in the Town. The ERU Charge will be determined 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.

6.7.6 ADMINISTRATION:

- 1) The Town of Clayton and Winnebago County Offices are hereby appointed as the collection agencies for the Storm Water Utility. A schedule of charges shall be sent on an annual basis by the Storm Water Utility to the Town of Clayton. The Town Board shall allocate the actual costs of billing and collecting.
- 2) The bills from Storm Water Utility charges shall be applied annually to real estate property tax bills and shall be paid in accordance with terms stated thereon.

6.7.7 CUSTOMER CLASSIFICATION:

The Town Board may make such other classifications as will be likely to provide reasonable and fair distribution of the costs of the Storm Water Utility. In so doing, the Town Board 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 Storm Water flow from a given property.

- 1) Residential, Single-Family (all single family residential units based on property use not zoning).
- 2) Residential, Two- to-Four-Family (including duplexes, condominiums, and manufactured housing parks).
- 3) Residential, Multi-Family (apartment complexes greater than four units).
- 4) Non-Residential (industrial commercial and institutional properties).
- 5) Undeveloped Land.

6.7.8 STORM WATER MANAGEMENT UTILITY FEE FORMULAS:

Storm Water Management Utility Fees are calculated by dividing the costs of the projects as approved by the Board for the CY Budget by the number of ERU's in the Town. The ERU Fee would be applied in the following manner:

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| 1) Residential; Single-Family: | 1.00 ERU Fee |
| 2) Residential; Two to Four Family Units,
Condominiums, and Manufactured Housing Parks: | 0.66 ERU Fee per unit |
| 3) Residential; Multi-Family: | 0.50 ERU Fee per unit |
| 4) Non-Residential: | 1.00 ERU Fee per (impervious area / ERU) with a
minimum charge of 1.00 ERU |

5) Undeveloped and Agricultural Land:

.25 ERU Fee per Tax ID Parcel

6.7.9 **STORM WATER UTILITY CREDITS AND APPEALS:**

Non-residential property owners are eligible for credits against their Storm Water Management Utility Fees based on certain criteria. These credits are customarily based on engineered on-site storm water management devices and limited by a cap on the fee credit. Specifically, the credits are based on peak flow controls and water clarity measures. Given the nature of the units of measure used to calculate the credits, they will only be available to individuals with engineered on-site storm water management devices. Listed below are examples of a Storm Water Management Utility Fee credit calculation:

6.7.9 (1) **Flow Reduction Credit Policy:**

Eligibility for flow reduction credits shall be based on a 24-hour, 10-year storm event. Only one of the following credits will be granted per customer.

- a) A 10% credit will be given if the peak discharge of the developed parcel is less than the peak discharge before the development.
- b) A 20% credit will be given if discharge is equal to or less than 0.40 cubic feet per second (CFS) per acre.
- c) A 30% credit will be given if discharge is equal to or less than 0.30 CFS/acre.
- d) A 40% credit will be given if discharge is equal to or less than 0.15 CFS/acre.

6.7.9 (2) **Water Quality Credit Policy:**

The credit for improving water quality will be capped at 25% and should be given for achieving the following water quality standards:

- a) A 12.5% reduction in the fee for removing between 40% and 79% of the total suspended solids (TSS) from the storm water.
- b) An additional 12.5% reduction in the fee for removing 80% or more of the total suspended Solids (TSS) from the storm water.

6.7.9 (3) **Method of Appeal:**

The Storm Water Utility charge may be appealed as follows:

- a) Within thirty (30) days of payment due date, a written challenge to the Storm Water charge must be filed with the Town Clerk specifying the basis for the challenge and the amount of the Storm Water charge the customer asserts is appropriate. Failure to file a challenge within thirty (30) days of payment due date waives all rights to later challenge of the charge.
- b) The Town Board will determine whether the Storm Water charge is fair and reasonable, or whether a refund is due the customer. The Town Board may act with or without a Public Hearing, and will inform the customer in writing of its decision.
- c) If the Town Board determines that a refund is due the customer, the refund will be applied as a credit toward the customer's Storm Water billing if the refund will not

exceed the customer's next Storm Water billing, or will be refunded at the discretion of the Town Board.

6.7.11 SPECIAL CHARGE AUTHORITY:

In addition to any other method for collection of the charges established pursuant to this ordinance for Storm Water Utility costs, the Town Board finds that these charges may be levied on property as a special charge pursuant to Wisconsin Statutes 66.0627. 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 the owner being charged principal, interest and penalties pursuant to the authority of Wisconsin Statutes 66.0627.

6.7.12 FINANCE:

The Storm Water Utility finances shall be accounted for in a separate Storm Water Utility Account by the Town. The Town Board 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 Storm Water Utility. The budget is subject to approval by the Town Board. The costs shall be spread over the rate classifications as determined by the Town Board. Any excess of revenues over expenditures in a year will be retained in the Storm Water Utility Account for subsequent years' needs.

6.7.13 SEVERABILITY:

In the event any section, subsection, clause, phrase or portion of this ordinance is for any reason held illegal, invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remainder of this ordinance. It is the legislative intent of the Town Board that this ordinance would have been adopted if such illegal provision had not been included or any illegal application had not been made.

Adopted this 7th, day of November, 2012



Mark E. Luebke, Town Chair

Attest: 

Richard Johnston, Town Administrator/Clerk