

ORDINANCE 2005-10-25

AN ORDINANCE CREATING A TOWN STORMWATER UTILITY.

WHEREAS, the Town Board finds that the management of stormwater and other surface water discharges within and beyond its borders is a matter that affects the public health, safety and welfare of the Town, its residents and businesses and others in the surrounding area; and

WHEREAS, the failure to effectively manage stormwater adversely affects the sanitary sewer utility operations of the Town by, among other things, increasing the likelihood of infiltration and inflow into the sanitary sewer system, and

WHEREAS, surface water runoff may cause the erosion of lands, threaten businesses and residences with water damage and create environmental damage to the rivers, streams and other bodies of water within and adjacent to the Town; and

WHEREAS, a system for the collection and disposal of stormwater provides service and benefits to all properties within the Town and surrounding areas, including those properties not presently served by the system; and

WHEREAS, the Town Board has determined that the cost of operating and maintaining the Town stormwater management system, ensuring regulatory compliance, and financing necessary plans, studies, repairs, replacements, improvements and extension thereof should, to the extent practicable, be allocated in relationship to the services provided by, and benefits received from, the system; and

WHEREAS, the Town Board finds that the present system of financing stormwater management functions and facilities through general tax levies allocates the costs based on the value and taxability of property without any direct relationship to the impact such properties have on the cost of stormwater management; and

WHEREAS, the Town Board finds that financing construction and operation of stormwater management facilities and other functions connected therewith through a stormwater utility will allow for more equitable allocation of such costs and correlation of the charges to the demands placed on the stormwater management system by each property;

NOW, THEREFORE, the Town Board of Onalaska, Wisconsin, does ordain as follows:

Section. 1. Subchapter ___ is hereby created as part of Chapter [X] of the Onalaska Municipal Code to read as follows:

SUBCHAPTER _____
ONALASKA STORMWATER UTILITY

X.x0 Stormwater Utility Established. The Onalaska Stormwater Utility is hereby established as a separate utility of the Town to operate and maintain the stormwater management facilities and functions of the Town in accordance with the policies and directives of the Town Board and this subchapter.

X.x1 Authority. The Stormwater Utility is created pursuant to the authority provided in Chapters 61 and 66 of the Wisconsin Statutes including, without limitation, the authority granted in the following sections: §§61.34, 61.36, 66.0621, 66.0627, 66.0701, 66.0703, 66.0809, 66.0811, 66.0813 and 66.0821.

X.x2 Management and Operations. The operation of the Stormwater Utility shall be under the general supervision of the Stormwater Utility Technical Advisory Committee (SWUTAC) and the Town Board. The Utility Director will oversee and be in charge of the day to day operations of the Utility.

X.x3 Powers and Duties.

- (1) **Facilities.** The Town, through the Stormwater Utility, may acquire, construct, lease, own, operate, maintain, extend, expand, replace, clean, dredge, repair, manage and finance such facilities as are deemed proper and reasonably necessary for a system of storm and surface water management. Such facilities may include, without limitation by enumeration, surface and underground drainage facilities, sewers, watercourses, retaining walls, ponds, basins, streets, roads, ditches and such other facilities as will support a stormwater management system.
- (2) **Rates and Charges.** The Town Board shall establish such rates and charges as are necessary to finance any necessary property or easement acquisition and the planning, design, construction, maintenance and operation of stormwater management facilities in accordance with the procedures set forth in this subchapter for the Stormwater utility. The Town may advance funds or services to the Stormwater Utility from time to time and the Utility shall reimburse the actual amount or value of such advances as determined by the Town Board.
- (3) **Budgeting Process.** The Utility Director and the SWUTAC shall prepare an annual budget for the stormwater utility, which shall include all operation, maintenance and capital costs, debt service and other costs related to the operation of the utility. The costs shall be allocated among the various rate classifications as determined by the Town Board. The budget shall be approved by the Board in accordance with the procedures and requirements of Wis. Stats. §65.90.

- (4) Excess Revenues. All stormwater fees collected, and any other revenues appropriated to, or attributable to the operation of, the stormwater utility shall be maintained in a segregated Stormwater Utility Enterprise Fund. Any excess of revenues over expenditures from stormwater utility operations in a given year shall be maintained in the Enterprise Fund and shall be used in future years exclusively for purposes consistent with this subchapter.

X.x4 Definitions. As used in this subchapter, the following terms have the meanings set forth below:

- (1) "Director" shall mean the Utility Director or his or her designee.
- (2) "Equivalent Runoff Unit" or "ERU" shall mean the estimated average horizontal measurement of impervious area of a fully developed single family parcel within the Town as determined from time to time by the Town Board. One ERU is determined on the effective date of this subchapter to be equivalent to 3709 square feet.
- (3) "Impervious Area" or "Impervious Surface" shall mean a horizontal surface, or the horizontal area included in a sloped surface, that is compacted or covered with a layer of material such that it significantly reduces the ability of rainwater or other surface water to penetrate the ground below. The term includes, but is not limited to, semi-impervious surfaces such as compacted clay, as well as streets, roofs, sidewalks, patios, parking lots, driveways and other similar surfaces.
- (4) "Duplex" shall mean a residential building containing two dwelling units.
- (5) "Duplex Unit" shall mean a dwelling unit within a duplex.
- (6) "Dwelling Unit" shall mean one or more rooms within a building that are arranged, designed or used as living quarters for one group of individuals living as a single housekeeping unit.
- (7) "Farmstead Home Site" shall mean that portion of any agricultural property which contains a single family home, duplex unit or multifamily unit, regardless of whether the dwelling unit is on a separate lot or parcel.
- (8) "Lot" shall have the meaning defined in §15.02(43) of this Code.
- (9) "Multifamily Property" shall mean a residential building consisting of three or more dwelling units.
- (10) "Multifamily unit" shall mean a dwelling unit within a multifamily property.

- (11) "Non-residential Property" shall mean any developed lot or parcel other than residential property as defined herein, and includes, but is not limited to, transient rentals (such as hotels and motels), mobile-home parks, commercial, industrial, institutional, governmental property and parking lots.
- (12) "Residential Property" shall mean any lot, parcel or farmstead home site developed for residential purposes including single family homes, duplex units, multifamily units, but not including transient rentals (such as hotels and motels) and mobile-home parks.
- (13) "Single Family Home" shall mean any residential building containing only one single dwelling unit.
- (14) "Undeveloped Property" shall mean property that has not been altered by the addition of any improvements such as a building or other structure, paving or the installation of substantial impervious landscaping; A property shall be considered developed pursuant to this chapter, upon issuance of a certificate of occupancy, or upon substantial completion of construction if no such certificate is issued or where construction is at least 50% complete and construction is halted for a period of three (3) months.
- (15) "Exempt Property" – All existing municipal and government lands and buildings that will not be charged a fee by the storm water utility.

X.x5 Rates and Charges.

- (1) The rates charged by the Stormwater Utility shall be established from time to time by Town Board resolution at sufficient levels to fund the capital, operating and other expenses set forth in the adopted budget which is not funded by other sources of revenue. Service charges so established shall be in addition to any assessments or charges imposed under any other provision of this Code.
- (2) A copy of the current rates shall be maintained at all times on file with the Town Clerk and available to the public during normal business hours.
- (3) Service charges established by the Board may include the following components:
 - (a) Base Charge (BC). The BC shall be the basic service fee charges to each property in the Town based upon its total area determined from annual tax records.
 - (b) Equivalent Runoff Unit Charge (ERU). The ERU charge shall be the basic service fee charged to each property in the Town based

upon the amount of impervious area as reasonably determined by the Director.

- (c) Special Charge (SC). A special charge may be imposed on property located in an area specially benefited by a particular stormwater management facility or service. Any special charge will be developed to reflect the benefits and/or services in a particular area which the Board determines cannot equitably be charged to all property throughout the Town.
- (d) Connection Charge. A one-time charge may be imposed when a property is converted from undeveloped to developed property or otherwise becomes connected to the Town stormwater management system. The charge shall be determined by the Town Board from time to time, and may vary based on the size of the parcel of property or other factors determined appropriate by the Town Board.

- (1) The Town Board may make such other classifications of properties or customers in order to achieve a reasonable and fair allocation of the costs of the Stormwater Utility among the properties benefited.

X.x6 Credits.

- (1) The Town Board may grant credits against the BC, ERU, SC, and connection charges as provided in this section. The total of all credits may not exceed the total of all applicable charges.
- (2) Any property owner requesting a credit shall file with the SWUTAC an application therefore on a form provided by the SWUTAC, together with a review fee established by the Town Board, identifying the storm water facilities, management practices or services for which the credit is claimed and the financial benefit to the utility. If the SWUTAC determines that additional engineering analysis is necessary to properly complete his or her review and to make an appropriate recommendation thereon, the SWUTAC may deny the application unless the applicant agrees to pay the cost of the necessary engineering services.
- (3) Credits may be granted under any of the following circumstances:
 - (a) Any property owner may seek a credit against the ERU charge where the owner has installed and maintained facilities that result in the detention, retention, or infiltration of stormwater on site and such facilities demonstrably reduce the financial obligations of the stormwater utility.
 - (b) Any multifamily or nonresidential property owner may seek a credit against the ERU charge for that portion of the property that

does not drain into any stormwater conveyance or facility operated or maintained by the stormwater utility.

- (c) Any property owner may seek a credit against the SC charge if stormwater from the property does not drain into any stormwater conveyance or facility that is the subject of the special charge.
 - (d) Any property owner may seek a credit against any applicable charges based on services rendered to, and at the request of, the Utility in the form of public educational programs relating to stormwater management or other topics determined to be beneficial to the Utility by the Town Board.
- (4) The SWUTAC shall evaluate the quantifiable benefits in both quantity and quality management measures in reviewing requests for credits, where applicable. In all cases, the SWUTAC shall submit a written recommendation to the Town Board as to whether a request for credit should be granted, denied, or granted in part and denied in part. The written recommendation shall also set forth the reason or reasons for such recommendation.
- (5) Credit applications shall be decided by the SWUTAC and shall be either one-time credits or may be continuing credits against recurring charges as determined appropriate by the Director. The Director shall grant a credit under sub. (3)(a) Only if it finds all of the following:
- (a) If the credit is based on special facilities or management practices under sub. (3)(a):
 1. The facilities installed or practices undertaken will reduce the expenses incurred by the utility by limiting the quantity and/or improving the quality of discharges into the facilities of the utility from the property;
 2. The property owner has, by contract, deed restriction or other method approved by the Director, ensured that the Town may legally enforce any operational or maintenance programs necessary to assure that the facilities or practices will continue to provide the benefits on which the credit is based;
 3. The investment of the property owner in the facilities or management practices exceeded the investment that would otherwise be necessary in order to comply with any other Town ordinance or to obtain any land division or development approval from the Town;
 4. The investment of the property owner in such facilities or management practices is disproportionate to the investment

made by the average property owner subject to the same normal charges such that it would be inequitable to charge the applicant on the same basis; and

5. The amount of the credit does not exceed the cost savings to the utility from the facilities and management practices maintained by the applicant.

(b) If the credit is based on sub. (3)(b) or (c):

1. That the absence of drainage from the property or a portion thereof into the facilities of the Utility results in financial savings to the Utility.
2. Adequate assurances are provided that the area of the property for which the credit is given will not be altered in such a way as to allow drainage into the facilities operated by the Utility.
3. The drainage from the property is managed in a way which complies with all Town ordinances and does not cause a nuisance condition.
4. The amount of the credit does not exceed the cost savings to the utility determined under subpar. 1.

(6) The Public Works Committee may revoke the credit in any case where the circumstances forming the basis for the credit have materially changed. The Committee shall provide at least 30 days advance written notice of any proposed credit revocation.

(7) A denial or revocation of any credit may be appealed under Section X.XX.

X.x7 Customer Classifications.

- (1) For purposes of imposing the ERU charges, all lots and parcels within the Town shall be classified into the following six (6) customer classes:
 - (a) Residential – Single Family, including Farmstead Home Sites
 - (b) Residential – Duplex
 - (c) Residential – Multifamily, including condominiums
 - (d) Non-residential
 - (e) Undeveloped

- (f) Exempt – All existing municipal and government lands and buildings.
- (2) The Town Utility Director shall prepare a list of properties within the Town and assign a customer classification to each lot or parcel.
- (3) ERU's shall be calculated for each property classification as follows:
 - (a) Residential – Single Family (also Farmstead Home sites): 1 ERU.
 - (b) Residential – Duplex: 2 ERU.
 - (c) Residential – Multifamily: 4 ERU.
 - (d) For non-residential parcels more than three (3) acres in size, the Director shall be responsible for determining the impervious area from available information, including, but not limited to, data supplied by the Town Assessor, the property owner, tenant or developer, aerial photography, or by actual on site measurement. The Director may require additional information from the property owner as necessary to make the determination. The ERU value for a nonresidential property shall be determined by dividing its impervious area by the number of square feet per ERU and rounding the quotient to the next higher .1 ERU. The billing amount shall be updated by the Director as necessary based on changes to the amount of impervious area on the property.
 - (e) For non-residential parcels less than three (3) acres that have limited site information available the Director shall determine the initial ERU value by multiplying the total area of the parcel by the average percentage of impervious area per parcel found in the other large parcels and dividing the product by the number of square feet per ERU.
 - (f) Undeveloped Properties - 0 ERU.
 - (g) Exempt - 0 ERU.

X.x8 Billing and Penalties.

- (1) Stormwater Utility charges will be billed annually with the tax billing. All charges shall be due and payable thirty (30) days after the date of billing.
- (2) Billings for Stormwater Utility charges shall be mailed to the designated property owner. The owner of the property shall be liable for all stormwater utility charges in the event payment is not made as required in this subchapter. The owner of any property served which is occupied by

tenants shall have the right to examine collection records of the Town to determine whether such charges for such property have been paid at the office of the Utility Billing Clerk during normal business hours.

- (3) Any Stormwater Utility charges remaining unpaid more than thirty (30) days from the date of billing shall be deemed delinquent and shall be subject to a ten (10) percent late payment charge in addition to all other charges. All delinquent charges shall be collected as provided in Wis. Stats. §§66.0821(4) and 66.0809.

X.x9 Appeals.

- (1) Any stormwater utility charge, determination of ERUs, or ERU credits for any individual property may be appealed by filing a written appeal with the Town Clerk not later than thirty (30) days after the date the payment is due. The appeal shall specify all bases for the appeal and the amount of the stormwater charge the appellant asserts is appropriate. Any appeal not filed within the time permitted by this section shall be deemed waived. As a condition to maintaining an appeal, the appellant shall pay all charges billed under protest prior to filing the appeal.
- (2) The Director shall review the appeal and determine whether the challenged determination is fair and reasonable and consistent with the provisions of this subchapter, and whether a refund is due the customer. The Director shall determine its procedure for deciding such appeals which, at a minimum, shall provide the appellant with written notice by regular mail at least 10 days prior to the meeting at which the appeal will be reviewed, and an opportunity to present evidence and be heard on the appeal at such meeting. The Director shall provide the appellant with its decision in writing within 15 days after the date of the decision.
- (3) The appellant may appeal the decision of the Director within thirty (30) days from the date of mailing the Director's decision. An appeal to the Town Board shall be limited to the evidence presented to the Director, but the appellant shall be afforded the opportunity to present arguments based on that evidence.
- (4) If the Board or the Director determines that the decision appealed from should be reversed or modified, it shall determine whether a refund is due the customer. Any refund ordered shall be applied as a credit against the customer's next stormwater billing if the refund will not exceed the customer's next stormwater billing, and otherwise will be refunded by the Town Treasurer.

X.x0 Special Assessment and Charges.

- (1) In addition to any other method for collection of the charges established pursuant to this subchapter for Stormwater Utility costs, the Town Board

may order that the charges be levied against the property as a special charge pursuant to Wis. Stat. § 66.0627. The mailing of an invoice reflecting the charges due to the owner shall be notice to the owner that failure to pay the charges when due may result in such charges being placed upon the tax roll.

- (2) In addition to any other method of charging for Stormwater Utility expenses, the Town Board may by resolution levy special assessments on property in a limited and determinable area for special benefits conferred upon property by any public improvements pursuant to Wis. Stat. § 66.0703. The failure to pay such special assessments shall result in a lien on the property and shall be enforced pursuant to Wis. Stat. §66.0703(13).

X.x1 Severability.

If any provision of this subchapter is found to be invalid or unenforceable for any reason, such determination shall not affect the validity or application of, the remaining provisions. A determination of invalidity or unenforceability of any provision as applied to any specific property or circumstance shall not affect the validity and application of such provisions to any other property or circumstances.

Section 2: This ordinance shall be effective upon its enactment.

Dave Paudler, Town Chairman

Attest: _____
Sue Schultz, Clerk

Date Passed: _____ Vote: _____