

ORDINANCE NO. 15,565

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by amending Sections 118-271, 118-274, 118-280, 118-295 and 118-296, relating to stormwater management utility.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, is hereby amended by amending Sections 118-271, 118-274, 118-280, 118-295 and 118-296, relating to stormwater management utility, as follows:

**Sec. 118-271. Definitions.**

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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

*Collection agent* means the general manager of the city water works.

*Contributor* or *user* means any person owning, operating, or otherwise responsible for property within the city which directly or indirectly discharges stormwater or surface or subsurface waters to any portion of the stormwater management system, including direct or indirect discharges to the city's stormwater drainage system, or which is directly or indirectly protected by the city's flood protection system or stormwater drainage system. The term "contributor" or "user" means any person responsible for the direct or indirect discharge of stormwater or surface or subsurface waters to the city's stormwater drainage system.

*Costs of construction* means costs reasonably incurred in connection with providing capital improvements to the system or any portion thereof, including but not limited to the costs of the following:

- (1) Acquisition of all property, real or personal, and all interests in connection therewith including all rights-of-way and easements therefor;

- (2) Physical construction, installation and testing including the costs of labor, services, materials, supplies and utility services used in connection therewith;
- (3) Architectural, engineering, legal and other professional services;
- (4) Insurance premiums taken out and maintained during construction, to the extent not paid for by a contractor for construction and installation;
- (5) Any taxes or other charges which become due during construction;
- (6) 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;
- (7) Principal and interest on any bonds; and
- (8) Miscellaneous expenses incidental thereto.

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

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

*Director* means the public works director as director of the stormwater management utility.

*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.

*Equivalent residential unit* or *ERU* means the average impervious area of residential developed property per dwelling unit located within the city as periodically determined and established as provided in this division.

*ERU rate* means the dollar value periodically determined and assigned to each ERU as a charge for stormwater management services, and expressed as \$X.XX per ERU.

*Exempt property* means public streets, alleys and sidewalks; public and private cemeteries; and public parks, including publicly owned property used for public recreation.

*Extension and replacement* 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.

*Fiscal year* means a 12-month period commencing on July 1 of any year, and ending on June 30 of the succeeding year.

*Flood protection system* means the system of levees, floodwalls, floodgates, storm sewer gatewells, and stormwater pumping stations lying adjacent to rivers, creeks, and streams within the city, including associated control and operating equipment and facilities whether adjacent to such rivers, creeks, or streams or remotely located, which are intended to provide flood protection to properties adjacent to such rivers, creeks, and streams.

*Impervious area* means the number of square feet of hard-surfaced areas which either prevent or retard the entry of water into soil mantle, as it entered under natural conditions as undeveloped property, and/or cause water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions as undeveloped property, including but not limited to roofs, roof extensions, patios, porches, driveways, sidewalks, pavement and athletic courts.

*Multifamily 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.

*Nonoperating revenues* refers to revenues derived from activities other than the basic operations of the stormwater management system, but excluding interest income on bond proceeds and on contributed capital.

*Nonresidential property* means any property developed for commercial, industrial, governmental, or institutional use, including churches, hospitals, and other eleemosynary institutions and including multiuse properties incorporating residential uses, but excluding undeveloped property and property used exclusively for agricultural purposes.

*Operating budget* means the annual operating budget for the stormwater management utility adopted by the city council for the succeeding fiscal year.

*Operations and maintenance expense* 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 recordkeeping, 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.

*Revenues* means all rates, fees, 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.

*Single-family residential property* means a detached residential structure designed as a single dwelling unit to accommodate one family or group of individuals living together and sharing the same living space, but excluding multiuse properties which include single-family residential uses.

*Stormwater best management practices (BMP)* means a means schedules of activities, structural controls, source area controls, treatment requirements, and other management practices to prevent or reduce pollutants in runoff entering the stormwater drainage system.

*Stormwater drainage system* means the system of publicly or privately owned or operated rivers, creeks, ditches, drainage channels, pipes, basins, street gutters, and lakes within the city through which or into which stormwater runoff, surface water, or subsurface water is conveyed or deposited.

*Stormwater management charge* means the charge authorized by state law and this division which is established to pay operations and maintenance, extension and replacement of debt service of the stormwater utility.

*Stormwater management utility* or *utility* means the enterprise fund utility created by this division to operate, maintain and improve the system and for such other purposes as stated in this division.

*Stormwater management utility system* or *system* means the existing stormwater management facilities, stormwater drainage system, and flood protection system of the city and all improvements thereto which by this division are constituted as the property and responsibility of the utility, to be operated as an enterprise fund to, among other things, conserve water; control discharges and flows necessitated by rainfall events; and incorporate methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation and water pollution or otherwise affect the quality and quantity of discharge from such system.

*Total annual revenue requirements* refers to 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 replacement 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 and stormwater pumping stations.

*Unclassified residential property* means a multifamily residential property whose owner or occupant has appealed the classification of that residential property for purposes of determining the stormwater management charge applicable thereto, requesting instead that the stormwater management charge for that property be determined by applying the ERU rate to the actual impervious area of that property.

*Undeveloped property* means real property that has no impervious area.

**Sec. 118-274. Organization.**

The city council shall be the governing body of the stormwater management utility. The stormwater management utility shall be under the direction, management and control of the public works director who shall function as its director. In that capacity, the director shall supervise the day-to-day operation of the stormwater management utility, shall enforce this division and the provisions of all ordinances and regulations adopted pursuant to this division and shall carry out the policy directives of the city council acting in its role as governing body of the stormwater management utility.

**Sec. 118-280. Periodic survey of dwelling unit and impervious surface calculation.**

- (a) The director or the director's designee shall periodically conduct a survey, not less than once every ten years, of single-family residential properties within the city to determine the appropriate billing category of each such property as provided in section 118-276 of this division. The stormwater management charge for single-family residential properties shall be calculated on the basis of the impervious area thereof as provided in section 118-276 of this division.
- (b) The director or the director's designee shall periodically conduct a survey, not less than once every ten years, of all duplex, triplex, and fourplex multifamily residential properties within the city to determine the actual number of dwelling units thereon and shall periodically update such data to keep it current. The stormwater management charge for duplex, triplex, and fourplex multifamily residential properties shall be calculated on the basis of the number of dwelling units on the property, as provided in section 118-277 of this division, unless the owner or occupant organization thereof exercises its appeal option as provided in this division, in which case the stormwater management charge for the property shall be calculated as provided in subsection 118-281(b) of this division.
- (c) The director or the director's designee shall periodically conduct a survey, not less than once every ten years, of all multifamily residential properties of more than four units to determine the actual number of dwelling units thereon and shall periodically update such data to keep it current. The stormwater management charge for multifamily residential properties of more than four units shall be calculated on the basis of the number of dwelling units on the property, as provided in section 118-277 of this division, unless the owner or occupant organization thereof exercises its appeal option as provided in this division, in which case the stormwater management charge for the property shall be calculated as provided in subsection 118-281(b) of this division.
- (d) The director or the director's designee shall periodically conduct a survey, not less than once every ten years, of all nonresidential properties within the city to determine the actual square footage of impervious area on each such property and shall periodically update such data to keep it current. The stormwater management charge for nonresidential properties shall be calculated on the basis of actual square footage of impervious area of each such property, as provided in section 118-279 of this division,

unless the owner or occupant exercises his or her appeal option as provided in this division, in which case the stormwater management charge for the property shall be calculated as provided in subsection 118-281(c) of this division.

**Sec. 118-295. Establishment of stormwater best management practices rebate program.**

- (a) The city council finds, determines, and declares it to be conducive to the health, welfare, safety and convenience of the city and its residents, and in compliance with the requirements of section 118-273, that a rebate program be established to reimburse contributors for qualifying stormwater best management practices, as described in section 118-296, which help to enhance the water quality of stormwater runoff and/or to decrease the amount of stormwater runoff that enters the stormwater drainage system. The Environmental Protection Agency and Iowa Department of Natural Resources have mandated that municipalities promote the use of stormwater best management practices to address water quality and quantity issues. The goals of this program are to create a cost effective and sustainable incentive for the construction of stormwater best management practices within the city, to increase public awareness of the need to control stormwater runoff and to educate the public about sustainable practices to control stormwater runoff. The city has allocated from the stormwater sewer user fee revenues a sum sufficient to provide a rebate, as described in section 118-296, to contributors who elect to make qualifying improvements to their property within the corporate boundaries of Des Moines as described in section 118-296. The amount of the stormwater best management practices rebate program rebate shall be as described in section 118-296.
- (b) The director or the director's designee shall make a stormwater best management practices rebate provided in this division to contributors who meet the requirements of this division.
- (c) The city shall have the right to suspend or terminate this program if the city council determines that continuation of such program is likely to have an adverse effect on sewer service collections so that the applicable bond rate covenants will not be met.

**Sec. 118-296. Qualifying practices and method of making rebate payments.**

- (a) Qualifying stormwater best management practices, or qualifying practices, which shall be considered eligible for rebate include bio-retention cells, rain gardens, permeable pavement, rain barrels, streambank stabilization, soil quality restoration, or other similar practices approved by the director. Stormwater best management practices shall meet design criteria in the Iowa Storm Water Management Manual or other applicable design guidance approved by the director. Stormwater best management practices which are required by Section 106-136 of this Code or those for which the property owner seeks reimbursement from other sources of city funding, shall not be eligible for rebate.
- (b) The stormwater best management practices rebate program will provide a maximum of a \$2,000.00 rebate as a reimbursement for 50% of the reasonable total out of pocket cost of ~~any~~ materials and labor per property for qualifying properties for a qualifying practice or a combination of qualifying practices. The total rebate allowed per property for rain barrels shall not exceed \$100.00.

A property which has received the maximum rebate amount is not eligible for additional rebates under this program, regardless of a change in ownership or use, until at least 10 years have passed since the date of issuance of the prior rebate.

- (c) The qualifying practice must have been installed after January 1, 2017 and installation completed by no later than June 30, 2023.
- (d) A completed stormwater best management practices rebate program application form and supporting documentation must be submitted to the department of public works by no later than April 1, 2023 and prior to commencement of the work in order to be eligible for the rebate. The application must be approved before work is begun in order to be eligible for reimbursement.
- (e) The account for the stormwater management fee charges on the property must be current as to the payments at the time of application.
- (f) Upon completion of the work and no later than August 31, 2023, the applicant must submit to the department of public works the documentation of the actual cost of the qualifying practice, which must include an itemized invoice that identifies the materials and labor and a copy of the full payment. The amount of funding for this program will be capped on an annual basis at an amount recommended by the director in the public works department operating budget as approved by the city council. To the extent that program funds are available, rebates shall be provided to qualified applicants in the order in which completed applications are received.
- (g) The city manager shall make all procedural and administrative determinations necessary to implement this program not in conflict with the provisions and intent of this division.

Section 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:

Ann DiDonato, Assistant City Attorney

T. M. Franklin Cownie, Mayor

Attest:

I, Diane Rauh, City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an ordinance (Roll Call No. 17-0506), passed by the City Council of said City at a meeting held March 20, 2017 signed by the Mayor on March 20, 2017 and published and provided by law in the Business Record on April 7, 2017. Authorized by Publication Order No. 9915.

Diane Rauh, City Clerk