

**STORMWATER MANAGEMENT UTILITY ORDINANCE**  
**ORDINANCE NO. 2012-03**  
ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF ELKHART, BY  
ADDING CHAPTER 100, "STORMWATER MANAGEMENT UTILITY"  
**CHAPTER 100**

**STORMWATER MANAGEMENT UTILITY**

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**100.01 PURPOSE.**

The purpose of this ordinance is to establish a stormwater management utility which shall be responsible for stormwater management within the corporate boundaries of the City of Elkhart and shall provide for the management, protection, control, regulation, use and enhancement of stormwater management systems and facilities.

(Code of Iowa, Sec. 384.84)

1. Pursuant to §384.84 Code of Iowa the City may establish a stormwater drainage system utility and impose rates and charges for the operation, maintenance and extension of the Stormwater Drainage System, which in the City of Elkhart shall be known as the Elkhart Stormwater Management Utility.
2. It is the best interests of the City of Elkhart that the Stormwater Management Utility be established so as to provide a means of funding the construction, operation, and maintenance of stormwater management facilities including, but not limited to, detention and retention basins, stormwater sewers, inlets, ditches and drains, and cleaning of streets and to provide for rates for the purposes of assuring sufficient funds for the same.
3. The City of Elkhart declares the entire area within the Corporate Limits of the City of Elkhart as the Stormwater Drainage System District pursuant to 384.84(5) Code of Iowa which shall be the area governed by the Elkhart Stormwater Management Utility.

**100.02 DEFINITIONS.**

Unless the context specifically indicates otherwise, the meaning of the terms used in this chapter shall be as follows:

1. "Apartment dwelling" means a self-contained housing unit that occupies only part of a building which consists of many similar housing units for rent or sale, wherein the land or lot beneath the multi-dwelling structure may be owned by the building owner. In the application of stormwater management fees, each apartment dwelling shall be considered one (1) Residential Unit.
2. "Bonds" means revenue bonds, notes, loans or any other debt obligations issued or incurred to finance the costs of construction.
3. "Construction cost" 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:
  - A. Acquisition of all property, real or personal, and all interests in connection therewith including all rights-of-way and easements therefore;
  - B. Physical construction, installation and testing including the costs of labor, services, materials, supplies and utility services used in connection therewith;

- C. Architectural, engineering, legal and other professional services;
  - D. Insurance premiums taken out and maintained during construction, to the extent not paid for by a contractor for construction and installation;
  - E. Any taxes or other charges which become due during construction;
  - F. 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;
  - G. Principal and interest on any bonds; and
  - H. Miscellaneous expenses incidental thereto.
4. "Customers of stormwater utility" include all persons, properties, and entities served by and/or benefiting from the utility's acquisition, management, maintenance, extension and improvement of the public stormwater management systems and facilities.
  5. "Debt service" means the amount of money necessary annually to pay the interest on outstanding debt and pay the principal of maturing bonded debt.
  6. "Developed property" means land that has been altered from its natural state by construction or installation of more than 500 square feet of impervious surface area thus increasing the amount of rainwater or surface water runoff.
  7. "Duplex dwelling" means a building containing only two (2) dwelling units and designed for and occupied exclusively by not more than two (2) families with separate housekeeping and cooking facilities for each. In the application of stormwater management fees, each duplex dwelling property shall be treated as two (2) Residential Units.
  8. "Exempt property" includes public streets, alleys and sidewalks; all undeveloped properties including land used for agriculture; all vacant properties and those which have been zoned but do not have building permits issued.
  9. "Impervious surface" means those areas which prevent or impede the infiltration of stormwater into the soil as it enters in natural conditions prior to development. Common impervious surface areas include, but are not limited to, rooftops, sidewalks, driveways, patios, parking lots, storage areas, compacted gravel surfaces and other surfaces which prevent or impede the natural infiltration of stormwater runoff which existed prior to development.
  10. "Mobile home dwelling" means a detached residential dwelling unit designed for transportation after fabrication on streets or highways on its own wheels or a flatbed or other trailer, and arriving at the site where it is occupied as a dwelling complete and ready for occupancy except for minor unpacking and assembly operations, location on jacks or other temporary or permanent foundations, connections to utilities, and the like. In the application of stormwater management fees, each mobile home dwelling property shall be treated as one (1) Residential Unit.
  11. "Nonresidential properties" means all developed properties not encompassed by the definition of residential shall be defined as nonresidential. Nonresidential properties shall include: commercial property; industrial property; institutional property; churches; hospitals; schools; parking lots; and any other property not mentioned in the lists of properties. In the application of stormwater management fees, each place of commerce, education, government, medicine, religion, or industry shall be one (1) Nonresidential Unit whether in a single building on a single lot or in a multiple-use building on a single lot or multiple lot complex.
  12. "Operating budget" means the annual operating budget for the stormwater management utility adopted by the city council for the succeeding fiscal year.
  13. "Pollutant" means anything that causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter or other discarded or abandoned objects, so that the same may cause or contribute to pollution; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform bacteria and pathogens; dissolved and particulate metals; animal wastes; waste and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.
  14. "Residential" or "Single-family dwelling" means a residence designed for or occupied by one

- family only, entirely surrounded by yard on the same lot. In the application of stormwater management fees, each single-family dwelling shall be one (1) Residential Unit.
15. "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.
  16. "Stormwater drainage system" means the system of publicly or privately owned or operated man-made facilities, structures, and natural watercourses, including rivers, streams, creeks, canals, ditches, drainage channels, culverts, flumes, pipes, catch basins, streets, gutters, and lakes within the city through which or into which stormwater runoff, surface water, or subsurface water is conveyed or deposited.
  17. "Stormwater management" means the tasks required to control stormwater runoff using stormwater management systems, to protect the health, safety, and welfare of the public, and comply with relevant state and federal regulations.
  18. "Stormwater management system and facilities" address the issue of drainage management (flooding) and environmental quality (pollution, erosion and sedimentation) of receiving rivers, streams, creeks, lakes and ponds through improvements, maintenance, and regulation of structures and property used in the collection, retention, detention and treatment of stormwater or surface water drainage.
  19. "Stormwater management utility" means the enterprise fund utility created by this Section to operate, maintain and improve the stormwater drainage system and for such other purposes as stated in this Section including managing stormwater and imposing charges for the recovery of costs connected with such stormwater management.
  20. "Townhome dwelling" means a dwelling unit which is detached or attached horizontally, and not vertically, to one or more other dwelling units, wherein the land or lot beneath each dwelling may be individually owned in common by a townhome association. In the application of stormwater management fees, each townhome dwelling shall be treated as one (1) Residential Unit.
  21. "Undeveloped property" means land in its unaltered natural state or which has been modified to such minimal degree as to have a hydrologic response comparable to land in an unaltered state. Undeveloped land shall have less than 500 square feet of pavement, asphalt or compacted gravel surfaces or structures which create an impervious surface area. Agricultural property shall be classified as undeveloped property.
  22. "Unit" means a Residential property, a Nonresidential property, or an Undeveloped Property for the purpose of assessing service charges. Each single-family dwelling shall be a Residential Unit and other types of dwellings have been defined as one (1) Residential Unit previously in this Section. Each place of commerce, education, government, medicine, religion, and industry shall be a Nonresidential Unit, whether in a single building on a single lot or in a multiple-use building on a single lot or multiple lot complex. Each unit shall be charged individually, but where a multiple dwelling, mobile home park, or complex is billed under one combined service utility account, the recipient of that bill shall be deemed the user and receive the total combined stormwater management utility charges for the multiple dwellings or complex.
  23. "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 or which is directly or indirectly protected by the city's flood protection system or stormwater drainage system.

### **100.03 DECLARATION OF PURPOSE; ESTABLISH DISTRICT.**

1. The city council finds, determines, and declares it to be conducive to the health, welfare, safety and convenience of the city and its residents that a stormwater management utility district be

established within the city. Consequently, pursuant to I.C. § 384.84(1), a stormwater management utility district, to be known as the Elkhart Stormwater Management Utility, is established, and it is ordained and declared that the property located within the City Limits of the City of Elkhart shall be and constitute the stormwater management utility district, and that the utility shall comprise and include elements of the city's stormwater drainage and flood protection systems which provide for the collection, treatment and disposal of stormwater, surface water, and groundwater. It is further found, determined, and declared that the elements of the stormwater management utility are of benefit and provide services to all real properties within the incorporated city limits, including property not directly served by the stormwater drainage system, and that such benefits and services may include but are not limited to the provision of adequate systems of collection, conveyance, detention, treatment and release of stormwater; the reduction of hazard to property and life resulting from stormwater runoff and flooding; improvement in general health and welfare through reduction of undesirable stormwater conditions and flooding; and improvement to the water quality in the stormwater and surface water system and its receiving waters.

2. It is further determined and declared to be necessary and conducive to the protection of the public health, welfare, safety and convenience of the city and its residents that charges be levied upon and collected from the owners or occupants of all lots, parcels of real estate, and buildings that discharge stormwater or surface or subsurface waters, directly or indirectly, to the city stormwater drainage system, and that the proceeds of such charges so derived be used for the purposes of operation, maintenance, repair, replacement and debt service for construction of the stormwater drainage and flood protection improvements comprising the stormwater management utility.
3. The City of Elkhart stormwater management utility consists of all rivers, streams, creeks, branches, lakes, ponds, drainage ways, channels, ditches, swales, storm sewers, culverts, inlets, catch basins, pipes, dams, head walls, and other structures, natural or man-made, within the corporate boundaries of the City which control and /or convey stormwater through which the City intentionally diverts surface waters from its public streets and properties. The City owns or has legal access for purposes of operation, maintenance, and improvement to those segments of this system which (1) are located within public streets, right-of-ways and easements; (2) are subject to easement or other permanent provisions for adequate access for operation, maintenance and improvement of systems or facilities; or (3) are located on public lands to which the City of Elkhart has adequate access for operation, maintenance, and improvement of systems and facilities. Operations, maintenance, and improvement of stormwater systems and facilities which are located on private property or public property not owned by the City of Elkhart and for which there has been no public dedication of such systems and facilities shall be and remain the legal responsibility of the property owner, or its occupant.

#### **100.04 POWERS, DUTIES, RESPONSIBILITIES.**

The stormwater management utility shall have the following powers, duties, and responsibilities:

1. Prepare ordinances as needed to implement this division and forward the ordinances to the City Council for consideration and adoption, and adopt such regulations and procedures as are required to implement this division and carry out its duties and responsibilities.
2. Administer the acquisition, design, construction, maintenance and operation of the stormwater utility system, including capital improvements for stormwater drainage.
3. Administer and enforce this division and all ordinances, regulations and procedures adopted relating to the design, construction, maintenance, operation and alteration of the utility system, including but not limited to the quantity, quality and/or velocity of the stormwater conveyed

thereby.

4. Inspect private systems as necessary to determine the compliance of such systems with this division and any ordinances or regulations adopted pursuant to this division.
5. Prepare and revise a comprehensive drainage and flood protection plan for periodic review and adoption by the city council.
6. Review plans, approve or deny, inspect and accept extensions to the stormwater drainage system.
7. Establish and enforce regulations to protect and maintain water quality within the system in compliance with water quality standards established by state, regional and/or federal agencies as adopted or amended.
8. Annually analyze the cost of services and benefits provided, and the system and structure of fees, charges, fines and other revenues of the utility, and make recommendations regarding adjustments to such fees, charges, fines and other revenues.
9. Prepare an annual operating budget for the utility and make recommendations regarding the financing of the cost of extending, improving, and replacing the system.

#### **100.05 ORGANIZATION.**

The City Council shall be the governing body of the stormwater management utility. The stormwater management utility shall be under the daily direction, coordination and control of the City Clerk. In that capacity, the City Clerk 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.

#### **100.06 RIGHT OF ENTRY.**

Authorized employees or representatives of the City of Elkhart bearing proper credentials and identification shall be permitted to enter all private properties for the purpose of inspection, observation, measurement, sampling, and testing all private stormwater discharges directly or indirectly entering into any public stormwater management system or facility in accordance with the provisions of this chapter.

#### **100.07 PROHIBITED ACTS.**

No person shall do, or allow, any of the following:

1. Damage Stormwater Management Systems and Facilities. Maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, pipe, appurtenance or equipment which is part of the stormwater management systems or facilities.
2. Illicit Discharges. No person shall throw, drain or otherwise discharge or cause to throw, drain, run or allow to seep or otherwise be discharged into the City of Elkhart stormwater management systems and facilities, including but not limited to pollutants or waters containing any pollutants, other than stormwater.
3. Manholes. Open or enter any manhole, structure or intake of the stormwater system, except by authority of City Council members or authorized city employees or representatives.
4. Connection. Connection of any private stormwater system to the City's stormwater management system and facilities, except by authority of City Council members or authorized city employees or representatives.

#### **100.08 PENALTIES**

The following penalty provisions shall apply to violations of the Stormwater Management Utility chapters of this Code of Ordinances.

1. Notice of Violation. Any person found to be violating any provisions of these chapters shall be served by the City of Elkhart with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently remedy all violations.
2. Continuing Violations. Any person who shall continue any violation beyond the time limit provided

for in subsection 1 thereof, shall be subject to a civil penalty as set forth in the Schedule of Municipal Infractions in Chapter 3 of this Code of Ordinances. Each day which said violation shall continue shall be deemed a separate offense.

3. Liability Imposed. Any person violating any of the provisions of this chapter shall become liable to the City for any expense, loss or damage occasioned the City by reason of such violation.
4. Failure to remit timely payment to the City shall result in a 15% late fee penalty applied and subsequent submission for collection to the Iowa Income Offset Program or a lien filed against the property.

#### **100.09 STORMWATER SERVICE CHARGES REQUIRED.**

Every customer whose premises is served by a connection with the stormwater management system and facilities of the City of Elkhart, either directly or indirectly, shall pay to the city stormwater service charges hereinafter established and specified for the purpose of contributing towards the costs of construction, maintenance and operation of the stormwater management system and facilities and at least sufficient to pay the principal and interest related to Bonds issued for the purpose of financing all or part of those costs, and sufficient to comply with any covenants or conditions associated with any such Bonds so issued.

#### **100.10 EFFECTIVE DATE**

Stormwater service charges shall accrue beginning February 1, 2013 and shall be billed monthly thereafter to all customers.

#### **100.11 BASIC RATE**

1. Except as hereinafter noted, each customer whose property lies within the corporate limits of the city shall pay to the city, as a part of the customer's combined water, sewer, recycling and stormwater service account with the City of Elkhart's monthly utility billings, at the same time payment for other City utilities are made, the following charges per Unit associated with the customer's property:
  - A. Undeveloped properties. A flat storm sewer availability charge at the rate of \$0.00 per month.
  - B. Single-family dwelling, 1 Residential Unit: \$2.00 per month.
  - C. Duplex dwelling, 1 Residential Unit: \$2.00 per month.
  - D. Townhome dwelling, 1 Residential Unit: \$2.00 per month.
  - E. Mobile home dwelling, 1 Residential Unit: \$2.00 per month.
  - F. Apartment dwelling, 1 Residential Unit: \$2.00 per month.
  - G. Nonresidential properties: 1 Nonresidential Unit: \$4.00
2. The yearly rate shall increase by 5.0% per year through 2018. As a result of the annual review of rates, as detailed in Section 100.15 of this Ordinance, the Council may choose to adjust the monthly unit rate as necessary. Such rate adjustments shall be approved by Resolution of the City Council.
3. Stormwater fee billing will begin upon water meter installation or if no water service, billing will begin upon completion of structure or improvements that result in more than 500 square feet of developed impervious surface on such property. This is by definition, developed property that increases the amount of rainwater or surface water runoff.

#### **100.12 RATE APPEALS.**

City staff will review all service charge and billing inquiries from customers to ensure the unit rate has been correctly applied to a property. Following this review, any customer who believes the provisions of this chapter have been applied in error may appeal in the following manner:

1. An appeal must be filed in writing to the City of Elkhart City Clerk and include all necessary information to support the request for an appeal.

2. In the case of service charge appeals, the appeal shall include official property information, including total area for the property in question.
3. Using the information provided by the appellant, the City Clerk shall conduct a technical review of the conditions on the property, communicate with the Councilperson in charge of Utilities, and respond to the appeal in writing within thirty (30) days.
4. In response to an appeal and with approval of the Councilperson in charge of Utilities, the City Clerk may adjust the stormwater service charge applicable to a property in conformance with the general purpose and intent of this chapter.
5. A decision by the City Clerk which is adverse to an appellant may be further appealed to the entire City Council within thirty (30) days of receipt of notice of the adverse decision. Notice of the appeal shall be served on the City Council by the appellant, stating the grounds for the appeal. The City Council shall schedule a public hearing within thirty (30) days. All decisions of the City Council shall be served on the appellant by registered mail, sent to the billing address of the appellant.
6. All decisions of the City Council shall be final.

#### **100.13 EXEMPTION FROM FEES; SPECIAL CONDITIONS.**

The stormwater management utility service fee shall not apply:

1. If a written request is made, in special conditions the City Council of the City of Elkhart may grant fee payment and collection variances after determining that granting the variance would be in the city's best interest, will improve efficiency, safety and is practical. Upon the granting of any variance, the City Clerk shall keep on file notice of granted variance, giving reason(s) for the variance.
2. To properties owned by the City of Elkhart.
3. To a subdivided lot until a substantially completed structure has been built or improvements on said lot meet the definition of developed property as defined in this chapter.

#### **100.14 STORMWATER SERVICE BILLING.**

1. All stormwater management fees shall be due and payable under the same terms and conditions, including late fees, provided for payment of a combined water, sewer, recycling service account as contained in Section 92.03 of this Code of Ordinances. Water service may be discontinued in accordance with the provisions contained in Section 92.04 if the combined service account becomes delinquent, and the provisions contained in Section 92.07 relating to lien notices shall also apply in the event of a delinquent account. Delinquent accounts may also be submitted to the Iowa Income Offset Program for collection.
2. Stormwater fee billing will begin upon water meter installation or if no water service, billing will begin upon completion of structure or improvements that result in more than 500 square feet of developed impervious surface on such property. This is by definition, developed property that increases the amount of rainwater or surface water runoff.

#### **100.15 ANNUAL REVIEW OF RATES.**

The city has the option to review the stormwater service charges at least yearly and revise the stormwater service charges as necessary to ensure that such charges as herein established and specified generate adequate revenues to pay the costs of maintenance and operation (including replacement and debt service) of a stormwater management system and facilities and that the stormwater service charges continue to provide for the proportional distribution of maintenance and operation costs (including replacement costs and debt service) for a stormwater management system and facilities among the users and user classes. The liability of a stormwater service user to pay for charges as provided in this chapter shall not be contingent, however, upon any such review or revision.

PASSED third and final approval by the City Council, of the City of Elkhart, on the 7th day of January, 2013 and APPROVED this 7th day of January, 2013.

ATTEST:  
Jeanne Uhl, City Clerk

CITY OF ELKHART, IOWA  
Brandon Snyder, Mayor

The foregoing Ordinance 2012-03 adds Chapter 100 to the Elkhart City Code of Ordinances. Both the Ordinance and Chapter 100 in their entirety are available for inspection on our City website at [www.elkhartiowa.com](http://www.elkhartiowa.com) or in City Hall at 260 NW Main Street Elkhart, IA 50073 between the hours of 9:30am – 2:30pm.