

TOWN OF MENASHA
MUNICIPAL CODE

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CHAPTER 35

MUNICIPAL STORMWATER UTILITY

[Created 7/13/09, Amended 8/23/10]

35.01 FINDINGS

The Town of Menasha Board of Supervisors finds that the management of stormwater and other surface water discharges within the Town limits is a matter that affects the public health, safety, and welfare of the Town, its citizens and businesses, and others in the surrounding area. Failure to manage the stormwater and other surface water discharges may cause, among other things, land erosion, property damage, and other environmental damage. In addition, the Town is required by the Wisconsin Department of Natural Resources (DNR) Administrative Code Section 216 to improve the quality of stormwater discharged from the Town into Waters of the State. The Town owns, operates, and maintains a storm sewer collection system that provides collection and regulation of stormwater and other surface water discharge for all real property owners within the Town. The costs of operating and maintaining this system and financing necessary plans, studies, repairs, replacements, improvements, and extensions thereof should, to the extent practicable, be allocated in relationship to the services received from the system.

35.02 ESTABLISHMENT

In order to protect the health, safety, and welfare of the public, there is hereby established a Stormwater Utility in the Town of Menasha.

35.03 AUTHORITY

- (1) 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 Menasha Stormwater Utility Ordinance.
- (2) The Town of Menasha Board of Supervisors shall serve as the Stormwater 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 stormwater management, and to enact and enforce ordinances to implement this authority. The Town Chairman shall serve as the President of the Stormwater Utility Commission, and the Town Supervisors shall serve as Commissioners.
- (3) The Stormwater 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 Stormwater 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 stormwater management system.

- (4) The Board of Supervisors hereby designates the Director of Community Development to administer and enforce the provisions of this ordinance.

35.04 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.

35.05 SEVERABILITY OF ORDINANCE PROVISIONS

If any section, provisions or portion of this ordinance is found to be unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

35.06 DEFINITIONS

- (1) **Administering authority** means for the purpose of this ordinance the Director of Community Development under the guidance of the Stormwater Utility Commission.
- (2) **Duplex** means a residential dwelling having two (2) side-by-side units or one lower level unit and one upper level unit, including zero-lot line condominiums.
- (3) **ERU** means Equivalent Residential Unit and indicates the computed average impervious surface of a single-family home within the Town of Menasha, established at 4,177 square feet.
- (4) **Impervious surface** means a surface that has been compacted or covered with a layer of material so that it is highly resistant to infiltration by rainwater. The term includes, without limitation due to enumeration, all areas covered by structures, decks, roof extensions, patios, porches, driveways, sidewalks, parking lots, pavement, gravel, compacted clay, and loading docks, all as measured on a horizontal plane.
- (5) **Land Disturbing Activity** means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities, and soil stockpiling.

- (6) **Multi-family** means a residential property comprised of more than four attached living units, including but not limited to apartments, flats and zero-lot line condominiums.
- (7) **Non-residential** means a lot or parcel of land, with improvements such as a building, paving, or impervious areas as defined in Sec. 35.06(4), grading or substantial landscaping, which is not exclusively residential as defined herein, including, but not limited to, commercial, industrial, institutional, mixed-use, and governmental property.
- (8) **Other surface water discharge** means a discharge to the storm sewer system created by some process other than stormwater runoff.
- (9) **Residential** means any property developed exclusively for residential purposes, including but not limited to, duplexes, apartments, mobile home parks, condominiums and townhomes.
- (10) **Runoff** or “Stormwater runoff” means that portion of the precipitation falling during a rainfall event, or that portion of snowmelt, or irrigation water that runs off the surface of the land and into the natural or artificial conveyance or drainage network.
- (11) **Single-Family** means a residential property comprised of one dwelling unit, including stand-alone single unit condominiums.
- (12) **Storm sewer system** means a conveyance or system of conveyances including all Waters of the State, roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains which are designed for collecting water or conveying stormwater that are located within or bordering upon the Town of Menasha.
- (13) **Undeveloped** means property that is not developed by the addition of an improvement such as a building, structure, other impervious area as defined in Sec. 35.06(4), grading of more than 4,000 square feet, or other land disturbing activity which increases stormwater runoff.
- (14) **Waters of the State** means those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within Wisconsin or its jurisdiction.

35.07 BASIS OF CHARGE

- (1) By this ordinance, the Board of Supervisors is establishing the rate classification and basis for computation of charges for stormwater services for each lot within the Town of Menasha. The actual charges to be imposed pursuant to these rate

classifications, and any future changes in the charges, shall be made by resolution. A schedule of current rates, following approval by the Stormwater Utility Commission, shall be maintained and on file in the Community Development Department.

- (2) The rate classifications used to distribute the costs of the Stormwater Program among utility customers shall be based on the Equivalent Residential Unit (ERU). The charge assigned to each developed parcel shall be assessed based upon the impervious areas or number of living units as reasonably determined by the Town. Undeveloped properties shall be assessed a fraction of an ERU based on proportion of administration and operating costs.

35.08 CUSTOMER CLASSIFICATION

- (1) Customer Classes. For the purposes of imposing the stormwater charges, all lots and parcels within the Town are classified into the following five (5) customer classes.
 - (a) Residential, Single-Family
 - (b) Residential, Two-Four Family (including duplexes, condos up to 4 units and manufactured housing in mobile home parks)
 - (c) Residential, Multi-Family (including condos greater than 4 units)
 - (d) Non-residential
 - (e) Undeveloped
- (2) Parcel Classification. The Director of Community Development shall assign a customer classification to each lot and parcel within the Town of Menasha.

35.09 CHARGE FORMULAS

- (1) Residential, Single-Family. The charges imposed for residential properties comprised of a single living unit shall be the charge for one (1) ERU, i.e.

Residential parcel charge = 1 ERU fee
- (2) Residential, Two-Four Family. The charges imposed for residential properties comprised of two (2) to four (4) attached living units, either side-by-side or one lower level unit and one upper level unit, and mobile homes shall be the fee of 0.66 ERU per living unit existing on the property, i.e.

Duplex, two-four unit condos and manufactured housing in mobile home parks = 0.66 ERU fee per unit

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- (3) Residential, Multi-Family. The charges imposed for residential properties with greater than four (4) attached living units shall be the fee of 0.50 ERU per living unit existing on the property, i.e.

Multi-Family parcel charge = 0.50 ERU fee per unit

- (4) Non-Residential. The charges imposed for non-residential properties shall be the charge for one ERU times the numerical factor obtained by dividing the total square footage of impervious area of the property by the square footage of one ERU. The factor shall be rounded down to the nearest one-tenth (0.1), i.e.

Non-residential parcel charge = 1 ERU fee x parcel impervious area ÷ 4,177 square feet

- (5) Undeveloped. The charges imposed for undeveloped parcels shall be the charge of 0.25 ERU fee per parcel, i.e.

Undeveloped charge = 0.25 ERU fee per parcel

- (6) Minimum Charge. The minimum charges for any customer assessed a charge shall be a 0.25 ERU fee.

- (7) New Construction. For all parcels the property owner shall be responsible for stormwater charges related to an increase in ERU's for the construction of new or expanded buildings, driveways, and/or other additions of impervious surface.

- (8) Public Roads, Trails, Sidewalks and Railroad Tracks, Public roads, public trails, public sidewalks, public and private railroad tracks, and waters of the state shall be exempt from ERU fees.

- (9) Impervious Area Measurement. The Director of Community Development or designee shall be responsible for determining the impervious area of nonresidential parcels based on best available information, including, but not limited to, data supplied by the Town assessor, Town building inspector, aerial photography, property owner, tenant, or developer. The Director of Community Development or designee may require additional information as necessary to make the determination. The number of ERU's shall be updated by the Director of Community Development or designee based on any alterations to the impervious area as approved through the building permit process.

35.10 CREDITS AND ADJUSTMENTS

- (1) Credits: The Town may provide credits against the stormwater utility fees charged for non-residential parcels where the owner installs and maintains private stormwater management facilities onsite which effectively reduce surface water runoff from that parcel or which improve the quality of stormwater runoff from that parcel. Credits must be applied for

and may be granted in accordance with the Stormwater Utility Credit Policy on file in the Community Development Department.

- (2) Adjustments: A non-residential property owner may have the number of ERU's assigned to their property adjusted. Nonresidential customers who believe the number of ERU's assigned to their property to be incorrect may submit a written adjustment request to the Director of Community Development. The allocated ERU's may be adjusted if the owner can provide information stamped by a certified engineer or surveyor showing the impervious surface square footage calculation as determined by the Community Development Director is incorrect. The Community Development Director may also adjust impervious surface square footage calculations if it is determined by the Director that errors were made in the original calculations due to misinterpretation or inaccuracies of the information used to determine impervious surface.

- b. Residential Parcels. A residential property owner may have the number of ERU's assigned to their property or properties adjusted. Residential customers who own more than one contiguous parcel may have their ERU's adjusted if the owner requests an adjustment or if the Director of Community Development determines an adjustment is appropriate under the following circumstances:

- (1) Where a single family home is physically located on two or more parcels the property owner shall be assessed a charge of one ERU.
- (2) Where a single family home is located on one parcel with one or more contiguous unbuildable parcel(s) totaling 4,000 square feet or less under the same ownership shall be charged one ERU for all of the parcels combined.
- (3) Where "garage" lots 4,000 square feet or less under the same ownership as the single family home located across the street shall be combined with the principal structure and shall be charged one ERU for both parcels combined.

- (3) Review Procedure. Within thirty (30) days of application to the Director of Community Development for a credit or adjustment, the Director of Community Development shall issue a written notice as to whether the request has been granted, denied, or granted in part. The written notice shall set forth the reason or reasons for the decision and shall be sent to the customer by mail.

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- (4) Effective Date. Any ERU adjustment granted shall thereafter be used to calculate the customer's user charges. The reduction shall only apply for the period of time subsequent to the filing of the request for adjustment. There shall be no retroactive adjustment for user charges imposed prior to the filing of the request.

35.11 METHOD OF APPEAL

- (1) If a property has been denied a credit or adjustment, the decision may be appealed by submitting a written appeal to the Director of Community Development.
- (2) Within thirty (30) days of the submission of an appeal, the Director of Community Development shall issue a written recommendation as to whether the appeal should be granted, denied or granted in part. The written recommendation shall set forth the reason or reasons for such recommendation. The recommendation shall be sent to the customer by mail and shall be provided to the Stormwater Utility Commission.
- (3) A property owner not satisfied with the Director of Community Development's decision has thirty (30) days to file a written appeal to the Stormwater Utility Commission. Upon appeal, the property owner must provide evidence sufficient to show that the decision of the Director of Community Development was incorrect.
- (4) The Stormwater Utility Commission shall review the appeal and issue a written recommendation to uphold, modify or reject the decision of the Director of Community Development. The written recommendation shall set forth the reason or reasons for such recommendation. The Stormwater Utility Commission may act with or without a public hearing.
- (5) The decision of the Stormwater Utility Commission shall be final and no further appeal will be allowed.
- (6) Any appeal granted shall thereafter be used to calculate the customer's stormwater utility fees. The credit or adjustment shall only apply for the period of time subsequent to the filing of the request for appeal. There shall be no retroactive adjustment for user charges imposed prior to the filing of the request.

35.12 FINANCES

- (1) The Stormwater Utility finances shall be accounted for in a separate Stormwater Enterprise Fund by the Town.
- (2) 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 Stormwater Utility Commission. The costs shall be spread over the rate classifications as determined by the Stormwater Utility Commission. Any excess of revenues over expenditures in a year will be retained by the Stormwater Enterprise Fund for the subsequent years' needs. All financial activity must adhere to the Town of Menasha Ordinance, Chapter 16 Finance.

35.13 BILLING AND COLLECTION

- (1) The Town of Menasha Finance Department is hereby appointed as the collection agency for the Town Stormwater Utility. Bills shall be prepared by the Finance Department and sent to the owner or occupant of each premise served.
- (2) The bills for the Stormwater Utility charges may be mailed to the designated utility bill recipient, but this mailing shall not relieve the property owner from liability for rental property in the event payment is not made as required.
- (3) In the event a customer of the Stormwater Utility fails to make payment in full upon a combined water, sewer, and/or stormwater bill, this failure to make payment in full shall result in the entire bill to be considered delinquent. No portion of the payment made can be considered specifically designated for water, sewer, or stormwater service, except by equal proportion. If Stormwater Utility charges remain unpaid, the same collection procedures and late fees that apply to the Water Utility will also apply to the Stormwater Utility.

35.14 SPECIAL ASSESSMENT AUTHORITY

The Stormwater Utility Commission shall have the authority to establish and collect special assessments or special charges pursuant to Wisconsin Statutes or Town Ordinances for the fair and equitable apportionment of capital and other costs incurred by the Stormwater Utility Commission as a result of the operation of its stormwater system.

35.15 EFFECTIVE DATE

This Ordinance shall become effective on August 3, 2009.