

ORDINANCE #05-33

CREATING CHAPTER 27 REGARDING A
STORM WATER UTILITY

THE COMMON COUNCIL OF THE CITY OF DE PERE DO ORDAIN AS

FOLLOWS:

Section 1. Findings and necessity. The City of De Pere finds that the management of storm water and other surface water discharge within and beyond the Fox River is a matter that affects the health, safety and welfare of the City, its citizens and businesses. Storm water affects the sanitary sewer utility operations of the City by, among other things, increasing the likelihood of infiltration and inflow in the sanitary sewer. In addition, surface water runoff may foster erosion, threaten businesses and residences with water damage and create sedimentation and other environmental injury to the City's waterways. A system which provides for the collection of and disposal of storm water benefits and provides services to all property within the City of De Pere. The cost of operating and maintaining the City storm water management system and financing necessary repairs, replacements, improvements and extension thereof should, to the extent practicable, be allocated in relationship to the benefits enjoyed and services received therefrom. In order to protect the health, safety and welfare of the public, the Common Council exercises its authority under Chapters 62 and 66 of the Wisconsin Statutes to establish a Storm Water Utility and set the rates for storm water management services.

Section 2. Chapter 27, De Pere Municipal Code is created to read as follows:

27-1. Creation. There is hereby established a City of De Pere Storm Water Utility. The operation of the Storm Water Utility shall be under the supervision of the Common Council. The Director of Public Works shall be in charge of the day-to-day operation of the Storm Water Utility.

27-2. Authority. The City may acquire, construct, lease, own, operate, maintain, extend, expand, replace, clean, dredge, repair, conduct, manage and finance such facilities as are deemed by the City to be proper and reasonably necessary for its Storm Water Utility. Such facilities may include, without limitation by enumeration, surface and underground drainage facilities, sewers, watercourses, retaining walls and ponds and such other facilities as will support a storm water management system.

27-3. Definitions. Words not defined herein shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary.

(1) **City.** "City" means the City of De Pere.

(2) **Common Council.** "Common Council" means the Common Council of the City of De Pere or designee.

- (3) **Director of Public Works.** “Director of Public Works” means the duly appointed Director of Public Works or designee.
- (4) **Duplex structure.** “Duplex structure” means any residential space intended for one dwelling unit attached to only one other dwelling unit or as classified by the City Building and Zoning Codes.
- (5) **Dwelling unit.** “Dwelling unit” means that part of a residential building intended for occupancy by a single family unit or as classified by the City Building and Zoning Codes.
- (6) **Equivalent Runoff Unit (ERU).** “ERU” means the statistical average horizontal impervious area of single-family structures within the City on the date of adoption of this ordinance. The horizontal impervious area includes, but is not limited to all areas covered by structures, roof extensions, patios, porches, driveways and sidewalks.
- (7) **Impervious Area or Impervious Surface.** These terms mean a horizontal surface that has been compacted or covered with a layer of material so that it is highly resistant to infiltration by rainwater. It includes, but is not limited to, semi-impervious surfaces such as compacted clay or gravel, as well as streets, roofs, sidewalks, parking lots and other similar surfaces.
- (8) **Multifamily structure.** “Multifamily structure” means any structure comprised of three or more dwelling units.
- (9) **Non-residential property.** “Non-residential property” means 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 property and parking lots.
- (10) **Platted undeveloped property.** “Platted undeveloped property” means property which has been subdivided by subdivision or certified survey map but has not had a building, structure, or impervious surface placed on the property.
- (11) **Residential property.** “Residential property” means 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 townhouse living units.
- (12) **Single Family Structure.** “Single family structure” means a single family home intended for occupancy by a single family unit and as identified in the City’s Building and Zoning Codes.

- (13) **Undeveloped property.** “Undeveloped property” means 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 (a) upon issuance of a Certificate of Occupancy, or upon completion of construction or final inspection if no such certificate is issued or (b) where construction is at least fifty (50) percent complete and construction is halted for a period of three (3) months.
- (14) **Unplatted undeveloped property.** “Unplatted undeveloped property” means property which has not been subdivided by subdivision or certified survey map and has not been altered from its nature state by the addition of a building, structure, impervious surface, change of grade or landscaping.

27-4. **Connection.**

Property owners shall be required to connect to any storm water conveyance system as required pursuant to §26-5, De Pere Municipal Code.

27.5. **Rates and Charges.**

- (1) By this ordinance, the Common Council hereby establishes that a rate charge shall be imposed upon all real property within the City of De Pere for services and facilities provided by the Storm Water Utility. The actual rate to be imposed, the establishment of formula for calculations of the charges, the establishment of specific customer classifications and any future changes in those rates, formulas, rate charges, and customer classifications shall be as determined by Resolution of the Common Council. All rates established pursuant to this ordinance shall be kept on file by the City Clerk-Treasurer. Rate charges may include:
- (a) **Base charge (BC)** – A Base Charge may be imposed on all property in the City. The **BC** shall reflect the fact that all properties contribute in some way to the storm water discharge that must be managed by the City and that all properties benefit from storm water management activities of the City. The **BC** shall be sufficient to cover administrative costs of the storm water utility and that portion of capital costs which are covered by special assessment. The **BC** may be based on parcel size.
- (b) **Equivalent Runoff Unit Charge (ERU Charge)** – An ERU charge may be imposed on all property in the City. The formula for the ERU Charge shall reflect that of a typical single family unit. Other units of property will be charged multiples of the ERU based on the impervious area contributing to surface water runoff.

- i. The average square footage of impervious area of ERU is hereby established to be equivalent to 3,861 square feet.
- ii. The charge imposed for single-family structure shall be the rate for one ERU.
- iii. The charge imposed for duplex residential properties shall be the rate of 0.7 of one (1) ERU for each individual dwelling unit existing on the property. (ERU rate multiplied by the number of dwelling units.)
- iv. The charge imposed for residential – multifamily units properties shall be the rate of one-half (0.5) of one (1) ERU for each individual dwelling unit existing on the property. (ERU rate multiplied by the number of dwelling units.)
- v. The charge imposed for residential – condominium unit properties shall be the rate of 0.7 of one (1) ERU for each individual dwelling unit existing on the property. (ERU rate multiplied by the number of dwelling units.)
- vi. The charge imposed for non-residential properties as defined herein shall be the rate of one (1) ERU, multiplied by the numerical factor obtained by dividing the total impervious area of a non-residential property by the square footage of one (1) ERU. The factor shall be rounded down to the nearest one-tenth (0.1), i.e.

ERU rate X impervious area

ERU

- vii. The charges imposed for platted undeveloped properties as defined herein shall be the rate of one-half (0.5) of one (1) ERU per lot.
- viii. The charges imposed for unplatted undeveloped properties as defined herein shall be the rate of one-half (0.5) of one (1) ERU per acre where such property discharges storm water into storm water facilities constructed, financed or maintained by the storm water utility. There shall be no charge for unplatted, undeveloped properties which do not discharge storm water into facilities constructed, financed or maintained by the Storm Water Utility.

- ix. The Director of Public Works shall be responsible for determining the impervious area based on the best available information, including, but not limited to, data supplied by the City Assessor, aerial photography, the property owner, tenant or developer. The Director of Public Works may require additional information as necessary to make the determination.
 - x. The minimum charges for any non-residential parcel shall be equal to the rate for one (1) ERU.
 - xi. All unoccupied developed lots and parcels shall be subject to the storm water utility charges.
- (c) **Credit** – The Common Council may provide for a credit or system of credits against charges for facilities installed and maintained by property owner for the purpose of limiting storm water flow from the subject property.
- (2) The City's Finance Department shall take all steps necessary to invoice all charges and collect all storm water utility payments for the City Storm Water Utility.
 - (3) Storm Water Utility charges shall be allocated to the property served and included on the property tax bill for such property. Billings for storm water utility charges shall be mailed to owners of record for tax-exempt property.
 - (4) Storm Water Utility charges shall not be payable in installments. If storm water utility charges remain unpaid for a period of twenty (20) days from the date the first installment of tax payment is due, such bill shall become a delinquent special charge and shall become a lien as provided in §§66.0627(4) Wis. Stats. Said charges shall automatically be extended upon the current or next tax roll as a delinquent tax against the property, and all proceedings in relation to the collection, return and sale of property for delinquent real estate taxes shall apply to such special charges. Unpaid charges shall be assessed a three (3) percent late payment charge to bills not paid within twenty (20) days of last date of tax payment.
 - (5) All delinquent special charges shall be subject to a ten (10) percent penalty in addition to all other charges and prior penalties or interest when the delinquent special charge is extended upon the tax roll.

27-6. Customer classification.

- (1) For purposes of imposing the storm water utility charges, all lots and parcel within the City are initially classified into the following seven (7) customer classes:

- a. Residential – Single Family
- b. Residential – Duplex
- c. Residential – Multifamily Units
- d. Residential – Condominium
- e. Non-residential
- f. Agricultural
- g. Undeveloped

The Council may, by Resolution, amend, alter or otherwise re-classify such customer class as are likely to provide fair distribution of the costs of the Storm Water Utility.

- (2) The Director of Public Works shall prepare a list of lots and parcels within the City and assign such appropriate classification to each lot or parcel.

26-7. New construction.

- (1) Except for single-family structures, a property owner shall be responsible for submitting a storm water utility service application at the time a building permit application is submitted or a site plan review is conducted, whichever occurs sooner. The application shall be made on a form prescribed by the city and provided with each application for a building permit or application for site plan review. No building permit shall be issued until such application is submitted and approved by the Director of Public Works.
- (2) The property owner shall be liable for all storm water charges attributable to such property from the date of commencement of construction.

28.8. Method of Appeal.

- (1) The storm water utility charge may be appealed as follows:
 - a. Within thirty (30) days of payment, a written appeal to the storm water charge must be filed with the City Clerk-Treasurer on behalf of the property owner, specifying the reason for challenge and the amount of the storm water charge the property owner asserts is appropriate. Failure to file an appeal within thirty (30) days of payment or non-payment of the charge shall operate as a waiver of appeal by the property owner.

- b. The Finance/Personnel shall hear such appeal at its next regularly scheduled meeting, and determine whether the storm water charge is fair and reasonable. All decisions of the Board shall be in writing and sent to the Appellant within 30 days of such decision.
 - (2) The property owner may, within fifteen (15) days from the date the decision of the Board is mailed, file a written appeal to the Common Council.
 - (3) The Common Council shall hear such appeal and determine whether the fee charged is fair and reasonable. The decision of the Council shall be a final decision.
- 27-9. **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 Common Council finds that charges may be levied against real property as a special charge pursuant to §66.0627, Wis. Stats. The charges established hereunder reasonably reflect costs of current services rendered and the benefits conferred on property and therefore may be charged against the property accordingly. Mailing of such charges to the property owner shall serve as notice that failure to pay the charges when due may result in the imposition of a special charge under §66.0627, Wis. Stats.
- 27-10. **Budget excess revenues.** The storm water utility finances shall be accounted for in a separate Storm Water Enterprise Fund by the City. The utility shall prepare an annual budget, subject to approval by the Common Council, which is to include all operation and maintenance costs, debt service and other costs related to the operation of the storm water utility. Any excess of revenues over expenditures in a year will be retained by the Storm Water Enterprise Fund for subsequent years' needs.
- 27-11. **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 Common Council that this ordinance would have been adopted if such illegal provision had not been included or any illegal application had not been made.
- 27-12. **Repeal and Effective Date.** All ordinances or parts of ordinances and resolutions in conflict herewith are hereby repealed. This ordinance shall take effect from and after its passage and publication.

Adopted by the Common Council of the City of De Pere, Wisconsin, this 16th day of August, 2005.

APPROVED:

Michael J. Walsh, Mayor

ATTEST:

David G. Minten, Clerk-Treasurer

Ayes: _____

Nays: _____