

## ARTICLE IV STORM WATER UTILITY

### Sec. 54-274. Purpose and necessity.

Whereas, the town board does hereby find that the management of storm water and other surface water discharges to bodies of water within the town is a matter that affects the public health, safety and welfare of the town, its citizens and businesses.

Whereas, surface water runoff may cause erosion of lands, threaten residences and businesses with water damage, and create environmental damage to the rivers, streams and other bodies of water within the town.

Whereas, a system for the collection, conveyance and disposal of storm water provides services to all properties within the town including those properties that are exempt by law from taxation.

Whereas, the cost of operating and maintaining the town's storm water management system and financing necessary repairs, replacements, improvements, and extensions thereof should, to the extent practicable, be allocated in relationship to the services received from the system.

Whereas, failure to effectively manage storm water affects the operations of the town sanitary sewer utility by, among other things, increasing the likelihood of infiltration and inflow into the sanitary sewer system.

Whereas, in order to protect the health, safety and welfare of the public, the town board hereby exercises its authority to establish a storm water utility and establish the rates for storm water management services.

Whereas, by adopting and publishing as required by law the regulations contained in this chapter, the town board is acting pursuant to authority granted by Wis. Stat. chs. 60 and 66.

### Sec. 54-275. Authority.

The town board, acting through the storm water utility, may acquire, construct, lease, own, operate, maintain, improve, modify, extend, expand, replace, clean, dredge, repair, conduct and manage programs, finance, borrow monies, assess and/or levy fees for such facilities, operations, and activities, as are deemed by the town board to be proper and reasonably necessary for a system of storm and surface water management and to obtain compliance with applicable local, state and federal storm water management requirements with which the town must comply. Neither the town, nor the storm water utility, shall exercise authority with respect to storm water matters affecting only private property interests, except where otherwise permitted by law.

**Sec. 54-276. Establishment of storm water utility.**

In order to protect the health, safety, and welfare of the public, the town board is exercising its authority to establish a town-wide utility known as the "Yorkville Storm Water Utility" and set the rates for storm water management services.

**Sec. 54-277. Establishment of Yorkville Storm Water Commission.**

(a) There is hereby established a storm water commission in the Town of Yorkville which shall be designated as the "Yorkville Storm Water Commission." The commission shall consist of five (5) town residents, serving at the pleasure of the town board, one (1) town board member and one (1) plan commission member. The town residents shall be appointed for staggered five (5) year terms by the town board, with each term commencing May 1. Initially, the terms of the various town resident committee members shall be staggered so that one term shall expire each year. The town board shall annually appoint the town board and plan commission members to serve on the commission, with said appointments being made by the end of May.

**Sec. 54-278. Powers and duties of utility.**

(a) *Facilities.* The town, through the storm water utility, shall exercise authority with respect to storm water facilities. Facilities may include, without limitation due to enumeration, surface and underground drainage facilities, inlets, manholes, catch basins, sewers, channels, watercourses, retaining walls, ponds, detention and retention basins, infiltration facilities, streets, roads, curbs, gutters, ditches and such other facilities as will support a storm water management system.

(b) *Rates and charges.* The town, after consideration of the recommendation of the storm water utility, may establish such charges as are necessary to finance planning, design, construction, maintenance, and operation of the facilities and to conduct necessary storm water programs and activities in accordance with the procedure set forth in this article. Any expenditure of funds shall be consistent with the approved budget, and shall require the approval of the town board. The bases for charges imposed under the ordinance are set forth in the "Town of Yorkville Storm Water Utility Creation and Rate Structure Study," dated \_\_\_\_\_, 2011 and incorporated herein by reference.

(c) *Budgeting process.* The storm water utility shall prepare an annual budget for consideration and approval by the Town Board, which is to include all capital, operation and maintenance costs, extension and replacement costs, regulatory compliance costs, debt service, and other costs related to the operation of the storm water utility.

(d) *Excess revenues.* The town will retain any excess of revenues over expenditures in a year in a segregated storm water enterprise fund which shall be used exclusively for purposes consistent with this article.

**Sec. 54-279. 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. The word "shall" is mandatory and the word "may" is permissive.

(a) *Base charge* means a uniform charge established by the Town Board to be imposed on all parcels within the Town to defray a portion of the cost of the Storm Water Utility which may include, but not be limited to, capital, operating and maintenance costs, extension and replacement costs, regulatory compliance costs, and storm water related public education expenses.

(b) *Condominium* means property subject to a condominium declaration established under Wis. Stat. ch. 703.

(c) *Cubic-Feet per Second (cfs)* means a standard unit of measurement for flow. When applied to storm water runoff calculations it means the rate at which storm water leaves a parcel, drainage basin or watershed.

(d) *Developed property* means real property which has been altered from its natural state by the addition of any improvements, such as buildings, structures or impervious surfaces.

(e) *Duplex* means a residential space containing two dwelling units.

(f) *Dwelling unit* means one or more rooms that are arranged, designed, or used as living quarters for occupancy by a single-family unit or as classified by the Racine County Zoning Code. Individual bathrooms and complete kitchen facilities, permanently installed, shall always be included for each dwelling unit.

(g) *Equivalent Runoff Unit (ERU) Charge* means the charge established by the Town Board on all parcels within the Town, tax-exempt or not, to defray, in part, the costs of the Storm Water Utility which may include, but not be limited to, capital, operating and maintenance costs, extension and replacement costs, regulatory compliance costs and storm water related public education expenses. The ERU charge is determined utilizing a methodology that is based on each parcel's gross area, intensity of development, and modeling established by the National Resources Conservation Service and set forth in Technical Release 55 ("TR-55").

(h) *Geographic Information System (GIS)* is any system that captures, stores, analyzes, manages, and presents groups of data that are linked to a specific location.

(i) *Impervious area* or *impervious surface* means a relatively horizontal or semi-horizontal surface which 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 and gravel as well as streets, roofs, sidewalks, patios, parking lots, driveways and other similar surfaces.

(j) *Life Cycle Replacement Cost* means the sum of all recurring and one-time (non-recurring) costs over the full life span, or a specified period, of a good, service, structure, or system. It includes purchase price, installation cost, operating costs, maintenance and replacement cost. For example, if a 30-inch reinforced concrete storm sewer has a useful design life of 40 years, 1/40<sup>th</sup> of its original installed cost should be collected every year for 40 years in order to have sufficient funds available to replace it at the end of its lifespan. (This scenario assumes inflation rates = savings interest rates).

(k) *Lot* means a parcel of land having a width and depth sufficient for one principal building and its accessory building together with open spaces required by the town's subdivision ordinance and abutting a public street or access easement.

(l) *Multi-family residential* means a residential space consisting of three or more dwelling units.

(m) *Non-residential property* means any developed lot or parcel not exclusively residential property as defined herein, including, but not limited to, transient rentals (such as hotels and motels), mobile home parks, commercial, industrial, institutional, governmental property, and parking lots.

(n) *100-Year Storm* is an event of the magnitude that has a 1 percent chance of occurrence in any given year (also called a "1-in-100 chance storm event"). A 100-year storm event in the Town of Yorkville equals 5.88 inches of rainfall in any given 24 hour period.

(o) *Percent of impervious coverage* means the total coverage by impervious surfaces in an area, such as a parcel or watershed, usually expressed as a percentage of the total land mass.

(p) *Property owner*, includes, but is not limited to, natural persons, partnerships, corporations, limited liability companies, limited liability partnerships, joint ventures, and all other legal entities of any kind or nature.

(q) *Residential property* means any parcel of land developed exclusively for residential purposes including, but not limited to, single family homes, manufactured homes, duplex units, multifamily apartment and condominium units, but not including transient rentals (such as hotels and motels).

(r) *Runoff* means "storm water runoff" which is a term used to describe water that originates during precipitation events. It may also be used to apply to water that originates with snowmelt or runoff water from overwatering that enters a storm water system. Storm water runoff does not soak into the ground, therefore becoming surface runoff, which either flows directly into surface waterways or is channeled into storm sewers, which eventually discharge to surface waters.

(s) *Runoff Curve Numbers (CN)* (also called a Curve Number) is an empirical parameter used in hydrology for predicting the amount of direct runoff or infiltration from a rainfall event. The runoff curve number is based on the area's hydrologic soil group, land use treatment and

hydrologic condition. It is widely used and is an efficient method for determining the approximate amount of direct runoff from a rainfall event in a particular area.

(t) *Runoff Coefficient* means the ratio of the amount of water that is NOT absorbed by the surface to the total amount of water that falls during a rain storm.

(u) *Single family home* means any residential property consisting of a single dwelling unit.

(v) *Storm water management program* means activities required to control storm water runoff to protect the health, safety, and welfare of the public, and to comply with state and federal regulations. It includes construction and maintenance of physical infrastructure as well development, implementation and management of policies, procedures and programs necessary for regulatory compliance. It includes but is not limited to street sweeping, erosion control, storm water basin improvements and maintenance, culvert and storm sewer maintenance, storm water testing, storm water management planning and related public education.

(w) *Storm water system* means the system of streets, curbs, gutters, berms, swales, detention and retention ponds or basins, infiltration basins, pipes, outfalls, inlets, and other components of infrastructure owned and/or maintained by the municipality for the purpose of managing, gathering, transmitting, treating or conveying storm water. This term includes tributaries, creeks, rivers, canals, and streams.

(x) *Storm water utility* means the utility established under this article for the purpose of managing storm water and imposing charges for the recovery of costs connected with such storm water management.

(y) *Technical Release 55 (TR-55)* presents simplified procedures to calculate storm runoff volume, peak rate of discharge, hydrographs, and storage volumes required for floodwater reservoirs. These procedures were developed by the USDA Soil Conservation Service (SCS) and are applicable to small watersheds.

(z) *Time of Concentration (Tc)* is a concept used in hydrology to measure the response of a watershed to a rainfall event. It is defined as the time needed for water to flow from the most remote point in a watershed to the watershed outlet. It is a function of the topography, geology, and land use within the watershed.

(aa) *Town* means the Town of Yorkville, Racine County Wisconsin.

(bb) *Town board* means the town board of the Town of Yorkville, Racine County, Wisconsin or designee.

(cc) *2-Year Storm* is an event of the magnitude that has a 50 percent chance of occurrence in any given year (also called a "50-in-100 chance storm event"). A 2-year storm event in the Town of Yorkville equals 2.57 inches of rainfall in any given 24 hour period.

(dd) *Undeveloped property* means any real property with no artificial impervious area, but

due to surface area, soil type, topography and natural imperviousness, generates runoff and has an impact on the Town's storm water drainage system.

(ee) *Watershed* means an area of land that drains downslope to a single low point with water moving through a network of drainage pathways, both underground and on the surface. The pathways generally converge into streams and rivers, which become progressively larger as the water moves on downstream, eventually reaching an estuary and the ocean. Other terms used interchangeably with watershed include *drainage basin* or *catchment basin*.

**Sec. 54-280. Utility rates and charges.**

(a) By this article, the town is establishing the basis for the rates that will be used to calculate and impose charges upon each parcel within the town for services and facilities provided by the town board consistent with this article.

(b) The actual rate of charges to be imposed and any future changes in those rates for each classification shall be made by resolution. All rates established pursuant to this article shall be fair and reasonable. A schedule of current charges shall be maintained and on file in the office of the town clerk.

(c) Charges shall be imposed to recover all or a portion of the costs incurred by the town for storm water management purposes. Such charges may include the following components:

- (1) *Base charge.* A base charge may be imposed on all parcels in the town. The base charge is established in recognition of the fact that all properties in the town receive services from the storm water management activities of the town and that all properties contribute to some degree to the storm water discharge that must be managed by the town.
- (2) *Equivalent runoff unit (ERU) charge.* The ERU charge shall be assessed for each parcel in the town based upon the town engineer's methodology that incorporates the use of gross area, intensity of development and modeling established by the National Resources Conservation Service and set forth in Technical Release 55 ("TR-55"). The town engineer shall prepare a list of all parcels within the town, utilizing the statutory land use classification(s) for each parcel as determined by the Town Assessor or State Department of Revenue. The ERU charge shall be updated by the town engineer based on any additions to the impervious area as approved through the building permit process, as well as changes in land use classifications as determined by the Town Assessor or State Department of Revenue.

**Sec. 54-281. Land use classifications.**

(a) For purposes of imposing one or more of storm water utility charges, all lots, parcels or portions thereof within the town are classified into the following classes:

- (1) Residential lots with an area of less than one acre
- (2) Residential lots with an area of one acre or more
- (3) Agricultural - Crop Land
- (4) Agricultural - Improved
- (5) Commercial
- (6) Manufacturing
- (7) Forest Land
- (8) Parkland
- (9) Municipal/Institutional
- (10) Railroad

(b) The town board may make such other classifications in accordance with this article as will be likely to provide reasonable and fair distribution of the costs of the storm water utility.

**Sec. 54-282. Exemptions.**

Public rights-of-way are considered part of the town's storm water conveyance system and are therefore exempt from storm water utility charges.

**Sec. 54-283. Billing and payment.**

Storm water charges at the rate set by resolution of the town board, shall be billed to the owners of each parcel within the Yorkville Storm Water Utility at the same time and in the same manner as the town tax bill, as a charge for storm water services. The full storm water charge shall be due with the first tax installment. Alternatively, storm water charges may be levied and collected as a special charge against property in the town, under Wis. Stat. § 66.0627 and as provided in this section. The mailing of the bill containing the storm water charges shall serve as notice to the property owner that failure to pay the storm water charges when due may result in the fee being levied, imposed and collected as a special charge, pursuant to the procedures set forth in Wis. Stat. § 66.0627.

**Sec. 54-284. Lien.**

All storm water charges shall be a lien upon the property, as provided in Wis. Stat. § 66.0809.

**Sec. 54-285. Credits and adjustments.**

(a) *Credit policy.* The town board shall utilize the following provisions in considering any request for a storm water charge credit:

- (1) No credit shall be given for the installation of storm water management facilities required by the town, Racine County, or state storm water regulations.

- (2) No credit shall be considered for structural or nonstructural best management practices that are required in order to comply with town or county ordinance or state statute or regulation.
  - (3) No credits shall be considered for any "natural" features such as, but not limited to, wetlands, lakes and floodplains or water impoundment of any kind in existence prior to passage of this section.
  - (4) The town board may, in its sole discretion, extend a credit in other situations that warrant relief from the storm water ERU charge (e.g., where a property owner installs a storm water facility that provides a regional benefit).
  - (5) The base charge is not eligible for credit or adjustment.
- (b) *Adjustment of fees and appeal procedure.*
- (1) The town elects not to be subject to the administrative review provisions contained in Wis. Stat. ch. 68, except as set forth below, and establishes the following as a complete and final review procedure. Appeals shall be limited to a determination of the ERU charge or ERU credits made for nonresidential properties. There shall be no right of appeal as to the underlying findings and necessity of this article or the ERU charge as applied to the following classifications:
    - (a) Residential lots with an area of less than one acre
    - (b) Residential lots with an area of one acre or more
    - (c) Agricultural - Crop Land
    - (d) Agricultural - Improved
  - (2) *Requests for adjustment.* Requests for adjustment of the ERU Charge, including requests for storm water charge credits, shall be submitted to the Yorkville Storm Water Commission, which is hereby given the authority to develop and administer the procedures and standards for the adjustment of fees as established herein. All requests shall be judged on the basis of the amount of impervious area on the site, and other criteria deemed relevant by the town engineer and Commission. The Commission shall not have the authority to revise a property's classification of uses as established by the Town Assessor, but shall alert the Assessor where it appears there is merit to a property owner's complaint on the basis of classification.
    - a. Any property owner who has paid a storm water ERU charge and believes the charge to be incorrect, may, within 60 days of the timely payment of such charge and subject to the limitations set forth in this section, submit a written adjustment request to the Commission. Failure to file an adjustment request within 60 days of payment waives all rights to later challenge the charge. To defray the town's costs for reviewing the

request, an adjustment review fee may be imposed and collected from an applicant in such amount, if any, as is set periodically by resolution of the town board.

- b. Adjustment requests shall be in writing and set forth in detail, the grounds upon which relief is sought.
- c. The property owner requesting the adjustments may be required, at his/her own expense, to provide supplemental information to the Commission, including, but not limited to, survey data prepared by a Registered Land Surveyor (R.L.S.) and engineering reports prepared by a Professional Engineer (P.E.). Failure to provide such information may result in the denial of the adjustments request.
- d. The Commission will determine whether the storm water utility charge is fair and reasonable, or whether a credit or refund is due the property owner. The Commission may act with or without a hearing, and may, at its discretion, require access to the property to assist in its determination. The Commission shall issue a written determination as to whether the request for adjustment shall be granted.

(3) *Appeal procedure.*

- (a) The property owner has 30 days from the decision of the Commission to file a written appeal to the town board.
- (b) In the event of an appeal, the town board shall hold a hearing as provided in Wis. Stat. §§ 68.11(2) and 68.11(3). The town board shall hold such hearing within 30 days of the appeal request, and shall notify the appellant of the hearing date no less than ten days notice in advance of the hearing. Within 20 days of the hearing and the filing of briefs, if any, the town board shall mail or deliver to the appellant its written final determination, setting forth, in detail, the reasons for its decision.

If the town board or commission determines that a refund is due the property owner, the refund will be applied as a credit on the property owner's next annual billing, or will be refunded at the discretion of the town clerk.

- (4) *Public service commission complaint.* Notwithstanding the above procedures, any property owner may file a complaint to the public service commission claiming that rates, rules and practices herein are unreasonable or unjustly discriminatory, pursuant to Wis. Stat. § 66.0821(5).