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Appendix C Stormwater Utility Ordinance

ARTICLE IX. STORMWATER MANAGEMENT SYSTEM AND USER FEE

Sec. 122-631. Findings and determination.

It is found, determined and declared as follows:

- (1) The management of stormwater and other surface water discharge within the city is a matter that affects the health, safety and welfare of the city, its citizens and businesses.
- (2) Failure to effectively manage stormwater may create among other things, erosion of lands, damage to homes and businesses and created sedimentation and environmental damages to waterways within the city.
- (3) In order to protect the health, safety and welfare of the public the common council of the city establishes a stormwater management system and authorizes the establishment of a fee in connection therewith.
- (4) Those elements of the stormwater management system which provide for the collection and disposal of stormwater are of benefit to all real property within the city including property not presently served by said system.
- (5) The costs of operating and maintaining the stormwater management system and financing necessary repairs, replacement, improvements and extension thereof should, to the maximum extent practicable, be allocated in direct relationship to the contributions to the system.
- (6) The city is acting under the authority contained in Chapters 62 and 66 of the Wisconsin Statutes and, in particular, sections 66.0621, 66.0809 and 66.0821.
- (7) The fees established herein bear a reasonable relationship to the service provided by the city's stormwater management system.
(Ord. No. 17-03-04 § 1, 8-25-03)

Sec. 122-632. Definitions.

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

City means the City of Sheboygan.

Committee means the Public Works Committee of the Sheboygan Common Council.

Common council means the Common Council of the City.

Debt service means, with respect to any particular fiscal year and any particular bond series, an amount equal to the sum of (i) all interest payable on such bonds during such fiscal year, plus (ii) any principal installments of such bonds during such fiscal year.

Developed property means real property, which has been altered from its natural state by the addition of any improvements, such as a building, structure or impervious surface.

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Duplex means a residential property with two dwelling units.

Dwelling unit means a single unit or apartment providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

Equivalent run-off unit (ERU) means the estimated average impervious area of a single-family home within the city on the date of adoption of this article. Impervious area includes, but is not limited to, all areas covered by structures, roof extensions, patios, porches, driveways and sidewalks. One ERU is equal to 2,215 square feet of impervious area.

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 twelve-month period commencing on the first day of January of any year.

Impervious area or impervious surface means a 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, as well as streets, roofs, sidewalks, parking lots and other similar surfaces.

Mobile home means a single residential unit (mobile home) within a mobile home park.

Multi-family means a residential property with four or more dwelling units.

Nonresidential means any developed property not used, primarily, as a permanent residence, such as a commercial, industrial or an institutional property (schools, churches, hospitals, fraternal organizations, municipal facilities, etc.).

Operating budget means estimated revenues and the estimated costs for operations and maintenance, extension and replacement and debt service of the system for each fiscal year.

Operation and maintenance 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, labor, executive compensation, the cost of regulatory compliance, 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.

Qualifying receiving water means a receiving body of water within the municipal boundaries of the city for which the city has or is expected to have little or no debt service costs or extension and replacement costs. Those portions of the Sheboygan River, Pigeon River and Lake Michigan located within the municipal boundaries of the city are qualifying receiving waters.

Rate means the user fee charged on each ERU. The rate is determined by the common council for each fiscal year.

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Residential property means all parcels developed exclusively for residential purposes including but not limited to single family, mobile home, duplex, triplex, condominium and multi-family.

Revenues means all rates, fees, assessments, rentals, fines or other charges or other income received by the city, in connection with the management and operation of the system, including amounts received from the investment or deposit of monies in any fund or account, as herein required, and any amounts contributed by the city, all as calculated in accordance with sound accounting practices.

Single-family home means a residential property with exactly one dwelling unit.

Stormwater management system, stormwater system or system means the existing stormwater collection system of the city including, but not limited to storm sewers, retention ponds, detention ponds, ditches, drainageways, streams, wetlands, qualifying receiving waters, and all improvements thereto, which by this article are constituted as the responsibility of the city, to be operated as an enterprise fund, and all activities undertaken to conserve water, control discharges necessitated by rainfall events, incorporate methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over-drainage, environmental degradation and water pollution or, otherwise, affect the quality and quantity of discharge from such system.

Tri-plex means a residential property with three dwelling units.

Undeveloped land means any real property with no impervious area.

User charge means the charge established by the common council on developed property in the city to pay operations and maintenance, extension and replacement and debt service for the stormwater management system.

(Ord. No. 17-03-04 § 1, 8-25-03)

Sec. 122-633. Establishment.

(a) There is established a City of Sheboygan stormwater management system.

(b) The city, through the stormwater management system may, without limitation because of enumeration 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 a system of stormwater management. These facilities may include, without limitation by enumeration, surface and underground drainage facilities, sewers, watercourses, retaining walls, retention ponds, detention ponds and such other facilities and appurtenances as will support a stormwater system.

(Ord. No. 17-03-04 § 1, 8-25-03)

Sec. 122-634. Stormwater user fee.

(a) *Fee established.* Subject to the provisions of this article, each and every residential developed property, nonresidential developed property and vacant improved property, within the corporate limits of the city, and the owners and nonowner users thereof, have

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imposed upon them a stormwater user fee. In the event the owner and nonowner users of a particular property are not the same, the liability for each the owner and nonowner user for the user fee attributable to that property shall be joint and several. The stormwater user fee shall be a quarterly service charge and shall be determined by the provisions of this article and the ERU rate which shall be established and changed from time to time by resolution of the common council.

(b) *Stormwater user fee collection.* The stormwater user fee for metered property shall be billed and collected with and in the same manner as the city's water bill for those properties within the corporate limits of the city utilizing city water services and billed and collected separately for those properties not utilizing city water service. All such bills for stormwater user fees shall be rendered by the water utility. The stormwater user fee for those properties utilizing city water is part of a consolidated statement for utility customers which is generally paid by a single payment. In the event that a partial payment is received, the payment shall be applied first to water charges, second to sewer charges and third to stormwater user fee. The stormwater user fee for property not utilizing city water shall be billed quarterly. All bills for stormwater user fees shall become due and payable in accordance with the rules and regulations of the water utility pertaining to the collection of water bills. The maximum penalty permitted by law for past-due water charges shall be added to user charges not paid by the due date.

(c) *Lien.* Pursuant to sec. 66.0821(4)(d), Wis. Stats., all user charges established hereunder shall be collected and taxed and shall be a lien upon the property served in the same manner as water rates are taxed and collected under sec. 66.0809, Wis. Stats. (Ord. No. 17-03-04 § 1, 8-25-03)

Sec. 122-635. Stormwater user fee determination.

There is established the following uniform schedule of rates for the services and use of facilities of the stormwater management system by the owner, tenant or occupant of the premises using the services and facilities of said system:

- (1) The common council shall, by resolution, establish reasonable rates for stormwater management systems for each single family residence: each single-family residence shall be billed at a flat fee established by the city council for an equivalent residential unit (ERU).
 - (2) Each mobile home shall be billed at a flat fee established by the city council for 1 equivalent residential unit (ERU).
 - (3) Each duplex and tri-plex shall be billed at a flat rate established by the city council for 0.7 equivalent residential units (ERUs) per dwelling unit.
 - (4) For any occupancy not covered by subsections (1) - (3) of this section, the rate shall be computed based on the total impervious area of the property divided by the average impervious area of an equivalent residential unit times the rate established for an equivalent residential unit.
 - (5) For any undeveloped land the equivalent residential unit shall be zero.
- (Ord. No. 17-03-04 § 1, 8-25-03)

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Sec. 122-636. Fee adjustments.

(a) *Intent.* In certain situations, the amount of services used by and the costs of providing service to a property may be lessened due to unique characteristics of the property served. This section provides a procedure to seek adjustments of charges in those situations. In developing this process, the city recognizes that debt service costs and extension and replacement costs are incurred primarily to provide the capacity needed in the stormwater management system, and operation and maintenance costs are incurred to ensure the administration of the stormwater system, the day-to-day operation of the stormwater system and the needed capacity in the system.

(b) *Requests for adjustment.* Requests for adjustments shall be limited to the fees for nonresidential developed properties. All such requests shall be in writing and submitted to the city clerk for placement on the next available common council meeting agenda for referral to the public works committee.

(1) The public works committee will determine whether the stormwater user fee is fair and reasonable, or whether an adjustment is merited based upon the guidelines set forth herein. It shall be the burden of the requester to demonstrate by a preponderance of the evidence that a fee adjustment is warranted. Failure to file a request for adjustment within 30 days of payment waives all rights to any refund of fees as a result of any adjustment's determination.

(2) A customer may be eligible for an adjustment under the following conditions:

a. The allocated ERU's may be adjusted if the square footage calculation of impervious area for the property is incorrect.

b. If the stormwater from a nonresidential property discharges directly into a qualifying receiving water without crossing the property of another, and the discharge does not contribute to the exceedence of federal, state or local water quality standards.

c. If a retention or detention basin is located on nonresidential property. In considering such a request, the public works committee shall consider whether and to what extent the city's cost of providing service or making service available to a property has been lessened by the retention or detention basin. If the city's cost of providing service or making service available to a property has not been lessened by the retention or detention basin, the request for the adjustment shall be denied. If the city's cost of providing service or making service available to a property has been lessened by the retention or detention basin, the fee shall be reduced to reflect the approximate reduction in the city's costs.

(3) The director of public works, or designee, shall submit a written recommendation to the public works committee as to whether the request for adjustment should be granted, denied, or granted in part and denied in part. The written recommendation shall also set forth the reason or reasons for such recommendation.

(4) In considering a request for an adjustment, the committee may, in its discretion, separately examine multiple drainage areas on one piece of property and may recommend allowing an adjustment for a portion of the property if the characteristics of one or more drainage areas meets the criteria set forth in subsection (2) above.

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- (5) The committee, in its discretion, may allow an adjustment for a nonresidential property for reasons other than as specifically set forth in subsection (2) above, provided that the adjustment is reasonable and not unjustly discriminatory.
- (6) Committee review of the request for adjustment shall be completed within 60 days of the date the written request for adjustment is introduced to the common council. The committee shall review the request and director's recommendation and determine whether an adjustment should be made. The committee may act with or without a hearing, and will inform the requester in writing of its decision.
- (7) The requester has 30 days from the decision of the committee to file a written appeal to the common council.
- (8) If the council or the committee determines that a refund is due the requester, the refund will be applied as a credit on the customer's next quarterly stormwater billing, or will be refunded at the discretion of the city finance director/treasurer.
- (c) *Public service commission complaint.* Notwithstanding subsection (b), any user may file a complaint with the public service commission claiming that the rates, rules and practices herein are unreasonable or unjustly discriminatory pursuant to sec. 66.0821(5), Wis. Stats.
- (Ord. No. 17-03-04 § 1, 8-25-03)

Sec. 122-638. Special assessment authority.

In addition to any other method for collection of the charges established pursuant to this article for stormwater utility costs, the common council finds that these charges may be levied on property as a special charge pursuant to sec. 66.0627, Wis. Stats. The charges established hereunder reasonably reflect the benefits conferred on property and may be assessed as special charges. The mailing of the bill for such charges to the owner will serve as notice to the owner that failure to pay the charges when due may result in them being charged pursuant to the authority of sec. 66.0627, Wis. Stats. In addition, the city may provide notice each September of any unpaid charges to the stormwater utility, which charges, if not paid by November 15, may be placed upon the tax roll under sec. 66.0627, Wis. Stats.

(Ord. No. 17-03-04 § 1, 8-25-03)

Sec. 122-638. Budget excess revenues.

The stormwater utility finances shall be accounted for in a separate stormwater enterprise fund by the city. 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 common council. The costs shall be spread over the rate classifications as determined by the council. Any excess of revenues over expenditures in a year will be retained by the stormwater enterprise fund for subsequent years' needs.

(Ord. No. 17-03-04 § 1, 8-25-03)

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The above ordinance was amended as shown below:

Gen Ord. No. 47 - 04 - 05. By Alderpersons Baumann, Berg, Rindfleisch, Peterson and Segalle. December 6, 2004.

AN ORDINANCE amending Section 122-632 and repealing and recreating subsection (b) of Section 122-637 of the Municipal Code relating to the stormwater management system so as to add certain definitions and modify the fee adjustment provisions.

THE COMMON COUNCIL OF THE CITY OF SHEBOYGAN DO ORDAIN AS FOLLOWS:

Section 1. Section 122-632 of the Sheboygan Municipal Code, entitled "Definitions," is hereby amended so as to add the following two definitions in the appropriate alphabetical sequence:

"Sec. 122-632. Definitions.

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- 'Director' means the Director of Public Works & Engineering, or his/her designee.**
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- 'Private stormwater management and treatment facilities' means the existing stormwater collection system of the nonresidential property including, but not limited to storm sewers, retention ponds, detention ponds, ditches, drainageways, streams, wetlands, qualifying receiving waters, and all improvements thereto, which by this article are constituted as the responsibility of the nonresidential property owner, to be operated as a private facility, and all activities undertaken to conserve water, control discharges necessitated by rainfall events, incorporate methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over-drainage, environmental degradation and water pollution or, otherwise, affect the quality and quantity of discharge from such system."**

Section 2. Subsection (b) of Section 122-637 of the Sheboygan Municipal Code, entitled "Requests for adjustment," is hereby repealed and recreated to read as follows:

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"Sec. 122-637. Fee adjustments.

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(b) Requests for adjustment. Requests for adjustments shall be limited to the fees for nonresidential developed properties. All such requests shall be in writing and submitted to the Director of Public Works & Engineering along with a review-fee of \$200.

- (1) The Director will investigate and make recommendations to the Public Works Committee as to whether the stormwater user fee is fair and reasonable, or whether an adjustment is merited based upon the guidelines set forth herein. It shall be the burden of the requester to demonstrate by a preponderance of the evidence that a fee adjustment is warranted. Failure to file a request for adjustment within thirty (30) days of payment waives all rights to any refund of fees as a result of any adjustment's determination.**
- (2) A customer may be eligible for an adjustment under the following conditions:**
- a. The allocated ERU's may be adjusted if the square footage calculation of impervious area for the property is incorrect.**
 - b. If the stormwater from a nonresidential property discharges directly into a qualifying receiving water without crossing the property of another, and the discharge does not contribute to the exceedence of federal, state or local water quality standards.**
 - c. Nonresidential properties with private on-site stormwater management and treatment facilities that are designed to properly manage the stormwater runoff from impervious surface areas in accordance with the design criteria described by the City's stormwater management ordinances may be eligible for a stormwater user fee adjustment. In considering such a request, the Public Works Committee shall consider whether and to what extent the City's cost of providing service or making service available to a property has been lessened by the private on-site stormwater management and treatment facilities. If the City's cost of providing service or making service available to a property has not been lessened by the on-site stormwater management and treatment facilities, the request for the adjustment shall be denied. If the City's cost of providing service or making service available to a property has been lessened by the on-site stormwater management and treatment facilities, the**

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fee shall be reduced to reflect the approximate reduction in the City's costs.

- (3) The Director shall submit a written recommendation to the Public Works Committee as to whether the request for adjustment should be granted, denied or granted in part and denied in part. The written recommendation shall also set forth the reason or reasons for such recommendation.**
- (4) In considering a request for an adjustment, the Director and/or the committee may, in their discretion, separately examine multiple drainage areas on one piece of property and may recommend allowing an adjustment for a portion of the property if the characteristics of one or more drainage areas meets the criteria set forth in subsection (2) above.**
- (5) The committee, in its discretion, may allow an adjustment for a nonresidential property for reasons other than as specifically set forth in subsection (2) above, provided that the adjustment is reasonable and not unjustly discriminatory.**
- (6) Committee review of the request for adjustment shall be completed within sixty (60) days of the date the written request for adjustment and required fee are submitted to the Director. The committee shall review the request and Director's recommendation and determine whether an adjustment should be made. The committee may act with or without a hearing, and will inform the requester in writing of its decision.**
- (7) The requester has thirty (30) days from the decision of the committee to file a written appeal to the Common Council.**
- (8) If the council or the committee determines that a refund is due the requester, the refund will be applied as a credit on the customer's next quarterly stormwater billing, or will be refunded at the discretion of the City Finance Director/Treasurer."**

Section 3. Severability. The provisions of this ordinance are severable, and if any section, sentence, clause, phrase or word is for any reason held to be illegal, invalid or unconstitutional, or inapplicable to any person or circumstance by a decision of any court, that decision shall not affect the validity of the remaining provisions of this ordinance or their application to other persons or circumstances. It is hereby declared to be the legislative intent of the Council that this ordinance would have been adopted if such illegal, invalid or unconstitutional section, sentence, clause, phrase or word had

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not been included and if the person or circumstances to which this ordinance or part thereof is inapplicable had been specifically exempted therefrom.

Section 4. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, and this ordinance shall be in effect from and after its passage and publication

