

CHAPTER 55: STORMWATER MANAGEMENT UTILITY

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Cross Reference:

Utility Billing Policy, see Ch. 36

AN ORDINANCE ESTABLISHING A STORMWATER MANAGEMENT UTILITY FOR THE CITY OF LOWELL

BE IT ORDAINED by the City Council of the City of Lowell that Chapter 55 of Title V of the City of Lowell Code of Ordinances is established to read as follows:

CHAPTER 55: STORMWATER MANAGEMENT UTILITY

§55.01 FINDINGS

(A) North Carolina General Statute Chapter 160A, Article 16 authorizes the City to acquire, construct, enlarge, improve, maintain, own, operate, and contract for the operation of stormwater management programs designed to protect water quality by controlling the level of pollutants in and the quantity and flow of stormwater and structural and natural stormwater and drainage systems of all types.

(B) The establishment of a Stormwater Management Utility shall be accounted for as a separate enterprise fund of the City and will facilitate the provision of a stormwater management program.

(C) North Carolina General Statute Section 160A-314 authorizes the City of Lowell to establish and revise from time to time a schedule of rates and charges to fund the stormwater management program activities, including both structural and natural stormwater conveyance and drainage system services provided by the Stormwater Management Utility.

§55.02 PURPOSE

This ordinance establishes a Stormwater Management Utility as an identified fiscal and accounting fund for the purpose of comprehensively addressing the stormwater management needs of the City through programs designed to protect and manage water quality and quantity by controlling the level of pollutants in stormwater runoff and the quantity and rate of stormwater received and conveyed by structural and natural stormwater and drainage systems of all types. It sets forth a schedule of charges and defines the control, collection, and disbursal of funds including penalties, appeals, exemptions, and credits.

§55.03 DEFINITIONS

For the purpose of this Chapter, the following words, terms, and phrases shall have the meanings given to them in this section, except when the context clearly indicates a different meaning:

CREDITS. Ongoing reductions in the stormwater management service charge applicable to a given lot or tract in recognition of on-site or off-site systems, facilities, measures, and/or actions undertaken to reduce or mitigate the stormwater quantity and/or quality impact(s) of the lot or tract that would otherwise impact the public stormwater management system. Credits shall be conditioned on the continuing performance of the mitigation systems, facilities, measures, or actions in reference to standards adopted by the Stormwater Management Utility, and may be revised or rescinded for cause. In no case shall credits exceed the amount of the stormwater management charge. The means and measures for identifying, issuing, and obtaining credits will be provided in a Credit Manual approved by the City Council.

DEVELOPED LAND. A lot or tract altered from its natural state to include impervious surface area equal to or greater than 200 square feet.

DRAINAGE SYSTEM. Natural and structural channels, swales, ditches, swamps, rivers, streams, wetlands, branches, reservoirs, ponds, drainage ways, inlets, catch basins, gutters, pipes, culverts, bridges, head walls, storm sewers, lakes, and other physical works, properties, or improvements that transfer, control, convey or otherwise influence the movement of stormwater runoff.

EQUIVALENT RATE UNIT (ERU). Two thousand and eight hundred and twenty-seven (2,827) square feet of impervious surface or fraction thereof.

IMPERVIOUS SURFACE AREA. Developed areas of land that prevent or significantly impede the infiltration of stormwater into the soil. Typical impervious surface areas include, but are not limited to: roofs, sidewalks, walkways, patios, swimming pools, private driveways, parking lots, access extensions, alleys and other paved, engineered, compacted, or gravel surfaces containing materials that prevent or significantly impede the natural infiltration of stormwater into the soil.

LOT. A legally subdivided lot (not a tract) shown on a legally recorded plat or deed, or a combination of such legally subdivided and recorded adjacent lots.

NATURAL STATE. Existing undeveloped land where the soil and vegetation characteristics have not been substantially modified or disturbed by human activities and the hydrologic function is in an unaltered or natural condition.

SERVICE AREA. All land within the corporate limits of the City of Lowell, including all land areas legally annexed thereto.

SERVICE CHARGE. A stormwater management service charge, applicable to a lot or tract, that generally reflects the impact on or demand for stormwater management services provided by the City to properly control and manage stormwater runoff quantity and/or quality associated with the lot or tract. The service charge may vary from one lot or tract to another, based on the impervious surface area.

STORMWATER. The runoff from precipitation that travels over natural state or developed land surfaces and enters a drainage system.

STORMWATER MANAGEMENT PROGRAM. An identified set of measures and activities designed to protect, restore, and/or manage stormwater quality by controlling and/or reducing pollutants and to reduce and/or manage quantity by controlling velocity, volume, and rate.

STORMWATER MANAGEMENT UTILITY. An organizational structure that is responsible for funding, administering, and operating the City's stormwater management program and that is supported through a rate structure based on the impervious surface area found on lots or tracts located within the service area.

TRACT. A parcel of land not previously recorded as a legally subdivided lot.

UNDEVELOPED LAND. All land that is not altered from its natural state to an extent that results in 200 or more square feet of impervious surface area.

§55.04 ESTABLISHMENT OF A STORMWATER MANAGEMENT UTILITY AND STORMWATER MANAGEMENT ENTERPRISE FUND

(A) There is hereby established a City of Lowell Stormwater Management Utility that shall be responsible for implementing, operating, and administering the City's stormwater management program as defined herein.

(B) There is hereby established a City of Lowell Stormwater Management Enterprise Fund for the purpose of dedicating and protecting funding applicable to the responsibilities of the Stormwater Management utility including but not limited to rates, fees, charges, fines, and penalties as may be established after due notice and a public hearing by the City Council. Funding may also include other funds transferred or allocated to the Stormwater Management Utility by the City Council. All revenues and receipts of the Stormwater Management Utility shall be placed in the Stormwater Management Enterprise Fund, and all expenses of the utility shall be paid from the Stormwater Management Enterprise Fund, except that other revenues, receipts, and resources not accounted for in the Stormwater Management Enterprise Fund may be applied to stormwater management activities as deemed appropriate by the City Council.

§55.05 JURISDICTION

The jurisdiction (service area) of the Stormwater Management Utility shall extend to the corporate limits of the City, including all areas legally annexed thereto.

§55.06 IMPERVIOUS SURFACE AREA AND EQUIVALENT RATE UNIT

(A) *Impervious surface area* on a given lot or tract directly relates to the volume, rate, and pollutant loading of stormwater runoff discharged from that lot or tract to the City's structural and natural drainage systems and facilities. Therefore, impervious surface area shall be the primary parameter for establishing a rate structure to distribute the cost of services associated with the operation, repair, improvement, and maintenance of public drainage systems and facilities through a schedule of rates, fees, charges, and penalties related to the operation of a Stormwater Management Utility and Stormwater Management Enterprise Fund as established in §55.04.

(B) Based on a third-party analysis of the City's impervious surface area on residential properties throughout the City, an impervious surface area of 2,827 square feet shall be designated as one (1) *Equivalent Rate Unit (ERU)*.

§55.07 SCHEDULE OF FEES AND CHARGES

(A) The schedule of fees and charges set out in this section is hereby adopted and shall apply to all lots and tracts within the corporate limits of the City, except as may be altered by credits and exemptions provided in this Chapter.

(1) All non-residential lots and tracts of land within the corporate limits of the City shall be billed for one (1) Equivalent Rate Unit for each 2,827 square feet or fraction thereof of impervious surface area on the subject lot or tract.

All single-family residential lots or tracts as determined by Gaston County tax records shall be billed for one (1) ERU.

(2) Stormwater service charges shall be fixed and established from time to time by the City Council and maintained on file in the offices of the City Clerk. Stormwater service charges will be determined and modified from time to time by the City Council so that the total revenues generated by said charges will be used to pay the principal and interest on the debt incurred for stormwater purposes and such expenses as are reasonably necessary for providing stormwater services within the service area.

(3) The initial service charge per Equivalent Rate Unit shall be \$6.75 per month.

(B) There will be no service charge for zoning lots or tracts with fewer than 200 square feet of impervious surface area.

§ 55.08 BILLING METHODS, RESPONSIBLE PARTIES

(A) Bills for stormwater service charges shall be sent at regular, periodic intervals. Stormwater service charges may be billed on a combined utility bill. Stormwater service charges that are shown on a combined utility bill may be for a different service period than that used for water or sewer service.

(B) Stormwater service bills for a property that receives water and/or sewer service may be sent to the customer receiving such service. However, where multiple water and sewer accounts exist for a single parcel, the stormwater service bill may be sent to the property owner.

(C) The property owner is ultimately responsible for payment of the stormwater service charge for property for which the party billed has not paid the service charge.

§55.09 PAYMENT PROVISIONS; UTILITY TERMINATION

(A) Where stormwater service charges appear on a combined utility bill and a customer does not pay the service charge for all utilities on the bill, the partial payment will be applied to the respective service charges in the following order: stormwater charges; water charges; and sewer charges.

(B) Stormwater service charges are due to the City within the time period stated on the bill. Bills not paid within this time shall be charged a late fee as set forth in the City Council adopted ordinance for unpaid water and sewer bills (§51.21)

(C) No property owner with outstanding stormwater service charges is entitled to receive other City utility services until the outstanding stormwater service charge on that property is paid. No customer with a delinquent stormwater service account is entitled to open another City utility account at the same or a different location until the delinquency has been satisfied.

(D) If a property is incorrectly billed, or not billed, or a bill is sent to the wrong party, the City may back bill a property for up to a twelve-month period for unpaid charges.

(E) If any citizen wishes to dispute a stormwater service charge billing or any other rates, fees, charges, or penalties adopted pursuant to this Chapter, that citizen must submit a written appeal within 60 days of receipt of the billing, stating the reasons for the appeal and providing information pertinent to the calculation of the billed charge. A timely appeal will stay the penalty deadlines. An appeal of a disputed bill shall be filed with the City's stormwater manager for review and disposition. If the citizen is not satisfied with the disposition of the appeal, the citizen may further appeal the disputed charge to the City Manager or his designee who shall make the final ruling on the validity of the appeal.

§55.10 USE OF STORMWATER UTILITY FUNDS FOR CONSTRUCTION, IMPROVEMENT, AND MAINTENANCE

(A) This division establishes the conditions under which funds from the stormwater utility will be used for work on stormwater system components located outside of city-owned rights of way.

Secondarily, stormwater system components located within city-owned rights of way play an essential function in carrying stormwater and the public impact when such components malfunction is generally greater than when such components are located outside the rights of way. Therefore, the first priority for use of stormwater utility funds is for maintenance of and improvements to existing stormwater system components within city-owned rights of way. Stormwater utility funds may also be used to fund stormwater system construction, improvement, repair, or maintenance on private property and public property outside of city rights of way. The city has an interest in helping to assure that components of the stormwater system that have a relatively greater impact on the overall system are maintained and/or improved, whether located on public or private property. Such components are generally those that carry in whole or in part runoff from publicly maintained streets. The intent of this section is not to transfer responsibility or liability to the city for components on private property. Rather, it is to establish priorities for work on such components, and to facilitate their repair and maintenance by making available stormwater utility funds for such efforts.

- (B) In addition to definitions previously appearing in this article, the definitions below also apply to this section:
- (C) Capital projects means drainage construction projects undertaken by the city as part of the capital improvements program, which are part of the city's long range stormwater management master plan. These include, but are not limited to, major channel improvements and construction of stormwater management facilities to reduce peak flow or pollution.
- (D) Major improvements mean the installation of pipe or other conduit, or channel improvements where the design capacity of the system to accommodate the ten-year storm exceeds the capacity of a 24-inch pipe. These include, but are not limited to, examples listed under minor improvements plus major dredging.
- (E) Minor improvements mean the installation of pipe or other conduit, or channel improvements where the design capacity of the system to accommodate the ten-year storm is at least as great as the capacity of a 15-inch pipe but does not exceed the capacity of a 24-inch pipe. These include, but are not limited to, the installation of pipe, catch basins or junction boxes, channel enlargement and minor dredging, installation of riprap or other erosion control measures, and slip lining.
- (F) Remedial maintenance means repair costing less than \$50,000 of the damaged stormwater system to restore it to the same functional state it was in when new. These include, but are not limited to, replacing broken or missing grates, repair/rebuilding broken inlets, repair/rebuilding headwalls, pipe joint repairs, replacing crushed pipes, major repair of erosion control measures, clearing channels and any other replacement of a component with the same size or performance capacity.
- (G) Routine maintenance means maintenance which allows the stormwater system to function properly by keeping it clean and free of blockage, but does not include construction or major repair. These include, but are not limited to, cleaning grates and inlets, flushing pipes, removing blockages in pipes, removing litter and debris from channels and ditches, minor clearing of overgrown vegetation and minor repair of erosion control measures.
- (H) Criteria for use of stormwater utility funds for construction and maintenance.
 - 1) Equivalent proposed to be spent must carry, in whole or in part, runoff from publicly maintained streets. In addition, such component must not be owned by an entity which is receiving a credit or by an entity which is getting credit for the same type of work. The determination as to whether a component is eligible for stormwater utility funding, and the priority category into which the project falls, shall be made by the stormwater administrator. In addition, projects must

meet the following criteria:

(a) All property owners, excluding the city, must dedicate a temporary construction easement at no cost to the city of a width, length, and type specified by the city. The dedication of such temporary construction easement shall not relieve the property owners, after the expiration of a one-year warranty period, of responsibility or liability thereafter for maintenance of the stormwater system component so constructed or installed upon their property;

(b) The project must not be located on property which is undergoing development or redevelopment unless the development/redevelopment project is funded in part by other city funds, or developed property that has been in existence less than five years.

(c) The project shall be the most cost effective to correct the existing problem, as determined by the stormwater administrator. Any excess costs shall be borne entirely by the property owner;

(d) Major improvements, minor improvements, and remedial maintenance shall fall within one of the priority categories listed in section §55.10 (A).

(I) Priority categories for major improvements, minor improvements, and remedial maintenance. The following priority categories shall be used to determine eligibility for funding and the order in which projects outside of city right-of-way and/or easements are initiated:

(1) Priority one: A clear and immediate danger exists and poses a threat to personal safety or a building's structural integrity;

(2) Priority two: A threat exists to personal safety or a building's structural integrity, but the threat is not immediate;

(3) Priority three: Neither of the conditions specified in subsection (a) or (b) above exists, but the work would reduce damage to property and financial loss.

(J) Amount of funding from stormwater utility funds: The use of stormwater utility funds for new construction, improvement or maintenance projects on property outside the city rights-of-way shall be limited as set forth in sections 55.10 H (1).

(K) Available funding for improvements outside the city's rights-of-way shall first be used where the property owner agrees to pay the owner's proportionate share of the project in accordance with the city's stormwater extension policy, as it may be amended from time to time by city council. Secondary consideration/priority shall be given to those projects in which the private property owner does not agree to participate financially.

(L) For capital, major, minor and remedial improvements, as well as routine maintenance within the city's rights-of-way, stormwater utility funds shall provide 100 percent financing.

(M) Municipal liability: Nothing in this article and no action or failure to act under this article shall or may be constructed to:

(1) Impose any liability on the city, or its departments, agencies, officers, or employees for the recovery of damages; or

(2) Relieve any person engaged in a land disturbing activity of duties, obligations, responsibilities, or liabilities arising from or incident to operations associated with such activity or imposed by the provisions of this article or the laws and regulations pursuant to which it was adopted.

(N) Severability.

(1) If any section, sub-section, paragraph, or clause of this article is held to be invalid or unenforceable, all other sections, sub-sections, paragraphs, and clauses nevertheless continue in full force and remain in effect. In addition, if

the city's use of funds for any portion of its stormwater program is held invalid, all other funded portions of the program shall continue in full force and remain in effect.

§55.10 CREDITS AND EXEMPTIONS

(A) *Credits.* Credits against stormwater management service charges are an appropriate means of adjusting rates, fees, charges, fines, and penalties, under some circumstances, to account for applicable mitigation measures. Credit mechanisms may be established by the City Council and, if established, the means and measures for identifying, issuing, and obtaining credits will be provided in a Credit Manual approved by the City Council. No exception, credit, offset, or other reduction in stormwater management service charges shall be granted based on age, race, tax status, economic status, or religion of the customer, or other condition unrelated to the demand for and/or cost of services provided by the Stormwater Management Utility.

(B) *Exemptions.* Except as provided in this Chapter, no public or private property shall be exempt from Stormwater Management Utility service charges, with the following exceptions:

- (1) Public road rights-of-way that have been conveyed to and accepted for maintenance by the North Carolina Department of Transportation and that are available for use by the general public for transportation purposes shall be exempt from Stormwater Management Utility service charges.
- (2) Public road rights-of-way that have been conveyed to and accepted for maintenance by the City of Lowell and that are available for use by the general public for transportation purposes shall be exempt from Stormwater Management Utility service charges.
- (3) Railroad rights-of-way used for trackage and related appurtenances shall be exempt from Stormwater Management Utility service charges.

§55.11 STORMWATER COMMISSION

(A) The stormwater commission shall provide advice to the mayor, council and staff on matters relating to the various aspects of stormwater management in the city. The commission shall be empowered to hear and make findings on appeals to the actions of the stormwater administrator, relative to this division and other programs.

(B) The stormwater commission shall consist of six members, appointed by the mayor and council. The commission members may also serve as City of Lowell Planning Board Members and shall serve terms that mirror their Planning Board term. Replacements will serve the remainder of the un-expired term of the original appointee. At its first meeting of each new term of service, the commission shall elect a chairman, from its members, who shall preside over the regular and special meetings of the commission. The commission shall also elect a vice-chairman, from its members, to act as chairman in the event of the absence of the chairman at any regular or special meeting of the commission. The commission shall establish and maintain rules of procedure to govern its operation.

This Ordinance shall be effective on this, the 8 day of June 2021.



Sandy Railey
Sandy Railey, Mayor

Attest:

Beverly J. Harris
City Clerk

Approved As To Form:

[Signature]
City Attorney