

ORDINANCE NO. 2117

AN ORDINANCE CREATING AND PROVIDING FOR OPERATION AND FINANCE OF A STORMWATER UTILITY AS AUTHORIZED BY CHARTER ORDINANCE NO. 50 OF THE CITY OF DERBY, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DERBY, KANSAS:

Section 1. Findings and determinations.

It is found, determined, and declared that the stormwater management system which provides for the collection, treatment and disposal of stormwater benefits and provides valuable services to property within the incorporated limits of the City. All real properties within the city benefit from provision, operation and improvement of the stormwater management system. Benefits include but are not limited to provision of adequate systems of collection, conveyance, detention, treatment and release of stormwater; reduction of threats to property and life resulting from stormwater runoff; improvement in general health and welfare through reduction of undesirable stormwater conditions; and improvement of the water quality in stormwater and surface water systems and their receiving waters.

Section 2. Definitions.

The following words, terms and phrases, where used in this ordinance, shall have the following meanings:

- a. "Bonds" means revenue or general obligation bonds or notes heretofore or hereafter issued to finance the costs of stormwater utility or related improvements.
- b. "Certificate of occupancy" means a certificate issued by the building official to authorize lawful occupancy of a newly constructed structure or a new addition to an existing structure.
- c. "Costs of capital improvements" means costs incurred in providing capital improvements to the stormwater management system or any portion thereof, including professional services and studies connected thereto; payment of principal and interest on bonds heretofore or hereafter issued, including payment of delinquencies of principal and interest due on bonds that are otherwise payable from special assessments; studies related to the operation of the stormwater management system; other start-up costs of the stormwater utility; costs related to any National Pollution Discharge Elimination System Permit study mandated by federal laws and regulations; and costs associated with purchasing computers, furniture, and other equipment necessary for the operation of the stormwater utility.
- d. "Debt service" means an amount equal to the sum of:
 - (1) all interest payable on bonds during a fiscal year; and
 - (2) any principal installments payable on such bonds during such fiscal year.
- e. "Developed property" means real property other than undisturbed property.
- f. "Developed nonresidential property" means developed property other than developed residential property.
- g. "Developed residential property" means developed property used for dwelling units.
- h. "Dwelling unit" means a single unit providing independent living facilities for one or more persons in a single-family, duplex, multifamily or condominium residential property.

- i. “Equivalent residential unit” (ERU) means a developed residential property having approximately 2,233 square feet of impervious area.
- j. “Equivalent residential unit rate” (ERU rate) means a stormwater fee of \$3 per month, per ERU.
- k. “Extension and replacement” means costs of extensions, additions and capital improvements to, or the renewal and replacement of capital units of, or purchasing and installing of equipment for, the stormwater management system; land acquisition for the stormwater management system and any related costs thereto; extraordinary maintenance and repairs, including the costs of capital improvements; or any other expense of the stormwater utility that is attributable to operation and maintenance or debt service.
- l. “Fiscal year” means a twelve-month period commencing on the first day of January of any year.
- m. “Impervious area” means the number of square feet of hard surface areas which either prevent or retard entry of water into the soil mantle as it entered under natural conditions upon undisturbed property, or causes water to run off the surface in greater quantities or at an increased rate of flow than under natural conditions upon undisturbed property; impervious area includes but is not limited to roofs, roof extensions, patios, porches, driveways, sidewalks, pavement, athletic courts, compacted dirt, and areas surfaced with gravel, crushed limestone or other similar materials.
- n. “Operations and maintenance” means, without limitation, current expenses, paid or accrued, of operation, maintenance and current repair of the stormwater management system, as calculated in accordance with generally accepted accounting principles (GAAP), and includes, without limiting the generality of the foregoing, insurance premiums, administrative expenses, equipment costs, labor costs, and the cost of materials and supplies used for current operations.
- o. “Property not serviced” means public rights-of-way, including improvements located thereon; public easements upon which publicly owned and maintained stormwater management facilities are constructed; and any other property not serviced by the stormwater management system, as determined by the city manager.
- p. “Revenues” means all rates, fees, assessments, rentals, penalties or other income received by the stormwater utility in connection with the management and operation of the stormwater management system, including amounts received from the investment or deposit of monies in any fund or account, as calculated in accordance with GAAP.
- q. “Soil mantle” means the loose or weathered topsoil and subsoil, residual or transported, overlying parent rock.
- r. “Stormwater fee” means a fee established by this ordinance or as amended from time to time by the city council to pay for operation and maintenance, extension and replacement and debt service associated with the stormwater management system.
- s. “Stormwater management system” means storm sewers that exist at the time this ordinance is adopted or that are hereafter established and all appurtenances necessary to maintenance and operation of the same, including but not limited to pumping stations, lateral storm sewers, main storm sewers, interceptor storm sewers, outfall sewers, surface drains, channels, rivers, streams and other flood control facilities and works for collection, transportation, pumping, treatment, and disposing of storm or surface water.
- t. “Stormwater utility” means the utility created by this ordinance to operate, maintain and improve the stormwater management system and for such other purposes as are set forth in this ordinance.

- u. “Undisturbed property” means real property which has not been altered from its natural condition in a manner which disturbed or altered the topography or soils on the property to the degree that the entrance of water into the soil mantle is prevented or retarded.

Section 3. Creation of stormwater utility.

Pursuant to the provisions of Charter Ordinance No. 50, the city council hereby establishes a stormwater utility and stormwater management system and declares its intention to be responsible for the operation, construction, maintenance and repair of such stormwater management system and stormwater utility.

Section 4. Administration.

Under the direction of the city manager, the stormwater utility, shall:

- a. Administer the acquisition, design, construction, maintenance and operation of the stormwater management system;
- b. Administer and enforce this ordinance and all adopted regulations and procedures relating to the design, construction, maintenance, operation and alteration of the stormwater management system including but not limited to the quantity, quality and velocity of the stormwater conveyed thereby;
- c. Advise the city council on matters relating to the stormwater management system;
- d. Review plans for extension and replacement of the stormwater management system or its components and make recommendations to the city council;
- e. Make recommendations to the city council with respect to adoption of ordinances and regulations to protect and maintain water quality within the stormwater management system in compliance with current and future water quality standards established by state, regional or federal agencies;
- f. Analyze the cost of services and benefits provided by the stormwater management system and the structure of fees, penalties and other revenues of the stormwater utility annually; and
- g. Subject to review by the city council, develop and implement incentives to reduce stormwater fees imposed upon properties utilizing privately owned and maintained stormwater retention or detention facilities that reduce the cost of operating the stormwater utility.

Section 5. Operating budget.

The city shall, as part of its annual budget process, adopt an operating budget for the stormwater utility for 2013 and each succeeding fiscal year. Such operating budgets shall be prepared in accordance with the state budget law, city policies and GAAP.

Section 6. Stormwater fee.

Pursuant to this ordinance, a stormwater fee is hereby imposed on each and every developed residential property and developed nonresidential property, other than property not serviced. Such stormwater fee shall be determined and set pursuant to the provisions of this ordinance in accordance with the ERU and ERU rate established herein, as they may be amended from time to time by the city council.

Section 7. Calculation of stormwater fees.

- a. Developed residential property. The stormwater fee for each developed residential property shall be the ERU rate multiplied by the number of individual dwelling units on the property. When a new dwelling unit is constructed, imposition of the stormwater fee attributable to such dwelling unit shall commence upon issuance of the certificate of occupancy therefor; provided, that if construction is at least fifty percent complete and is halted for a period of three months, then such dwelling unit shall be deemed complete and imposition of the stormwater fee shall commence at the end of such three-month period.
- b. Developed nonresidential property.
 - (1) The stormwater fee for each developed nonresidential property shall be equal to the ERU rate multiplied by the number of ERUs attributable to such property. The number of ERUs attributable to such property shall be calculated by dividing the total square feet of impervious area of such property by 2,233 and rounding the quotient up to the next whole number; provided, that at least 1 ERU shall be assigned to each developed nonresidential property. When undeveloped property becomes developed nonresidential property or additional development occurs on nonresidential property that is already developed, imposition of the stormwater fee attributable thereto shall commence, or increase, upon issuance of the certificate of occupancy therefor; provided, that if no certificate of occupancy will be issued for such development or development has halted for at least three months, then imposition of the stormwater fee shall commence on the earlier of the date the building official reasonably determines that such development is substantially complete or has been halted for at least three months.
 - (2) For developed nonresidential property with multiple occupants that have separately metered water service and make joint use of common impervious areas, the city finance director shall allocate the stormwater fee *pro rata* among such occupants. Any owner or occupant aggrieved by the finance director's allocation decision may appeal such decision to the city manager as provided in this ordinance.
- c. Dwelling unit and impervious surface calculations. For the purpose of computing the stormwater fees established herein, the finance director shall initially and from time to time thereafter determine the number of dwelling units located on developed residential property and calculate the square footage of impervious area for nonresidential real property in the city. Such initial and subsequent calculations may be based on any information and data that the finance director deems pertinent.
- d. Stormwater management fee incentives. The city manager may, subject to review and modification by the city council, establish and implement incentives to reduce stormwater fees that would otherwise be imposed on developed nonresidential properties pursuant to this ordinance. Such incentives may include, but need not be limited to, credits against the applicable stormwater fee for properties that utilize privately owned and maintained retention or detention facilities, when utilization thereof results in a reduction of the operating costs of the stormwater utility.

Section 8. Collection of stormwater fee.

- a. (1) Payment of stormwater fees shall initially be the responsibility of the customer who is paying for water or sewer service for the property; provided, that for properties not served by City water or sewer utilities, stormwater fees shall be the responsibility of the person in possession of the property unless other arrangements have been made. If no

- person is in possession of the property, then the stormwater fees shall be the responsibility of the property owner. The property owner is responsible for all stormwater fees not paid by a City utility customer or other person in possession.
- (2) The stormwater fee shall be billed and collected:
 - (a) monthly, along with charges for water and sewer service, for those properties served by another city utility; and
 - (b) semi-annually for all other properties.
 - (3) The stormwater fee for property served by another City utility shall be part of a consolidated statement and shall be paid by a single payment. In the event a partial payment is received, such payment shall be applied first to the water or sewer portion of the account and then to the stormwater fee portion of the account.
 - (4) Unless otherwise provided herein, stormwater fees shall become due and payable in accordance with the City code, rules and regulations applicable to City water and sewer utilities, and the El Paso Water Co., Inc. Operations Manual.
- b. Penalties for late payment of stormwater fees shall be the same as that imposed for late payment of water and sewer utility charges. In addition to any other remedies or penalties provided by this ordinance or another ordinance of the city, failure of any user of the stormwater management system to pay such fee promptly when due shall subject such user to discontinuance of water services.
 - c. In addition to other available remedies, stormwater fees imposed pursuant to this ordinance, when delinquent, may be certified by the clerk of the city to the county clerk of Sedgwick County to be placed on the *ad valorem* tax roll for collection, subject to the same penalties and to be collected in like manner as taxes, and such fees shall thereafter constitute a lien upon the real estate upon which such charges were imposed, regardless of whether such fees accrued when the property was in possession of the owner or a nonowner.

Section 9. Appeal procedure.

- a. Any person who:
 - (1) is liable for or whose property is assessed a stormwater fee; and
 - (2) is aggrieved by imposition or calculation of a stormwater fee; or
 - (3) believes he or she is entitled to a credit pursuant to applicable guidelines;
 may appeal a decision of the finance director to the city manager. Appeals must be in writing. The city manager shall issue a written decision on any such appeal within thirty (30) days.
- b. The decision of the city manager on any such appeal shall be final unless appealed to the Eighteenth Judicial District Court of the state of Kansas pursuant to K.S.A. 60-2101(d).

Section 10. Stormwater utility enterprise fund.

Stormwater fees collected by the city shall be paid into an enterprise fund which is created hereby, to be known as the "stormwater utility fund." Such fund shall be used for the purpose of paying for extension and replacement, operations and maintenance and debt service of the stormwater management system and to carry out any other lawful purpose of the stormwater utility.

Section 11. Severability.

In the event that any portion or section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall not affect the remaining portions or sections of this ordinance, which shall remain in full force and effect.

Section 12. Effective date.

This Ordinance shall be effective for services rendered on or after January 1, 2013.

ADOPTED BY THE GOVERNING BODY this 10th day of July, 2012.



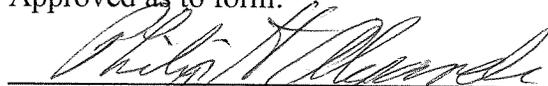
Dion P. Avello, Mayor

ATTEST:



Jean Epperson, City Clerk

Approved as to form:



Philip H. Alexander, City Attorney