

## Chapter 40 - STORMWATER MANAGEMENT

### ARTICLE I. - IN GENERAL

Secs. 40-1—40-18. - Reserved.

### ARTICLE II. - STORMWATER MANAGEMENT UTILITY

Sec. 40-19. - 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:

*Bonds* means revenue or general obligation bonds or notes heretofore or hereafter issued to finance the costs of stormwater management.

*Building permit* means a permit issued by the building inspector/code administrator which permits construction on a structure.

*Costs of capital improvement* means costs incurred in providing capital improvements to the stormwater management system or any portion thereof, including, without limitation, alteration, enlargement, extension, improvement, construction, reconstruction, and development of the stormwater management system; professional services and studies connected thereto; 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 system; costs of the stormwater management service fee study, performed to establish stormwater management service fees for the stormwater utility and to determine other start-up costs of the stormwater utility; costs related to the National Pollutant Discharge Elimination System Permit study, application, negotiation and implementation, as mandated by federal and state laws and regulations; acquisition of real and personal property by purchase, lease, donation, condemnation or otherwise, for the stormwater management system or for its protection; and costs associated with purchasing equipment, computers, furniture, etc., necessary for the operation of the system or the utility.

*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 the bonds during such fiscal year.

*Developed property* means real property, other than undisturbed property, vacant property, or exempt property.

*Director* means the person appointed by the city manager to be the director of the city's public works department or the director's designee.

*Duplex dwelling unit* means an individual residential dwelling unit located in a two-family dwelling (whether an apartment, loft, condominium, or otherwise) which unit itself is not a single-family residential property. A duplex dwelling unit may be located on or as part of a single-family residential property or nonresidential developed property. The term "duplex dwelling unit" may include, but need not be limited to, a dwelling in mixed-use structure, an attached dwelling, an elderly or retirement home dwelling, a live/work dwelling, a townhouse dwelling, or an apartment, as such terms are defined or described in the city's development regulations, as adopted and amended from time to time.

*Effective date* means the date that the ordinance from which this article is derived was published in the official city newspaper and, pursuant to said ordinance, took effect.

*Exempt property* means public right-of-way, public trails, public streets, public alleys, public sidewalks, and public lands and/or easements upon which the public stormwater management system is constructed and/or located.

*Family or families* means, as provided in the city's development regulations, as adopted and amended from time to time.

*Fiscal year* means a 12-month period commencing on the first day of January of any year.

*Multifamily dwelling* means a building or portion thereof designed for occupancy by three or more families.

*Multifamily dwelling unit* means an individual residential dwelling unit located in a multifamily dwelling (whether an apartment, loft, condominium, or otherwise) which unit itself is not a single-family residential property. A multifamily dwelling unit may be located on or as part of single-family residential property or nonresidential developed property. The term "multifamily dwelling unit" may include, but need not be limited to, a dwelling in mixed-use structure, an attached dwelling, an elderly or retirement home dwelling, a live/work dwelling, a multifamily dwelling, a townhouse dwelling, or an apartment, as such terms are defined or described in the city's development regulations, as adopted and amended from time to time.

*Nonresidential developed property* means developed property other than single-family residential property, duplex dwelling unit or a multifamily dwelling unit (both as classified by the city), and includes commercial property and industrial property.

*Operating budget* means the annual stormwater utility operating budget adopted by the city for the succeeding fiscal year.

*Operations and maintenance* means, without limitation, the current expenses, paid or secured, for operation, maintenance and repair and minor replacement of the system, as calculated in accordance with generally accepted accounting practices, and includes, without limiting the generality of the foregoing, insurance premiums, administrative expenses including professional services, equipment costs, labor costs, and the cost of materials and supplies used for current operations.

*Public stormwater management system* means all elements of the stormwater management system that have been officially dedicated to and accepted by the city.

*Revenues* means all rates, fees, assessments, rentals, charges 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 moneys in any fund or account, as calculated in accordance with generally accepted accounting practices.

*Single-family residential property* means developed property used for single-family detached dwelling units. For purposes of this article, if multiple single-family detached dwelling units (including, but not limited to, manufactured homes) are located on one parcel of single-family residential property, then each such unit shall be treated as a separate single-family residential property.

*Stormwater management service fee* means a fee authorized by this article, as set forth in a resolution or an ordinance adopted or amended by the city commission, established to pay operation and maintenance, costs of capital improvements, debt service associated with the stormwater management system, and other costs included in the operating budget.

*Stormwater management system, sewer system, or system* means storm sewers that exist on the effective date of the ordinance from which this article is derived, or that are hereafter established, and all appurtenances necessary in maintaining and operating the same, including, but not limited to, the following, to the extent owned or controlled by the city: pumping stations; enclosed storm sewers; outfall sewers; surface drains; street, curb and alley improvements associated with stormwater or surface water improvements; arches; pipes; natural and manmade wetlands; channels; ditches and culverts; rivers, streams, and creeks; wet and dry bottom basins; and other flood control facilities and works for the collection, transportation, conveyance, pumping, treatment, control, management, and disposal of stormwater or surface water or pollutants originating from or carried by stormwater or surface water.

*Stormwater rate* means a rate or fee structure for the stormwater management service fee, established by city commission resolution or ordinance, charged for each property within the city that established by this article or by a city commission resolution or ordinance to be subject to such stormwater rate. The stormwater rate may be established on a residential property, duplex, multifamily,

nonresidential property, commercial, industrial, square footage, or other basis as the city commission may determine.

*Stormwater utility* or *utility* means the utility created by this article to operate, maintain and improve the stormwater management system and for all other purposes, as set forth in this article.

*Two-family dwelling* means a building or portion thereof designed for occupancy by two families.

*Undisturbed property* or *vacant property* means real property that has not been altered from its natural condition in a manner such that the entrance of water into the soil matrix is prevented or retarded, or real property that is not single-family residential property or nonresidential developed property, a duplex dwelling unit, a multifamily dwelling unit, or exempt property.

(Ord. No. [8102](#), § 1(103-1), 6-25-2019)

Sec. 40-20. - Creation of a stormwater utility; findings and determinations.

- (a) Pursuant to the provisions of K.S.A. 12-3101 et seq., as chartered out of by the city pursuant to Charter Ordinance No. 58, the city's general home rule authority, nuisance abatement authority, police powers and all other authority, the city commission does establish a stormwater utility and declares its intention to operate, construct, maintain, repair and replace the public stormwater management system and operate the stormwater utility.
- (b) The city commission finds, determines, and declares that the elements of the stormwater management system providing for the collection, conveyance, detention, retention, treatment and release of stormwater benefit and provide services to real property within the incorporated city limits. The benefits of the stormwater management system include, but are not limited to, the provision of adequate systems of collection, conveyance, detention, retention, treatment and release of stormwater; the reduction of hazards to property and life resulting from stormwater runoff; improvement in general health and welfare through reduction of undesirable stormwater conditions; improvement of water quality in the stormwater and surface water system and their receiving waters; and appropriate balancing between development and preservation of the natural environment.

(Ord. No. [8102](#), § 1(103-2), 6-25-2019)

Sec. 40-21. - Administration.

The stormwater utility, under the supervision of the director, shall have the power to:

- (1) Administer the acquisition, design, construction, maintenance, operation, extension and replacement of the stormwater management system, including any real and personal property that is, will become a part of, or will protect the system;
- (2) Administer and enforce this article and all regulations, guidelines and procedures relating to the design, construction, maintenance, operation and alteration of the stormwater management system, including, but not limited to, the flow rate, volume, quality and/or velocity of the stormwater conveyed thereby;
- (3) Advise the city commission on matters relating to the stormwater management system;
- (4) Review plans concerning the creation, design, construction, extension and replacement of the stormwater management system and make recommendations to the city commission;
- (5) Make recommendations to the city commission concerning the adoption of ordinances, resolutions, guidelines and regulations in furtherance of this article and/or to protect and maintain water quality within the stormwater management system, in compliance with water quality standards established by state, county, regional and/or federal agencies, as now adopted or hereafter adopted or amended;

- (6) Analyze the cost of services and benefits provided by the stormwater management system and the structure of fees, service charges, fines and other revenues of the stormwater utility at least once each year;
- (7) Make recommendations to the city commission concerning the cost of service and benefits provided by the stormwater management system and the structure of fees, service charges, fines and other revenues of the stormwater utility; and
- (8) Administer programs established pursuant to this article or pursuant to ordinances, resolutions, regulations or guidelines hereafter adopted by the city commission that provide for credits and/or incentives which reduce stormwater management service fees imposed against properties.

(Ord. No. [8102](#), § 1(103-3), 6-25-2019)

Sec. 40-22. - Operating budget.

The city shall, as part of its annual budget process, adopt an operating budget for the stormwater utility for the next following fiscal year. The operating budget shall conform with state budget law, city policy and generally accepted accounting practices.

(Ord. No. [8102](#), § 1(103-4), 6-25-2019)

Sec. 40-23. - Stormwater management service fee.

- (a) *Service fee established.* Subject to the provisions of this article, there is imposed on each and every single-family residential property, nonresidential developed property, duplex dwelling unit and multifamily dwelling unit, a stormwater management service fee. This stormwater management service fee shall be determined and set by the provisions of this article in accordance with the stormwater rate. The amount of the fee shall be set out in the city fee schedule.
- (b) *Statement of stormwater rate.* The stormwater rate that is used to determine the stormwater management service fee for each single-family residential property, nonresidential developed property, duplex dwelling unit and multifamily dwelling unit shall be as established by ordinance or resolution heretofore adopted or hereafter adopted by the city commission, and as thereafter amended by ordinance of the city commission.
- (c) *Stormwater management service fee for single-family residential property.* The stormwater management service fee for single-family residential property shall be determined by reference to the stormwater rate, as established by a city commission resolution or ordinance. The director shall update the database for residential developed properties on an annual basis. In the event of newly constructed residential property, the charge for the stormwater management service fee attributable to that new single-family residential property shall commence as of the first day of the calendar year after the date the building permit has been issued for that new single-family residential property, regardless of whether a certificate of occupancy has been issued.
- (d) *Stormwater management service fee for nonresidential developed property.* The stormwater management service fee for nonresidential developed property shall be determined by reference to the stormwater rate, as established by a city commission resolution or ordinance. The director shall update the database for nonresidential developed properties on an annual basis. In the event of newly constructed nonresidential property, the charge for the stormwater management service fee attributable to that new nonresidential developed property shall commence as of the first day of the calendar year after the date the building permit has been issued for that new nonresidential developed property, regardless of whether a certificate of occupancy has been issued.
- (e) *Stormwater management service fee for duplex dwelling units.*

- (1) The stormwater management service fee for duplex dwelling units shall be determined by reference to the stormwater rate, as established by a city commission resolution or ordinance. The director shall update the database for duplex dwelling units on an annual basis. In the event of newly constructed duplex dwelling units, the charge for the stormwater management service fee attributable to those new duplex dwelling units shall commence as of the first day of the calendar year after the date the building permit has been issued for those new duplex dwelling units, regardless of whether a certificate of occupancy has been issued.
  - (2) Notwithstanding the foregoing, the stormwater management fee shall not be imposed as any individual duplex dwelling unit if, pursuant to the provisions of section 40-24, the owner of such unit can establish that such duplex dwelling unit has not been leased or occupied within the 12 calendar months immediately preceding the date by which an appeal must be filed under section 40-24.
- (f) *Stormwater management service fee for multifamily dwelling units.* The stormwater management service fee for multifamily dwelling units shall be determined by reference to the stormwater rate, as established by a city commission resolution or ordinance. The director shall update the database for multifamily dwelling units on an annual basis. In the event of newly constructed multifamily dwelling units, the charge for the stormwater management service fee attributable to those new multifamily dwelling units shall commence as of the first day of the calendar year after the date the building permit has been issued for those new multifamily dwelling units, regardless of whether a certificate of occupancy has been issued. Notwithstanding the foregoing, the stormwater management fee shall not be imposed as any individual multifamily dwelling unit if, pursuant to the provisions of section 40-24, the owner of such unit can establish that such multifamily dwelling unit has not been leased or occupied within the 12 calendar months immediately preceding the date by which an appeal must be filed under section 40-24.
- (g) *Stormwater management service fee calculation.* The director shall initially, and from time to time, and with reference to the stormwater rate, determine the stormwater management service fee applicable to single-family residential properties, nonresidential developed properties, duplex dwelling units and multifamily dwelling units within the city. To the extent the stormwater rate is established on a square footage basis (whether as to lot size, buildings, or both), the city shall have such square footage calculated to establish the stormwater management service fee. The director shall make the initial calculations with respect to existing single-family residential properties, nonresidential developed properties, duplex dwelling units and multifamily dwelling units and may from time to time change this calculation from the information and data deemed pertinent by the director. With respect to property proposed to be nonresidential developed property, the applicant for development or redevelopment approval shall submit square footage calculations as to lot size and building/improvements size, in accordance with the city's building/plan submission requirements, as established from time to time.

(Ord. No. [8102](#), § 1(103-5), 6-25-2019)

Sec. 40-24. - Appeal procedure.

- (a) Owners of single-family residential property, nonresidential developed property, duplex dwelling units or a multifamily dwelling unit with respect to which a stormwater management service fee has been imposed, who:
- (1) Disagree with the manner by which the applicable stormwater management service fee was determined or calculated; or
  - (2) Believe the stormwater management service fee should not be applied to such owner's multifamily dwelling unit on account of non-leasing or non-occupancy, as provided in section 40-23(e); may appeal the calculation or finding to the city. The owner/appellant must file a written notice of appeal with the city clerk by no later than December 1 of the calendar year for which the stormwater management service fee is applicable. The appealing party shall provide

information concerning the basis of the appeal, and any other information that the director shall request to the appellant. The city clerk will set an appeal date within seven days after the date the timely and fully completed appeal notice is filed with the city. The city manager or his designee will provide a decision in writing on the appeal within seven days after the scheduled appeal date.

- (b) In all instances, the burden of proof shall be on the appellant to demonstrate, by clear and convincing evidence, that the determination of the director, from which the appeal is being taken, is erroneous.
- (c) The filing of a notice of appeal shall not stay the imposition, calculation or duty to pay the fee. The appellant shall pay the stormwater management service fee, as stated in the billing, to the county treasurer. If the city determines that the appellant should not pay a fee, or should pay a fee amount less than the amount appealed from, the city shall issue a check to the appellant in the appropriate amount within ten business days after the date of the applicable written decision, which in no event shall be more than the amount of the fee paid by the appellant as of the date the check is issued.
- (d) The decision of the city manager or his designee shall be final.

(Ord. No. [8102](#), § 1(103-6), 6-25-2019)

Sec. 40-25. - Stormwater management service fee collection.

- (a) The stormwater management service fee shall be billed by the city clerk and collected by the county treasurer. The stormwater management service fee shall be shown as a separate item on the county's annual ad valorem property tax statement, in accordance with the procedures established in an agreement, pursuant to K.S.A. 12-2908, between the city and the county, as authorized. The payment of stormwater management service fee bills for any given property shall be the responsibility of the owner of the property that is provided service by the stormwater system.
- (b) Stormwater management fees shall be subject to interest and penalties for late payment, which interest and penalties shall be the same as that imposed for late payment of ad valorem property taxes collected by the county, and, as to the extent permitted by applicable law, shall be assessed, shall constitute a lien and be collected by the county in the same manner as late charges are assessed and collected by the county for ad valorem property taxes, regardless of whether the stormwater management service fees were incurred when a property owner was in possession of the property or a non-owner was in possession of the property.

(Code 1994, § 103-7; Ord. No. 8077, § 1, 6-12-2018)

Sec. 40-26. - Stormwater utility.

Stormwater management service fees collected by the city shall be paid into a fund that is created and shall be known as the stormwater utility fund. This revenue shall be used for the purpose of paying costs of capital improvements, administration of the stormwater utility, operation, maintenance and debt service of the stormwater management system, and to carry out all other lawful purposes of the utility. In addition, fund transfers from this fund to the bond and interest fund may be made to pay debt service on bonds issued by the city to fund the city's stormwater management activities.

(Code 1994, § 103-8; Ord. No. 8077, § 1, 6-12-2018)

Sec. 40-27. - Issuance of sewer revenue bonds; requirements.

- (a) Having chartered out of, and exempting the city from, the provisions of the Kansas Water Pollution Act, K.S.A. 12-3101 et seq., pursuant to Charter Ordinance No. 58, the city commission shall have

the power to use any unencumbered municipal revenues or to issue revenue bonds from time to time in its discretion, without an election, to finance the planning, altering, enlarging, extending, improving, constructing, and reconstructing the stormwater management system. Such bonds shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the city derived from or held in connection with its sewer system or sewer systems; provided, however, that payment of these bonds, both as to principal and interest, may be further secured by a pledge of other unencumbered municipal revenues or of any loan, grant, or contribution from the federal government, the state, other states, counties, cities, drainage districts, public bodies of the state, or any person.

- (b) Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction and shall not be subject to the provisions of any other law relating to the authorization, issuance, or sale of bonds. Bonds issued under the provisions of this section are declared to be issued for an essential public purpose and governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes as and in accordance with the law of any applicable taxing jurisdiction.
- (c) Bonds issued under this section shall be authorized by ordinance or resolution of the city commission and may be issued in one or more series and shall bear such date or dates, be payable on demand or mature at such time or times, bear interest at such rate or rates, not exceeding the maximum rate of interest prescribed by law (including K.S.A. 10-1009), be in such form, have such rank or priority, be executed in such manner, and have such other characteristics as may be provided by such ordinance or resolution.
- (d) Pending the issuance of revenue bonds authorized by this section, the city commission may issue revenue anticipation bonds of the city for the purpose of providing interim financing for a project, such revenue anticipation bonds being payable from revenue bonds issued to provide permanent financing for activities authorized by this article and the income, proceeds, revenues, and funds of the city derived from or held in connection with its sewer system.

(Code 1994, § 103-9; Ord. No. 8077, § 1, 6-12-2018)