

ORDINANCE NO. 2005-3

AN ORDINANCE TO ENACT CHAPTER 3-7 OF THE MOORHEAD CITY CODE RELATING TO STORM WATER UTILITY AND STORM WATER MANAGEMENT FEE SYSTEM

WHEREAS, the City of Moorhead is responsible for storm water management within the City limits; and

WHEREAS, the governing body of a municipality is authorized by Chapter 444 of the Minnesota Statutes Annotated to adopt a system of charges to fund the implementation of storm water management programs; and

WHEREAS, City Charter Chapter 11 provides that the city may, own, construct, operate, maintain and regulate rates for public utilities; and

WHEREAS, the City wishes to enact a storm water management fee system based on factors that influence runoff, including land use and the amount of impervious surface on the property; and

WHEREAS, all real property in the City, including property owned by public and tax-exempt entities, contributes to runoff and either uses or benefits from the storm water system; and

WHEREAS, storm water runoff can contribute non-point source pollution to the ponds of the City's sub-watersheds and the Red River of the North, and a storm water management program can reduce this type of pollution; and

WHEREAS, a storm water management fee system offers financial management options that can assist the City to improve storm water and drainage services; and

WHEREAS, it is in the interests of the public to fund storm water management with a user fee system that allocates the costs of storm water management to all property owners in the City and that further seeks to base the amount of the storm water management fee on the extent that each parcel of real property contributes to the need for storm water management.

SECTION 1. The Moorhead City Code is amended by enacting Chapter 7 of Title 3 of the ordinances of the City of Moorhead to read as follows:

CHAPTER 7 – STORM WATER UTILITY AND STORM WATER MANAGEMENT FEE SYSTEM

SECTION:

- 3-7- 1: Findings.
- 3-7- 2: Administration and Budget
- 3-7- 3: Definitions.
- 3-7- 4: Establishment of Storm Water Utility Fund.
- 3-7- 5: Purposes of the Fund.
- 3-7- 6: Storm Water Cost of Service Charge.
- 3-7- 7: Classification of Property for Purposes of Determination of the Storm Water Cost of Service Charge.
- 3-7- 8: Base Rate.
- 3-7- 9: Charges for Tax-Exempt Properties; Exemptions.
- 3-7-10: Storm Water Cost of Service Charge Credits.
- 3-7-11: Requests for Correction of the Storm Water Cost of Service Charge.

3- 7-1: FINDINGS:

- (a) The City maintains a system of underground and surface storm water management facilities including, but not limited to, inlets, conduits, manholes, channels, ditches, drainage easements, retention and detention basins, and other components as well as natural waterways.
- (b) The storm water system in the City needs regular maintenance and improvements.
- (c) Water quality of the Red River of the North can be degraded due to erosion and the discharge of nutrients, metals, oil, grease, toxic materials, and other substances into and through the storm water system.
- (d) The public health, safety, and welfare can be adversely affected by periodic poor water quality within the Red River of the North and flooding that results from inadequate management of both the quality and quantity of storm water.
- (e) All real property in the City either uses or benefits from the maintenance of the storm water system.
- (f) The extent of use of the storm water system by each property is dependant on factors that influence runoff, including land use and the amount of impervious surface on the property.
- (g) The costs of improving, maintaining, operating, and monitoring the storm water system should be allocated, to the extent practicable, to all property owners based on the impact of runoff from the impervious areas of their property on the storm water management system.
- (h) Management of the storm water system to protect the public health, safety, and welfare requires adequate revenues and it is in the interest of the public to finance storm water management adequately with a user charge system that is reasonable and equitable so that each user of the system pays to the extent to which he contributes to the need for it.

3-7-2: ADMINISTRATION AND BUDGET: The City Engineer, under the supervision and authority delegated by the City Manager, shall advise the City Manager and City Council on matters related to the Storm Water Management Program and to make recommendations to the City Manager and City Council concerning the adoption of ordinances, resolutions, policies, guidelines and regulations in furtherance of the objectives of the Storm Water Management Program. The City Engineer shall undertake the following activities to implement a storm water management program:

- (a) Prepare studies, acquire data, prepare master plans, analyze policies or undertake such other planning and analyses as may be needed to address concerns related to storm water within the City and to further the objectives of the Storm Water Management Program, and to undertake activities designed to communicate, educate and involve the public and citizens in addressing these issues or in understanding and abiding by the elements of the Storm Water Management Program.
- (b) Design, construct, operate, maintain, expand, or replace any element or elements of the public storm sewer system, including recommending the acquisition of easements by eminent domain, and recommending acquisition of title or easements other than by eminent domain, over any real or personal property that is part of, will become part of, or will protect the public storm sewer system, or is necessary or convenient for the implementation of the Storm Water Management Program.
- (c) Regulate, establish standards, review, inspect the design, construction or operation and maintenance of any storm water management system that is under the control of private owners, whether or not such systems are required or intended for dedication to the public sewer system,

when such systems have the potential to impact, enhance, damage, obstruct or affect the operation and maintenance of the public storm sewer system or the implementation of the Storm Water Management Program.

- (d) Regulate, establish standards, review and inspect land use or property owner activities when such activities have the potential to affect the quantity, timing, velocity, erosive forces, quality, environmental value or other characteristics of storm water which would flow into the Storm Water Management System or in any way effect the implementation of the Storm Management Program.
- (e) Undertake any activities related to storm water management when such activities are recommended by applicable federal, state or local agencies or when such activities are required by any permit, regulation, ordinance, or statute governing storm water or water quality concerns.
- (f) Analyze the cost of services and benefits provided by the Storm Water Utility and the structure of fees, service charges, credits, and other revenues on an annual basis and make recommendations to the City Council regarding same.
- (g) Undertake authorized expenditures as required to implement these activities, including all costs of capital improvements, operations and maintenance, debt services, and other costs as required.

The City Council shall, as part of its annual budget process, adopt capital and operating budgets for the Storm Water Utility. The operating budget shall conform with state law, City policy and generally accepted accounting practices.

3- 7-3: DEFINITIONS: For the purposes of this Chapter, the following words and phrases shall have the meanings indicated:

- (a) **Base Rate** means the Cost of Service Charge on a base unit. The monthly Cost of Service Charge for a single-family residential property in the City equals the base rate.
- (b) **Base Unit** means the sample based average impervious surface area associated with a single family residential property in the City.
- (c) **Charge or Cost of Service Charge or Storm Water Management Fee** means the monthly charge established under this Chapter and charged to owners of parcels or pieces of real property to fund the costs of storm water management and of operating, maintaining, and improving the storm water system in the City.
- (d) **City Engineer** means the City Engineer for the City of Moorhead, Minnesota or his or her designee.
- (e) **Developed Property** means real property altered from its natural state by the addition of any improvements such as buildings, structures, or other impervious area.
- (f) **Impervious Surface Area** means the number of square feet of horizontal surface covered by buildings and other impervious surfaces. All building measurements shall be made between exterior faces of walls, foundations, columns or other means of support or enclosure.
- (g) **Impervious Surface** means a surface which receives rainfall or other precipitation and is compacted or covered with material that is resistant to infiltration by water, including, but not limited to, most conventionally surfaced streets, roofs, sidewalks, patios, driveways, parking lots, and any other oiled, graveled, graded, compacted, or other surface which impedes the natural infiltration of surface water.
- (h) **Multiple Family Dwelling** means a multiple family dwelling consisting of two or more dwelling units

including trailer parks. Multiple family dwellings service Multiple Family Tenants with a common water meter(s).

- (i) **Multiple Family Tenant** means any single family dwelling unit within a multiple family dwelling consisting of two or more family dwelling units including manufactured homes in trailer parks.
- (j) **Other Developed Property** means metered non-residential, non-multiple family, non-multiple family tenant, industrial and non-industrial business enterprises, schools, parks, government and public customers. Non-metered commercial tenant units are considered to be an integral part of the metered customer and are not considered individually.
- (k) **Property Owner** means the property owner of record as listed in Clay County records. A property owner includes any individual, corporation, firm, partnership, or group of individuals acting as a unit, and any trustee, receiver, or personal representative.
- (l) **Single Family Dwelling** means any single family dwelling or Multiple Family Tenant with an individual water meter.
- (m) **Storm Water Utility Fund or Fund** means the Fund created by this Chapter to operate, maintain, and improve the City's Storm Water Management Program.
- (n) **Storm Water Management** means the planning, design, construction, regulation, improvement, repair, maintenance, and operation of facilities and programs relating to water, flood plains, flood control, grading erosion, tree conservation, and sediment control.
- (o) **Storm Water System** means the system or network of storm and surface water management facilities including but not limited to inlets, conduits, manholes, channels, ditches, drainage easements, retention and detention basin, and other components as well as all natural waterways.
- (p) **Undeveloped Property** means any property, including forest or agricultural land, which has one-third or less of the base unit of impervious surface area.
- (q) **Water** means any storm water, surface water, snow-melt or ground water.

3-7-4: ESTABLISHMENT OF STORM WATER UTILITY FUND:

- (a) The Storm Water Management Program is established and the Storm Water System is provided to protect the waterways and land in the City by controlling flooding and to protect the natural environment. The costs of designing, developing, improving, operating, maintaining, and monitoring the Storm Water System required in the City should, therefore, be allocated, to the extent of practicable, to all property owners based on their impact on the storm water system. In order to provide revenue to fund those costs and to fairly allocate those costs, a Storm Water Utility Fund ("the Fund") is established.
- (b) All revenues collected from the Cost of Service Charge, grants, permit fees and other charges collected under this Chapter shall be deposited to the Fund. The City Council may make additional appropriations to the Fund. All disbursements from the Fund shall be for the purposes of the Fund as set forth in Section 3-7-5.

3-7-5: PURPOSES OF THE FUND: The Fund shall be used for the following purposes:

- (a) The acquisition by gift, purchase or condemnation of real and personal property, and interests therein, necessary to construct, operate, and maintain storm water control facilities.
- (b) All costs of administration and implementation of the storm water management program, including

the establishment of reasonable operating and capital reserves to meet unanticipated or emergency storm water management requirements.

- (c) Engineering and design, debt service and related financing expenses, construction costs for new facilities and enlargement or improvement of existing facilities.
- (d) Operation and maintenance of the storm water system.
- (e) Monitoring, surveillance, and inspection of storm water control devices.
- (f) Water quality monitoring and water quality programs.
- (g) Retrofitting developed areas for pollution control.
- (h) Inspection and enforcement activities.
- (i) Billing and administrative costs.
- (j) Other activities, which are reasonably required.

3-7-6: STORM WATER COST OF SERVICE CHARGE: A monthly Cost of Service Charge is imposed upon all real property in the City to fund Storm Water Management programs. This service

charge shall be known as the Storm Water Cost of Service Charge or Storm Water Management Fee. The Charge is based on: (1) The extent to which each property creates a need for the Storm Water Management program; (2) the amount of impervious area on each property; and (3) the cost of implementing a Storm Water Management program.

3-7-7: CLASSIFICATION OF PROPERTY FOR PURPOSES OF DETERMINATION OF THE STORM WATER COST OF SERVICE CHARGE.

- (a) For purposes of determining the Storm Water Cost of Service Charge all properties in the City are classified into one of the following classes:
 - 1. Single Family Dwelling;
 - 2. Multiple Family Dwelling;
 - 3. Other Developed Property; or
 - 4. Undeveloped Property.
- (b) ***Single Family Dwelling Storm Water Cost of Service Charge.*** The intensity of development of most parcels of real property in the City classified as Single Family Dwelling is similar and it would be excessively and unnecessarily expensive to determine precisely the square footage of the improvements (such as buildings, structure, and other impervious area) on each such parcel. Therefore, all Single Family Dwelling properties in the City shall be charged a flat Storm Water Cost of Service Charge, equal the Base Rate, regardless of the size of the parcel or the improvements.
- (c) ***Multiple Family Dwelling Storm Water Cost of Service Charge.*** The Charge for Multiple Family Dwelling Property in the City shall be the Base Rate multiplied by the numerical factor obtained by dividing the total impervious area (square feet) of the property by one Base Unit. That result will then be indexed to a fee schedule, recommended by the City Engineer and adopted by the City Council, that groups properties with similar ranges of impervious area together. The impervious surface area of Multiple Family Dwelling Property may be determined through site examination, mapping information, aerial photographs, and other available information. The minimum Storm Water Cost of Service Charge for Multiple Family Dwelling Property shall equal the Base Rate for Single Family Dwelling property.

- (d) **Other Developed Property Storm Water Cost of Service Charge.** The Charge for Other Developed Property in the City shall be the Base Rate multiplied by the numerical factor obtained by dividing the total impervious area (square feet) of the property by one Base Unit. That result will then be indexed to a fee schedule, recommended by the City Engineer and adopted by the City Council, that groups properties with similar ranges of impervious area together. The impervious surface area of Other Developed Property may be determined through site examination, mapping information, aerial photographs, and other available information. The minimum Storm Water Cost of Service Charge for Other Developed Property shall equal the Base Rate for Single Family Dwelling property.
- (e) **Undeveloped Property.** Undeveloped Property shall be exempt from the Storm Water Cost of Service Charge.

3-7-8: BASE RATE: The City Council shall, by Resolution, establish the monthly Base Rate and charge schedule for the Storm Water Cost of Service Charge. The Base Rate shall be calculated to insure adequate revenues to fund the costs of Storm Water Management and to provide for the operation, maintenance, and capital improvements of the Storm Water System in the City.

3-7-9: CHARGES FOR TAX-EXEMPT PROPERTIES; EXEMPTIONS:

- (a) The Council finds that all real property in the City contributes to runoff and either uses or benefits from the maintenance of the Storm Water System. Therefore, except as otherwise provided in this Section, all real property in the City, including property that is tax exempt from property tax, shall be charged the monthly Storm Water Cost of Service Charge.
- (b) Other Developed Property, which is owned by the City shall not be exempt from the Charge. However, public right of way, public trails, public streets, public alleys, public sidewalks, and public lands and/or easements in or upon which public storm or sanitary sewers are constructed and/or located shall be exempt from the charge.

3-7-10: STORM WATER COST OF SERVICE CHARGE CREDITS: The City Council may, by resolution establish a system of credits recommended by the City Engineer, which may reduce the Storm Water Cost of Service Charge for approved storm water runoff reduction or treatment.

3-7-11: REQUESTS FOR CORRECTION OF THE STORM WATER COST OF SERVICE CHARGE:

- (a) A property owner may request correction of the Charge by submitting the request in writing to the City Engineer. Grounds for correction of the Charge include:
1. Incorrect classification of the property for purposes of determining the Charge;
 2. Errors in the square footage of the impervious surface area of the property;
 3. Mathematical errors in calculating the Charge to be applied to the property; and
 4. Errors in the identification of the property owner of a property subject to the Charge.
 5. Mathematical errors in calculating credits pursuant to Section 3-7-10.
- (b) The City Engineer shall make a determination within 30 days after receipt of the property owner's completed written request for correction of the Charge. The City Engineer's decision on a request for correction of the Charge shall be final.
- (c) A property owner must comply with all rules and procedures adopted by the City when submitting a request for correction of the Charge and must provide all information necessary for the City Engineer to make a determination on a request for correction of the Charge. If a property owner alleges an error under Section 3-7-11(a) (2), the request for correction must include a certification

by a registered engineer or professional land surveyor of the impervious surface area of the property. Failure to comply with the provisions of this subsection shall be grounds for denial of the request.

SECTION 2. The rate structure set forth within this Ordinance shall be effective January 1, 2006. All other provisions shall be effective immediately.

SECTION 3. This Ordinance shall take effect upon publication in accordance with the Moorhead City Charter.

PASSED by the City Council of the City of Moorhead this ____ day of _____, 2005.

APPROVED BY:

MARK VOXLAND, Mayor

ATTEST:

KAYE E. BUCHHOLZ, City Clerk

First Consideration: February 22, 2005

Second Consideration:

Date of Publication:

TITLE AND SUMMARY OF ORDINANCE NO. 2005-3

The following Ordinance is hereby published by title and summary:

1. Title of Ordinance:

An Ordinance to Enact Chapter 3-7 of the Moorhead City Code Relating to Storm Water Utility and Storm Water Manager Fee System

2. Summary of Ordinance:

The City of Moorhead is responsible for storm water management within the City limits and the Moorhead City Council, as the governing body of a municipality, is authorized by Chapter 444 of the Minnesota Statutes Annotated to adopt a system of charges to fund the implementation of storm water management programs. This ordinance enacts a storm water management fee system based on factors that influence runoff, including land use and the amount of impervious surface on the property.

This Ordinance shall take effect upon publication in accordance with the Moorhead City Charter.

3. Availability of Ordinance:

A complete, printed copy of this Ordinance is available for inspection by any person during regular business hours in the office of the City Clerk, Third Floor, City Hall, 500 Center Avenue, Moorhead, Minnesota.

This Ordinance was passed by the City Council of the City of Moorhead on the ____ day of, ____ 2005.

APPROVED:

MARK VOXLAND, Mayor

ATTEST:

KAYE BUCHHOLZ, City Clerk

Date of Publication: