

**ORDINANCE NO. 680**

**CITY OF FORT ATKINSON, JEFFERSON COUNTY, WISCONSIN  
AN ORDINANCE OF THE CITY OF FORT ATKINSON  
CREATING CHAPTER 98, ARTICLE V.  
PERTAINING TO THE CREATION OF A STORMWATER UTILITY**

The Common Council of the City of Fort Atkinson does ordain as follows:

WHEREAS, the Common Council of the City of Fort Atkinson makes the following findings and determinations:

1. The management of stormwater and other surface water discharges within and beyond the City is a matter that affects the health, safety and welfare of the City, its residents and businesses.
2. Surface water runoff may cause erosion of lands and threaten businesses and residences, and other facilities with water damage. Stormwater and other surface water discharge may create environmental damage to the rivers, streams and other bodies of water within and near the City.
3. New federal and state regulations are being adopted which will require the City to improve its management of stormwater to reduce pollution to the area's streams, rivers and wetlands.
4. In order to effectively manage stormwater and other surface water discharges, the City operates and maintains a stormwater management system, made up of natural and man-made facilities, and provides other services to manage the quantity and quality of stormwater and other surface water discharges in the City. The City also maintains compliance with all regulatory requirements for stormwater.
5. The cost of the stormwater management system, providing stormwater management services, and maintaining regulatory compliance are costs incurred due to the discharge of stormwater and surface water from properties in the City. It is appropriate for these costs to be reasonably allocated to those properties which result in stormwater and surface water discharges.
6. In order to protect the health, safety and welfare of the public, the Common Council hereby exercises its authority to establish a stormwater utility and establish the rates for stormwater management services.
7. In promulgating the regulations contained in this section, the City is acting pursuant to authority granted by Chapters 62 and 66 of the Wisconsin Statutes, 2007-2008, including, but not limited to, Sections 66.0621, 66.0809, 66.0821, and 66.0627.

SECTION 1. That Chapter 98, UTILITIES, Article V, Stormwater Utility, of the City of Fort Atkinson Municipal Code, pertaining to the creation of a stormwater utility is created to read as follows:

**ARTICLE V. Stormwater Utility.**

Sec. 98-601. Creation.

There is hereby established a stormwater utility in the City of Fort Atkinson. The operation of a stormwater utility shall be under the supervision of the Director of Public Works.

Sec. 98-602. Authority.

The City, acting through the stormwater utility, may without limitation due to enumeration, do the following:

- (a) Acquire, construct, lease, own, operate, maintain, extend, expand, replace, clean, dredge, repair, manage and finance such facilities and equipment, as are deemed by the City to be proper and necessary for storm and surface water management. These facilities may include, without limitation due to enumeration, surface and underground drainage facilities, pollution control practices, sewers, watercourses, retaining walls, ponds, streets, roads, ditches and such other natural or man-made facilities as will support a stormwater management system.
- (b) Undertake any operations or activities, or provide any services deemed by the City to be proper and necessary for storm and surface water management.
- (c) Maintain compliance with all regulatory requirements for storm and surface water management.

Sec. 98-603. 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 content clearly indicates a different meaning:

City Credit Policy. The City Credit Policy is a written document prepared by the Director and approved by the City which sets forth the criteria under which customers may be eligible for a credit to reduce stormwater charges. The City Credit Policy shall be available through the Department of Public Works prior to the initial billing.

Developed Property. The term “developed property” means property that is developed by the addition of an improvement such as a building, structure, grading, other impervious surface, or substantial landscaping, but excluding publicly-owned rights of way. A new improvement shall be considered complete upon issuance of a Certificate of Occupancy, or if no such certificate is issued, upon completion of construction or final inspection. A new improvement shall also be considered complete if the construction project is at least fifty percent (50%) complete, and then is halted for a period of three (3) months or more.

Director. The term “Director” means the Director of Public Works, or his/her designee.

Equivalent Runoff Unit (ERU) means 3,096 square feet, which is approximately the statistical average impervious area of one single family residential housing unit within the City. This definition only applies to this chapter, and not to any other City of Fort Atkinson Ordinance.

Impervious Area or Impervious Surface. The terms “impervious area” or “impervious surface” means a horizontal surface that 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, streets, roofs, sidewalks, parking lots, compacted gravel surfaces, as well as other similar surfaces.

Customer. The term “customer” means the owner or non-owner user of a property with impervious area in the City.

Non-Residential Property. The term “non-residential property” means any developed property not defined as “residential property”, including, but not limited to, transient rental (such as hotels and motels), multifamily apartment buildings or condominiums more than four units, commercial, industrial, institutional, governmental property, and parking lots.

Residential Property. The term “residential property” means any developed property developed exclusively for residential purposes with four or fewer residential housing units.

#### Sec. 98-604. Rates and Charges

- (a) User charges shall be imposed on all developed property with impervious area in the City to recover all or a portion of the costs of the stormwater utility. The amount of such charges shall be based on a rate per equivalent runoff unit (ERU). The rate per ERU shall be established pursuant to further resolution of the City of Fort Atkinson Common Council and shall be fair and reasonable. A schedule of current rates shall be maintained and on file in the office of the City Clerk.
- (b) All developed property with impervious area shall be assigned ERUs. Each single family residential property shall be assigned one (1) ERU. Each two family residential property shall be assigned 0.7 ERUs/dwelling unit. Each three and four-family residential property shall be assigned 0.5 ERUs/dwelling unit. Non-residential property shall be assigned ERUs based upon the amount of impervious area on the property divided by 3,096 square feet, however shall not be less than one (1) ERU.
- (c) In the event the owner and non-owner users of a particular property are not the same, the liability for the charges attributable to that property shall be joint and several.
- (d) The Director shall prepare a City Credit Policy which sets forth available credits to reduce stormwater charges for customers with riparian lands, and for customers who have taken additional stormwater management steps which reduce the City's stormwater

management costs (i.e. does not include credits for rain barrels, rain gardens or minor stormwater management steps).

(e) Undeveloped and agricultural – no stormwater charge shall be assigned.

#### Sec. 98-605. Payments

(a) Stormwater charges will be billed to the utility customer and shall be payable at the same time and in the same manner as water and wastewater charges. A stormwater utility bill will be established for those properties that do not receive a water /wastewater bill. These bills will be payable at the same time as the other water/wastewater bills. Such charges shall not be payable in installments.

(b) The owner of any property, which is occupied by tenants, shall have the right to examine during normal business hours the appropriate records of the City to determine whether such fees and charges have been paid by such tenants.

(c) Delinquent stormwater charges may be placed as a lien upon the property as provided in Sections 66.0821(4)(d) and 66.0809, Wisconsin Statutes.

#### Sec. 98-606. Adjustments and Credits

(a) A non-residential customer may apply for an adjustment to the ERUs assigned to his, her or its property if the customer believes the impervious area measurements on which the ERU calculation is based are inaccurate.

(b) Residential and non-residential customers may apply for a credit to their stormwater charge if the property is eligible for a credit pursuant to the City Credit Policy.

(c) Procedure to apply for adjustments or credits.

(1) A customer may submit a request for an adjustment or credit at any time. All such requests shall be submitted to the Director on forms provided by the City.

(2) The Director shall have the authority to develop and administer the procedures and standards for adjustment of ERUs or granting of credits as established in this section.

(3) The non-residential customer requesting the adjustment may be required, at his, her or its own expense, to provide supplemental information to the Director.

(4) Once a completed request and all required information is fully submitted, the Director shall have thirty (30) calendar days within which to render a written decision. The Director shall notify the requester in writing of the decision by first class mail addressed to the individual at the address listed within the request. Service is conclusive upon mailing.

(5) If a request is granted, stormwater charges shall be adjusted on a going forward basis.

## Sec. 98-607. Appeals Process

- (a) The City of Ft. Atkinson elects not to be subject to the administrative review procedure provisions contained within Chapter 68 of the Wisconsin Statutes, and established this Section as its municipal review procedure. As a condition precedent to challenging any stormwater utility charge, the charge must be timely paid in full under protest to the City.
- (b) Within thirty (30) calendar days after the date of mailing the Director's decision, the customer may appeal the Director's decision to the Board of Public Works (Board) by filing a written appeal with the City Clerk. The written appeal shall specify all grounds for the challenge and shall state the amount of stormwater charge that the appellant considers to be appropriate. The appeal must specifically address the Director's conclusions and not merely repeat the bases for the initial request. Failure to timely and properly appeal shall deprive the Board of jurisdiction to hear the appeal.
- (c) The Board shall conduct a formal hearing at such time and place as designated in a hearing notice to the appellant, providing a minimum of five (5) business days notice to the appellant. In considering an appeal, the BOARD shall determine whether the stormwater charge is fair and reasonable. The decision shall be based upon the evidence presented at the hearing. The Board shall notify the appellant in writing of its determination by first class mail addressed to the individual at the address listed within the appeal. Service is conclusive upon mailing.
- (d) Within thirty (30) calendar days after the date of mailing the Board decision, the customer may appeal the Board's decision to the Common Council following the process set forth in subsection E of this section. Failure to timely and properly appeal shall deprive the Common Council of jurisdiction to hear the appeal.
- (e) The Common Council shall consider the appeal in the same manner as a new resolution, pursuant to its rules for procedure in existence at the time of consideration. The City Clerk shall provide written notice no later than five (5) business days to the address listed within the appeal of the time and place of the Common Council's consideration of the appeal. In considering an appeal, the Common Council shall determine whether the stormwater charge is fair and reasonable. The Common Council shall base its decision upon the information presented at its meeting. The City Clerk shall notify the appellant in writing of the Common Council's determination by first class mail addressed to the individual at the address listed within the appeal. Service is conclusive upon mailing.
- (f) As a condition precedent to any adjustment or credit request, or any appeal, a customer must have paid in full all stormwater charges to the City.
- (g) If an adjustment request is granted, stormwater charges shall be adjusted on a going forward basis.

## Sec. 98-608. Alternative Method to Collect Stormwater Charges.

In addition to any other method for collection of the charges established under this section, or subsequent resolution, such charges may be, and are hereby authorized to be levied and imposed on property as a special charge pursuant to Section 66.0627, Wisconsin Statutes. The mailing of the bill for stormwater charges to a property owner shall serve as notice to the property owner that failure to pay the charges when due may result in the charges being imposed pursuant to the authority of Section 66.0627, Wisconsin Statutes. The procedures contained in Section 66.0627, Wisconsin Statutes, shall govern such notice and further collection procedures.

Sec. 98-609. Budget Excess Revenues.

The stormwater utility finances shall be accounted for in a separate Stormwater Utility Fund by the City. The Finance Director or his/her designee, shall prepare an annual budget, which is to include all operation and maintenance costs, debt service, capital, and other costs related to the operation of the stormwater utility. The budget is subject to approval by the Common Council. Any excess of stormwater utility revenues over expenditures in a year will be retained by the Fund for subsequent years' needs of the stormwater utility.

This ordinance shall be interpreted liberally to secure the ends sought hereby. If any provision of this ordinance is found to be illegal, the remaining provisions shall remain in full force and effect.

Adopted: September 1, 2009.