

## Chapter 301

### STORMWATER UTILITY

**[HISTORY: Adopted by the Town Board of the Town of Scott 11-10-2009. Amendments noted where applicable.]**

#### GENERAL REFERENCES

Construction site erosion control — See Ch. 73.

Illicit discharges to storm sewer system — See Ch. 260, Art. I.

Stormwater management — See Ch. 297.

Zoning — See Ch. 375.

#### **§ 301-1. Applicability.**

The rules, regulations, and rates set forth in this chapter shall apply to all real property within the boundaries of the Town of Scott.

#### **§ 301-2. Findings.**

- A. The Town of Scott finds that the management of stormwater and other surface water discharges within and beyond its borders is a matter that affects the public health, safety, and welfare of the Town, its citizens, businesses, and others in the surrounding area. The development of land increases impervious surfaces and results in increased stormwater runoff. Surface water runoff may create erosion of lands, threaten businesses and residences with water damage and create sedimentation and other environmental damage in surrounding areas. Specific requirements have been placed on the Town through the Wisconsin Department of Natural Resources (DNR) Regulation 216, requiring the Town to improve the quality of stormwater discharged to the waters of the state.
- B. The cost of operating and maintaining the Town stormwater management system, ensuring regulatory compliance, and financing necessary plans, studies, repairs, replacements, improvements and extension thereof should, to the extent practicable, be allocated in relationship to the benefits enjoyed and services received therefrom.

#### **§ 301-3. Establishment, management and authority.**

- A. In order to protect the health, safety and welfare of the public, Town assets, and natural resources, the Town Board is exercising its authority to establish the Town of Scott's Stormwater Utility and set the rates for stormwater management services.
- B. The Town Board shall operate and manage the Stormwater Utility.
- C. The Town is acting under the authority of Chs. 60, 61 and 66, Wis. Stats., and particularly, without limitation, the following sections: §§ 61.34, 66.0809, 66.0811, and 66.0821, Wis. Stats.

**§ 301-4. Operation.**

- A. Creation and supervision. The Town of Scott hereby establishes a Stormwater Utility. The operation of the Stormwater Utility shall be subject to the review of the Board. The Director shall be responsible for the maintenance and management of the Stormwater Utility under direction of the Board.
- B. Facilities. The Town, through the Stormwater Utility, may acquire, construct, lease, own, operate, maintain, extend, expand, replace, clean, dredge, repair, conduct, manage, and finance such facilities as are deemed by the Town to be proper and reasonably necessary for a system of stormwater and surface water management. These facilities may include, but are not limited to, land, surface and underground drainage facilities, storm sewers, watercourses, ponds, ditches, street sweepers, leaf vacuums and such other facilities and equipment relating to collection of runoff, sediments, and other pollutants as will support a stormwater management system, whether such facilities are owned and operated directly by the Town or are provided under statutory or contractual provisions, and furnishing of which facilities creates or imposes a cost or charge upon the Town for the services afforded by such facilities.
- C. Transfer of assets and outstanding debt. Effective January 1, 2009, the following assets and debts of the Town are hereby transferred to the Stormwater Utility:
  - (1) The land rights and improvements of the Town, including such other rights as determined to exist, and equipment for the following components of the public stormwater system:
    - (a) Storm sewers, catch basins, and culverts.
    - (b) Stormwater ponds and related appurtenances.
    - (c) Access structures.
    - (d) Greenways.
    - (e) Street sweepers, leaf vacuums, trucks, loaders, backhoes, pumps, and other maintenance equipment.
  - (2) Debt service on all outstanding general obligation debt issued for stormwater management purposes.
- D. Rates and charges. The Town, through the Stormwater Utility, may establish such rates and charges as are necessary to finance planning, design, construction, maintenance, administration, and operation of the facilities in accordance with the procedures set forth in this chapter.
- E. Budgeting process. The Town, through the Stormwater Utility, shall prepare an annual budget, which is to include all operation and maintenance costs, debt service, administrative fees, and other costs related to the operation of the Stormwater Utility. The costs shall be spread over the rate classification as determined by the Board. The budget is subject to the public hearing and approval process set forth in § 65.90, Wis. Stats.

- F. Excess revenues. The Town will retain an excess of revenues over expenditures in a year in a segregated Stormwater Enterprise Fund, which shall be used exclusively for purposes consistent with this chapter.
- G. Financing methods. The Town has the authority, as provided in §§ 66.0821, 66.0627 and 66.0703, Wis. Stats., and may exercise such authority with respect to all financing methods such as user charges, special charges, special assessments and liens as provided therein.

**§ 301-5. Definitions.**

In this chapter, the following terms have the meanings set forth below:

**AGRICULTURAL LAND USES** — Related to or used for production of food and fiber, including but not limited to general farming, livestock and poultry enterprises, grazing, nurseries, horticulture, viticulture, truck farming, forestry, sod production, cranberry productions, and wild crop harvesting and includes lands for on-site buildings and other structures necessary to carry out such activities.

**CUSTOMER** — Any person, owner or occupant, firm, partnership, cooperative, municipality, organization, governmental agency or political entity provided with stormwater management services by the Town of Scott Stormwater Utility.

**DETENTION STORAGE** — The temporary detaining or storage of stormwater in reservoirs under predetermined and controlled conditions, with the rate of discharge regulated by installed devices.

**DEVELOPED PROPERTY** — The real property that has been altered from its natural state by the addition of any improvements that may include a building, structure, impervious surface, and change in grade or landscaping.

**DUPLEX UNIT** — A residential space containing two dwelling units.

**DWELLING UNIT** — One or more rooms that are arranged, designed, or used as living quarters for one family only. Individual bathrooms and complete kitchen facilities, permanently installed, shall always be included for each dwelling unit.

**EQUIVALENT RUNOFF UNIT or ERU** — The statistical average of horizontal impervious area of single-family homes within the Town of Scott as of the date of the adoption of this chapter. The horizontal impervious area includes but is not limited to all areas covered by structures, roof extensions, patios, porches, driveways, and sidewalks.

**FARMSTEAD HOME SITE** — That portion of any agricultural property which contains one or more dwelling units and vehicle garage, regardless of whether the dwelling units are on a separate lot or parcel.

**IMPERVIOUS AREA or IMPERVIOUS SURFACE** — Areas that have been paved, covered or compacted to inhibit the natural infiltration of water into the soil or cause water to run off the area in greater quantities or at an increased rate of flow from the present under the natural conditions as undeveloped property. Such areas may include, but are not limited to, roofs, roof extensions, patios, porches, driveways, sidewalks,

pavement, gravel, athletic courts, and compacted surfaces, private roads, and parking lots. Excluded from this definition are undisturbed land, lawn, fields, and public streets.

**LOT** — A parcel of land having a width and depth sufficient for one principal building and its accessory building together with open spaces required by Chapter 375, Zoning, of the Code of the Town of Scott, and abutting a public street or access easement.

**MULTIFAMILY UNIT** — A residential space consisting of three or more dwelling units within a single building, including apartments, residential condominiums, and townhouses.

**NONRESIDENTIAL PROPERTY** — Any developed lot or parcel other than residential property as defined herein, including but not limited to transient rentals (such as hotels and motels), mobile home parks, commercial, industrial, institutional, or governmental property, parking lots, and agricultural accessory buildings.

**PARCEL** — A legal unit of land division as recorded with the Brown County Register of Deeds.

**RESIDENTIAL PROPERTY** — Any lot, parcel or farmstead home site with a vehicle garage developed exclusively for residential purposes, including single-family homes, duplex units, multifamily units, manufactured homes and condominiums, but not including transient rentals (such as hotels and motels) and mobile home parks.

**RUNOFF** — The surface water, including rain and snowmelt, which is inhibited by impervious surfaces from naturally infiltrating into soil.

**SINGLE-FAMILY HOME** — Any residential property consisting of a single dwelling unit.

**STORMWATER SYSTEM** — All public storm sewers, drainage conduits, drainage conveyances, roadside ditches, curb and gutter, and public greenways, and all improvements thereto, which by this chapter are constituted as the property and responsibility of the Stormwater Utility, to be operated to, among other things, conserve water, control discharges necessitated by rainfall events, incorporate methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, environmental degradation and water pollution or otherwise affect the quality and quantity of discharge from such system.

**STORMWATER UTILITY** — The utility established under this chapter for the purpose of managing stormwater and imposing charges for the recovery of costs connect with such stormwater management services.

**UNDEVELOPED PROPERTY** — Property that has not been altered by the addition of any improvements, such as building, structure, change of grade or substantial landscaping; agricultural use of property; or property that has been graded for residential or commercial development but does not have buildings, structures or other improvements. A property shall be considered developed pursuant to this chapter upon issuance of a certificate of occupancy or upon substantial completion of construction or final inspection if no such certificate is issued or where construction is at least 50% complete and construction is halted for a period of three months.

**§ 301-6. Rates and charges.**

- A. The Stormwater Utility shall establish a uniform system of stormwater service charges that shall apply to each and every lot or parcel within the Town. It shall be the policy to establish stormwater service charges in such amount in order to pay for all or a part of the operation and maintenance, administrative fees, debt service, and other costs related to the operation of the stormwater management utility. The Stormwater Utility may establish and modify stormwater service charges, as necessary, so as to assure that the charge generates adequate revenues to pay the costs of the stormwater management program and that the costs are allocated fairly and proportionately to all parcels in the Town.
- B. By this chapter, the Stormwater Utility is establishing the basis for the rates that will be used to calculate and impose a charge upon each developed lot and parcel within the Town for services and facilities provided by the Stormwater Utility consistent with this chapter. Charges imposed under this chapter are in addition to assessments imposed by resolution of the Town of Scott Town Board.<sup>1</sup>
- C. The amount of the charge to be imposed for each customer classification shall be made by resolution of the Town Board. The current rates will be set forth in a Stormwater Utility Rate Table and kept on file in the office of the Town Clerk. The rates shall be reviewed by the Town Board on an annual basis and adjusted as necessary.
- D. Charges shall be imposed to recover all or a portion of the costs for the Stormwater Utility set forth in Subsection A. Such charges may include the following components:
  - (1) Base charge (BC). The base charge may be imposed on all developed property in the Town. The base charge will be designed to reflect the fact that all developed properties benefit from the stormwater management activities of the Town and that all developed properties contribute in some way to the stormwater discharge that must be managed by the Town. The base charge will be designed to collect the administrative costs of the storm sewer utility and the portion of capital costs not covered by other means.
  - (2) Equivalent runoff unit (ERU) charge. The ERU charge shall be imposed for all property in the Town based upon the amount of impervious area as reasonably determined by the Town under § 301-8.
  - (3) Special charge (SC). A special charge may be imposed on property that is in a specific area benefited by a particular stormwater management facility. The special charge will be developed to reflect the benefits/services in a particular area that may not be appropriate to spread to property throughout the Town. The special charge shall be calculated on an ERU basis or impervious surface area.

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<sup>1</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

- (4) Connection charge (CC). A one-time charge may be imposed when a property is converted from undeveloped to developed property or otherwise becomes connected to the Town stormwater system. The charge may vary based on the size of the parcel.
- E. The Stormwater Utility may make such other classifications in accordance with § 301-8 as will be likely to provide reasonable and fair distribution of the costs of the Stormwater Utility. In so doing, the Board may provide credits against certain charges set for the above facilities installed and maintained by the property owner for the purpose of lessening the stormwater flow from that given property.
- F. The Town of Scott is hereby appointed as the collection agency for the Stormwater Utility. Bills shall be prepared by the Stormwater Utility or its agent and sent to the owner a minimum of 30 days prior to such bill being due pursuant to § 301-9 for each premises served. The Stormwater Utility shall allocate the actual cost of billing and collecting as a base charge.

**§ 301-7. Credits.**

- A. The Stormwater Utility may provide credits against the ERU and SC charges pursuant to Subsections B through H. The Stormwater Utility will not provide credits against the base charge or connection charge unless a scrivener's error is made and it is determined that the property owner paid an erroneous charge.
- B. To be entitled to consideration for a credit, the property owner shall file with the Stormwater Utility an application, together with a review fee, that is supported by documentation from a professional engineer and demonstrates that the conditions of this section have been met. The application is subject to review and approval of the Stormwater Utility. If the Stormwater Utility and property owner cannot agree on credits, then the Stormwater Utility can deny the application unless the property owner agrees to pay for the necessary engineering services.
- C. Credits shall be provided under the following circumstances:
  - (1) An 80% credit for parcels used exclusively for agricultural, forest, or agricultural forest.
  - (2) A 2/3 credit for agricultural buildings being used as such on exclusive agricultural zoned property (A-2).
- D. Credits may be provided under the following circumstances:
  - (1) A nonresidential property owner may seek a credit on the ERU charge where it has installed and maintained an on-site stormwater management system that both mitigates flood impacts and provides adequate treatment of pollutants in stormwater runoff utilizing a design that has been approved by the Utility.
  - (2) A nonresidential property may seek a credit on the ERU charge if all or a portion of the property discharges directly into the Bay of Green Bay. A maximum 75% credit will be allowed if all the property drains directly into the Bay of Green Bay and portioned if only a portion drains into the Bay.

- E. A maximum 50% credit may be provided if the property owner can document to the Stormwater Utility that an on-site approved stormwater system is treating stormwater.<sup>2</sup>
- F. No credit shall be considered for any "natural" features, limited to wetlands, streams and creeks, floodplains, or water impoundment of any kind in existence prior to the passage of this chapter.
- G. The Stormwater Utility may revoke the credit if the basis for the credit has materially changed. The Stormwater Utility shall provide at least 30 days' advance written notice of any proposed revocation.
- H. A denial or revocation of any credit may be appealed under § 301-10.

**§ 301-8. Customer classifications.**

- A. For purposes of imposing the base and ERU charges, all lots and parcels within the Town shall be classified into the following five customer classes:
  - (1) Residential — single-family, including farmstead home sites.
  - (2) Residential — duplex.
  - (3) Residential — multifamily, including condominiums, townhouses, and apartments.
  - (4) Nonresidential.
  - (5) Undeveloped.
- B. The Stormwater Utility shall prepare a list of lots and parcels within the Town of Scott and assign a customer classification of "residential," "nonresidential," or "undeveloped" to each lot or parcel.
- C. The average square footage of impervious area of one ERU is established to be equivalent to 4,250 square feet.
- D. ERUs shall be calculated per classification as follows:
  - (1) Residential — single-family, including farmstead home sites: 1 ERU.<sup>3</sup>
  - (2) Residential — duplex: 0.75 ERU for each dwelling unit.
  - (3) Residential — multifamily, including condominiums, townhouses, and apartments: 0.6 ERU times the number of dwelling units.
  - (4) The charges imposed for the nonresidential properties, as defined herein, shall be the rate for one ERU multiplied by the numerical factor obtained by dividing the total impervious area of nonresidential property by the square

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<sup>2</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

<sup>3</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

footage of one ERU. The factor shall be rounded down to the nearest 1/10, i.e., impervious area in square feet.

$$\frac{\text{4,250 square feet}}{\text{4,250 square feet}} = 1 \text{ ERU Rate}$$

e.g.  $\frac{10,500 \text{ square feet}}{4,250 \text{ square feet}} = 2.471 \text{ ERUs} = 2.4 \text{ ERUs}$

- E. The Stormwater Utility/consultant shall be responsible for determining the impervious area, based upon the best available information, including, but not limited to, data supplied by the Town, aerial photography, the property owner, tenant, or developer. The Stormwater Utility/consultant may require additional information, as necessary, to make the determination. The billing amount shall be updated by the Stormwater Utility/consultant on any additions to the impervious area. Upon property owner's written notification and request, the Stormwater Utility/consultant shall review impervious area for possible reductions.
- F. All unoccupied developed lots and parcels shall be subject to the Stormwater Utility charges. Upon filing of a final plat or certified survey map, a charge of 0.5 ERU times the rate shall be imposed on each newly created undeveloped lot. Appropriate ERU rate charges shall be made in accordance with the "New Construction" section at the time of building construction.<sup>4</sup>
- G. All undeveloped lands and parcels, including agricultural, forest, and agricultural forest classified properties, shall be subject to the Stormwater Utility charges. The minimum charges for any undeveloped parcel shall be equal to the rate of 20% of one ERU per parcel up to 100 acres.

**§ 301-9. Billing and penalties.**

- A. Stormwater Utility charges may be billed in advance and on an annual basis or collected as a special charge pursuant to § 66.0627, Wis. Stats. Nothing in this subsection shall be construed to preclude the Stormwater Utility from billing on a more frequent basis.
- B. The property owner is held responsible for all stormwater service charges on real property that he/she or it owns. All stormwater bills and notices of any nature relative to the stormwater management program will be addressed to the owner and delivered with reasonable care to the addressee by first class mail. A failure to receive a stormwater service charges bill shall not relieve any person of the responsibility for payment of stormwater service charges within the prescribed period nor exempt any party from any penalty imposed for delinquency in payment thereof.

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<sup>4</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).



- C. Unpaid delinquent Stormwater Utility charges shall be a lien upon the property served and shall be enforced as provided in § 66.0809(3), Wis. Stats. The Town shall collect delinquent charges under §§ 66.0821(4) and 66.0809(3), Wis. Stats.
- D. All delinquent charges shall be subject to a three-percent penalty per quarter in addition to all other charges, including prior penalties that exist when the delinquent charge is extended upon the tax roll.

**§ 301-10. Appeals.**

- A. The Stormwater Utility charge, a determination of ERUs, or ERU credits may be appealed by filing a written appeal with the Stormwater Utility prior to the utility charge due date, if not paid, or within 30 days of payment. The appeal shall specify all bases for the challenge and the amount of the stormwater charge the appellant asserts is appropriate. Failure to file a timely appeal waives all rights to challenge such charge.
- B. The Town Board shall review said written appeal and shall determine whether the stormwater charge is fair and reasonable, or whether an adjustment or refund is due the appellant. The Town Clerk shall provide five business days' prior written notice of the time and place of the Board's consideration of the appeal to the appellant/owner at the address listed in the appeal. The appellant shall be notified in writing, by first class mail, of the Board's decision. If the Board or the Town Clerk determines that a refund is due the appellant, the refund will be applied as a credit on the customer's next stormwater bill or will be refunded at the discretion of the Town Clerk.

**§ 301-11. Special assessments and charges.**

In addition to any other method of charging for Stormwater Utility costs, the Stormwater Utility may by resolution collect special assessments on property in a limited and determinable area for special benefits conferred upon property pursuant to § 66.0703, Wis. Stats. The failure to pay such special assessments may result in a lien on the property enforced pursuant to § 66.0703(13), Wis. Stats.

**§ 301-12. Finances.**

The Stormwater Utility finances shall be accounted for in a separate Stormwater Management Fund by the Town. The Utility shall prepare an annual budget, which is to include all operation and maintenance costs, administrative costs, debt served and other costs related to the operation of the Stormwater Utility. The budget is subject to the approval by the Town Board. The costs shall be spread over the rate classifications as determined by the Board. Any excess of revenues over expenditures in a year will be retained by the Stormwater Management Fund for subsequent years' needs.

**§ 301-13. Stormwater Management Committee.** [Added 4-12-2010]

- A. Creation and supervision. The Town of Scott hereby establishes a Stormwater Management Committee which shall consist of four members appointed by the Town Chairman subject to confirmation by the Town Board.
- B. Term of office. All terms of office shall be three years, except the terms of office shall be staggered so that not more than two members are appointed annually.
- C. Compensation. The Town Board, by resolution, shall determine compensation and expense reimbursement for members of the Committee.
- D. Committee authority.
  - (1) The Committee shall assist the Town Board in the operation and management of the Stormwater Utility as follows:
    - (a) Budget: prepare and recommend to the Town Board an annual budget for the Stormwater Utility.
    - (b) Expenses: review, approve and recommend to the Town Board the payment of expenditures for the operation and maintenance of the Stormwater Utility.
    - (c) Appeals: hear initial appeals under § 301-10 for the determination of ERUs or ERU credits. Committee decisions on appeals may be appealed to the Town Board.
    - (d) Billing: review and recommend to the Town Board a billing system or method for the collection of stormwater sewer service charges.
    - (e) Stormwater planning: stormwater planning with recommendations to the Town Board to comply with the DNR MS4 permit requirements for the Town of Scott.
    - (f) Capital improvements: prepare, design, locate and recommend to the Town Board any capital improvements or facilities for the Stormwater Utility.
    - (g) Property classification: maintain and update a list of lots and parcels within the Town of Scott and assign a customer classification of residential, nonresidential or undeveloped to each lot or parcel.
  - (2) Stormwater management. The Town Board hereby designates the Committee to have the administrative authority to administer, implement and enforce the provisions of Chapter 297, Stormwater Management. It is the intent of this section that the Committee shall have the same authority that has been designated to the Zoning Administrator pursuant to Chapter 297; however, any formal enforcement action shall be authorized by the Town Board.
  - (3) Illicit discharge. The Town Board hereby designates the Committee to have the administrative authority to administer, implement and enforce the provisions of Chapter 260, Sewers and Sewage Disposal, Article I, Illicit Discharges to Storm Sewer System. It is the intent of this section that the

Committee shall have the same authority that has been designated to the Zoning Administrator pursuant to Chapter 260, Article I; however, any formal enforcement action shall be authorized by the Town Board.

- (4) Construction site erosion control. The Town Board hereby designates the Committee to have the administrative authority to administer, implement and enforce the provisions of Chapter 73, Construction Site Erosion Control. It is the intent of this section that the Committee shall have the same authority that has been designated to the Zoning Administrator pursuant to Chapter 73; however, any formal enforcement action shall be authorized by the Town Board.