

**TOWN OF SCOTT, CHAPTER 24
ORDINANCE NO. _____**

**AN ORDINANCE REPEALING AND RECREATING CHAPTER 24,
STORM WATER UTILITY OF THE TOWN OF SCOTT**

The Town Board of the Town of Scott, Brown County, Wisconsin do ordain as follows:

Chapter 24, of the Town of Scott Municipal Code, entitled "Storm Water Utility" is hereby repealed and recreated to read as follows:

SECTION 1. CHAPTER 24 STORM WATER UTILITY

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

(1) FINDINGS

- (a) The Town of Scott finds that the management of storm water 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 storm water 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 storm water discharged to the waters of the State.
- (b) The cost of operating and maintaining the Town storm water 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 there from.

(2) ESTABLISHMENT OF STORM WATER UTILITY

- (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 Storm Water Utility and set the rates for storm water management services.
- (b) The Town Board shall operate and manage the Storm Water Utility.
- (c) The Town is acting under the authority of Chapters 60, 61 and 66 of the Wisconsin Statutes, and particularly without limitation the following sections: §§ 61.34, 66.0809, 66.0811, and 66.0821.

(3) POWERS AND DUTIES OF UTILITY

- (a) **Creation and Supervision.** The Town of Scott hereby establishes a Storm Water Utility. The operation of the storm water utility shall be subject to the review of the Board. The Director shall be responsible for the maintenance and management of the storm water utility under direction of the Board.
- (b) **Facilities.** The Town, through the Storm Water 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 storm 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 storm water management system, whether such facilities are owned and operated directly by the Town or are provided under statutory or contractual provisions and furnishings of which facilities create or impose 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 Storm Water Utility:
 - a. 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 storm water system:
 - i. Storm sewers, catch basins, and culverts;
 - ii. Storm water ponds, and related appurtenances;
 - iii. Access structures;
 - iv. Greenways;
 - v. Street sweepers, leaf vacuums, trucks, loaders, backhoes, pumps, & other maintenance equipment
 - b. Debt service on all outstanding general obligation debt issued for storm water management purposes.
- (d) **Rates and Charges.** The Town, through the Storm Water 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 ordinance.
- (e) **Budgeting Process.** The Town through the Storm Water 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 Storm Water 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 Wis. Stat. §65.90.
- (f) **Excess Revenues.** The Town will retain an excess of revenues over expenditures in a year in a segregated Storm Water Enterprise Fund, which shall be used exclusively for purposes consistent with this ordinance.
- (g) **Financing Methods.** The Town has the authority as provided in §66.0821, §66.0627 and §66.0703, and may exercise such authority with respect to all financing methods such as user charges special charges, special assessments and liens as provided therein.

- (4) **DEFINITIONS.** In this chapter, the following terms have the meanings set forth below:
- (a) **“Agricultural Land Uses”** means 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 onsite buildings and other structures necessary to carry out such activities.
 - (b) **“Customer”** means 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 Storm Water Utility.
 - (c) **“Developed Property”** means 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.
 - (d) **“Detention Storage”** is the temporary detaining or storage of storm water in reservoirs under predetermined and controlled conditions, with the rate of discharge regulated by installed devices.
 - (e) **“Duplex Unit”** a residential space containing two dwelling units.
 - (f) **“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.
 - (g) **“Equivalent Runoff Unity or ERU”** means the statistical average of horizontal impervious area of “single family homes” within the Town of Scott the date of the adoption of the Ordinance. The horizontal impervious area includes but is not limited to, all areas covered by structures, roof extensions, patios, porches, driveways, and sidewalks.
 - (h) **“Farmstead Home Site”** is 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.
 - (i) **“Impervious Area or Impervious Surface”** means 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.
 - (j) **“Lot”** is a parcel of land having a width and depth sufficient for one principal building and its accessory building together with open spaces required by the Town of Scott zoning ordinance and abutting a public street or access easement.
 - (k) **“Multifamily Unit”** is a residential space consisting of three or more dwelling units within a single building including apartments, residential condominiums, and townhouses.
 - (l) **“Nonmetallic mining or nonmetallic mining operation”** is an operation or activities for the excavation from the earth for sale or use by the operator of mineral

aggregates such as stone, sand, gravel and nonmetallic minerals such as asbestos, beryl, clay, feldspar, peat, talc, and topsoil related operations or activities such as excavation, grading or dredging if the purpose of those operations or activities is the extraction of mineral aggregates and nonmetallic minerals and related processes such as crushing, screening, scalping, dewatering, and blending. "Nonmetallic mining" or "nonmetallic mining operation" does not include or allow the following activities or uses by the way of illustration, which include but are not limited to manufacture of concrete building blocks or other similar products, asphalt or hot blacktop mixing and production of ready-mix concrete.

- (m) **"Non-residential 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, governmental property, parking lots, and agricultural accessory buildings.
- (n) **"Parcel"** means a legal unit of land division as recorded in the Brown County Register of Deeds.
- (o) **"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.
- (p) **"Runoff"** means the surface water, including rain and snowmelt, which is inhibited by impervious surfaces from naturally infiltrating into soil.
- (q) **"Single Family Home"** is any residential property consisting of a single dwelling unit.
- (r) **"Storm Water System"** means all public storm sewers, drainage conduits, drainage conveyances, roadside ditches, curb and gutter, and public greenways, and all improvements thereto which by this section are constituted as the property and responsibility of the Storm Water 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.
- (s) **"Stormwater Utility"** means 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.
- (t) **"Undeveloped Property"** is 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 (3) months.

(5) RATES AND CHARGES

- (a) The Storm Water Utility shall establish a uniform system of storm water service charges that shall apply to each and every lot or parcel within the Town. It shall be the policy to establish storm water 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 storm water management utility. The Storm Water Utility may establish and modify storm water service charges, as necessary so as to assure that the charge generate adequate revenues to pay the costs of the storm water management program and that the costs are allocated fairly and proportionately to all parcels in the Town.

- (b) By this Ordinance, the Storm Water 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 Storm Water Utility consistent with this ordinance. Charges imposed under this chapter are in addition to assessments imposed by resolution of the Town of Scott Municipal Code.
- (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 Storm Water 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 Storm Water Utility set forth in paragraph (1)(a). Such charges may include the following components:
 - a. **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 storm water management activities of the Town and that all developed properties contribute in some way to the storm water 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.
 - b. **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 paragraph (7).
 - c. **Special Charge (SC).** A special charge may be imposed on property that is in a specific area benefited by a particular storm water 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.
 - d. **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 Storm Water System. The charge may vary based on the size of the parcel.
- (e) The Storm Water Utility may make such other classifications in accordance with paragraph (7) as will be likely to provide reasonable and fair distribution of the costs of the Storm Water 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 storm water flow from that given property.
- (f) The Town of Scott is hereby appointed as the collection agency for the Storm Water Utility. Bills shall be prepared by the Storm Water Utility or its agent and sent to the owner a minimum of thirty (30) days prior to such bill being due pursuant to paragraph (8) of each premise served. The Storm Water Utility shall allocate the actual cost of billing and collecting as a base charge.

(6) CREDITS

- (a) The Storm Water Utility may provide credits against the ERU and SC Charges pursuant to paragraph (6)(b) through (6)(i). The Storm Water Utility will not provide credits against the base charge or connection charge, unless a scrivener 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 an application together with a review fee with the Storm Water Utility. The Utility in most cases will require documentation from a professional engineer that demonstrates the conditions of this section have been met. The application is subject to review and approval of the Storm Water Utility. If the Storm Water Utility and property owner cannot agree on credits, then the Storm Water 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:
 - a. An 80% credit for parcels used exclusively for agricultural, forest, or agricultural forest.
 - b. A 2/3 credit for agricultural buildings being used as such on exclusive agricultural zoned property (A2).
 - c. An 80% credit for nonmetallic mining parcels that are permitted by the Wisconsin Department of Natural Resources under the Wisconsin Administrative Code Section NR216. In order to receive the credit the nonmetallic mining operation must:
 - i. Contain the runoff within the limits of the quarry
 - ii. Discharge of the runoff off site is by means of pumping, gravity flow is not possible.
 - iii. Maintain a compliant WPDES permit with the WDNR
 - iv. Comply with the Town's stormwater management ordinance.
- (d) Credits may be provided under the following circumstances:
 - a. A non-residential property owner may seek a credit on the ERU charge where they have 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.
 - b. A non-residential 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 of 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 of 50% credit if the property owner can document to the Storm Water Utility that an onsite approved storm water system is treating storm water.
- (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 Ordinance.
- (g) The Storm Water Utility may revoke the credit if the basis for the credit has materially changed. The Storm Water 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 paragraph (9).

(7) 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 six (6) customer classes:

- a. Residential – Single Family, including Farmstead Home Sites
- b. Residential – Duplex
- c. Residential – Multifamily including condominiums, townhouses, and apartments
- d. Non-residential
- e. Non-metallic Mining
- f. Undeveloped

(b) The Storm Water Utility shall prepare a list of lots and parcels within the Town of Scott and assign a customer classification of residential, non-residential, or undeveloped to each lot or parcel.

(c) The average square footage of impervious area of one (1) ERU is established to be equivalent to 4,250 square feet.

(d) ERU's shall be calculated per classification as follows:

- a. Residential – Single Family including mobile homes: 1 ERU
- b. Residential – Duplex: .75 ERU for each dwelling unit
- c. Residential – Multifamily including condominiums, townhouses, and apartments: .6 ERU times the number of dwelling units.
- d. The charges imposed for the non-residential and non-metallic mining properties, as defined herein, shall be the rate for one (1) ERU, multiplied by the numerical factor obtained by dividing the total impervious area of non-residential or non-metallic mining property by the square footage of one (1) ERU. The factor shall be rounded down to the nearest 1/10th, i.e.:
Impervious area in square feet.

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

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

(e) The Storm Water 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 Storm Water Utility/Consultant may require additional information, as

necessary, to make the determination. The billing amount shall be updated by the Storm Water Utility/Consultant on any additions to the impervious area. Upon property owner's written notification and request, the Storm Water Utility/Consultant shall review impervious area for possible reductions.

- (f) All unoccupied developed lots and parcels shall be subject to the Storm Water Utility charges. Upon filing of a final plat or certified survey map, a charge of .5 ERU times the rate shall be imposed on each newly created underdeveloped lot. Appropriate ERU rate charges shall be made in accordance with the "New Construction" section at the time of building construction.
- (g) All undeveloped lands and parcels, including agricultural, forest, and agricultural forest classified properties, shall be subject to the Storm Water 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.

(8) BILLING AND PENALTIES

- (a) Storm Water Utility charges may be billed in advance and on an annual basis or collected as a special charge pursuant to Sec. 66.0627, Wis. Stats.. Nothing in this paragraph shall be construed to preclude the Storm Water Utility from billing on a more frequent basis.
- (b) The property owner is held responsible for all storm water service charges on real property that he/she or it owns. All storm water bills and notices on any nature relative to the storm water 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 storm water service charges bill shall not relieve any person of the responsibility for payment of storm water service charges within the prescribed period nor exempt any party from any penalty imposed for delinquency in payment thereof.
- (c) Unpaid delinquent Storm Water Utility charges shall be a lien upon the property served and shall be enforced as provided in §66.0809(3). The Town shall collect delinquent charges under Wis. Stat. §§66.0821(4) and 66.0809(3).
- (d) All delinquent charges shall be subject to a three percent (3%) penalty per quarter in addition to all other charges, including prior penalties that exist when the delinquent charge is extended upon the tax roll.

(9) METHOD OF APPEAL

- (a) The Storm Water Utility charge, a determination of ERU's, or ERU credits may be appealed by filing a written appeal with the Storm Water Utility prior to the utility charge due date if not paid, or within thirty (30) days of payment. The appeal shall specify all bases for the challenge and the amount of the storm water 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 storm water charge is fair and reasonable, or whether an adjustment or refund is due the appellant. The Town Clerk shall provide five (5) 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 storm water bill, or will be refunded at the discretion of the Town Clerk.

(10) SPECIAL ASSESSMENT AND CHARGES

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

(11) BUDGET EXCESS REVENUES

- (a) The Storm Water Utility finances shall be accounted for in a separate Storm Water 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 Storm Water 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 Storm Water Management Fund for subsequent years needs.

(12) SEVERABILITY

- (a) If any provision of this Chapter 24 or the application thereof to any party or circumstance held invalid, the invalidity shall not affect other provisions or applications of this chapter, which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are declared severable.
- (b) If any section, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remainder of such ordinance.

Adopted this ____ day of _____, 2010

Town Chairman

ATTEST:

Town Clerk

Approve as to form:

Town Attorney

Date