

ORDINANCE #3-2021
STORMWATER UTILITY ORDINANCE

SECTION 1.0 INTRODUCTION

1.01 Purpose

It is determined and declared to be necessary and conducive to the protection of the public health, safety, welfare and convenience of the Town to collect charges from all users of the Town stormwater collection system. The proceeds of such charges will be used to fund the management of the Town's stormwater system to include reinvestment in the maintenance and improvement of existing infrastructures, and other improvements to the system that will reduce urban non-point source pollution in stormwater runoff consistent with federal and state regulations

1.02 Authority

The Town is acting under authority of Chapters 60 and 66 of the Wisconsin Statutes, and particularly without limitation the following sections: 66.0809, 66.0811, and 66.0821.

1.03 Powers and Duties of Utility

- (A) Creation and supervision. The Town of Holland hereby establishes a Stormwater Utility. The operation of the Stormwater Utility shall be subject to the review of the Town Board. The Utility Commission shall be responsible for the maintenance and management of the Stormwater Utility under the 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 furnishings of which facilities create or impose a cost or charge upon the Town for the services afforded by such facilities.
- (C) Rates and charges. The Town 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 article.
- (D) Budgeting process. The Stormwater Utility Commission 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 section 65.90, Wis. Stats.

- (E) Excess revenues. The Stormwater Utility will retain any excess of revenues over expenditures in a year in a segregated Stormwater Enterprise Fund, which shall be used exclusively for purposes consistent with this article.
- (F) Financing methods. The Town Board has the authority as provided in sections 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.

1.04 Definitions

Unless the ordinance specifically indicates otherwise, the meaning of terms used in this section shall be as follows:

- (A) “Developed Property” means real property which has been altered from its natural state by the addition of any improvements, such as a building, structure, or impervious surface.
- (B) “Drainage Easement” means a legal right granted by a land owner to a grantee, in this case the Town of Holland, allowing the use of private land to convey, treat, or manage stormwater runoff. It is an attachment to a property deed.
- (C) “Dwelling Unit” means a single unit or apartment providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.
- (D) “Equivalent Runoff Unit (ERU)” means the statistical average amount of horizontal impervious area per single family property of all “single family properties” within the Town on the date of adoption of this ordinance.
- (E) “Farmstead Home Site” means the portion of any agricultural property which contains one or more dwelling units, and vehicle garage(s) regardless of whether the dwelling units are on a separate lot or parcel.
- (F) “Fiscal Year” means a twelve (12) month period commencing on the first day of January of any year.
- (G) “Impervious Area” or “Impervious Surface” means a horizontal surface which 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, semi-impervious surfaces such as compacted clay, gravel, as well as streets, roofs, sidewalks, parking lots, and other similar surfaces.
- (H) “Mobile Home” means a single residential unit (mobile home) within a mobile home park.
- (I) “Nonresidential” means any developed property not used, primarily, as a permanent residence, such as a commercial, industrial property or an institutional property (schools, churches, hospitals, fraternal organizations, parks, municipal facilities, etc.).

- (J) “Operating Budget” means estimated revenues and the estimated costs for operations and maintenance, extension, and replacement of the system for each fiscal year.
- (K) “Operation and Maintenance” means the current expenses, paid or accrued, of operation, maintenance, and current repair of the system, as calculated in accordance with sound accounting practice and includes, without limiting the generality of the foregoing, insurance premiums, administrative expenses, labor, executive compensation, the cost of materials and supplies used for current operations, and charges for the accumulation of appropriate reserves for current expenses not annually incurred, but which are such as may reasonably be in accordance with sound accounting practices.
- (L) “Rate” means the user fee charged on each ERU. The rate is determined by the Stormwater Utility Commission and approved by the Town Board for each fiscal year.
- (M) “Revenues” mean all rates, fees, assessments, rentals, fines or other charges or other income received by the Town in connection with the management and operation of the system, including amounts received from the investment or deposit of moneys in any fund or account, as herein required, and any amounts contributed by the Town, all as calculated in accordance with sound accounting practices.
- (N) “Right-of-way” means that portion of the Town property extending beyond the road pavement and abutting property following the Town road standards as established in Section 82.50 Wis. Statutes. The right-of-way allows access for future road maintenance, road upgrades and/or utility work.
- (O) “Single Family” or “Single Family Property” means a residential property with exactly one (1) dwelling unit.
- (P) “Stormwater System” or “System” means the existing stormwater collection system of the Town and all improvements thereto which by this section are constituted as the property and responsibility of the Town to be operated as an enterprise 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, over- drainage, environmental degradation and water pollution or otherwise affect the quality and quantity of discharge from such system.
- (Q) “Stormwater Utility” means the Town of Holland Stormwater Utility, Utility Commission means the Town of Holland Stormwater Utility Commission.
- (R) “Town” means the Town of Holland; Town Board means the Town Board of the Town of Holland.
- (S) “Undeveloped Land” means any real property with no impervious area.

- (T) “User Fee” means the charge established by the Town Board on developed property in the Town to pay for operations and maintenance, and extension and replacement for the stormwater system.

1.05 Disposition of Revenue

- (A) The user fees hereunder shall generate adequate annual revenues to pay costs for the operation, maintenance, and capital improvements to the Town stormwater system.
- (B) The Town shall establish a stormwater utility account for all the revenues and stormwater system expenses.
- (C) Fiscal year-end balances in the account shall be carried over to the same account in the subsequent fiscal year. Monies which have been transferred from other sources to meet temporary shortages in the stormwater utility account shall be returned to their respective accounts upon appropriated adjustment of the user fee rates. The user fee rate shall be adjusted such that the transferred monies will be returned to their respective accounts within the fiscal year following the fiscal year in which the monies were borrowed.

SECTION 2.0 RATE AND CHARGES

2.01 User Fee

The Town Board shall require that adequate revenues are generated through user fees to provide for a balanced operating budget. The Town Board hereby authorizes the imposition of user fees on all developed property in the Town.

2.02 Rates

- (A) Rates. The Stormwater Utility Commission shall recommend to the Town Board modification of the rates for each fiscal year. All rates established by the Stormwater Utility Commission and approved by the Town Board will be fair and reasonable and calculated to achieve a balanced operating budget for the system. Current rates will be on file in the office of the Town Clerk and Town Treasurer.
- (B) The Town Board shall set the ERU Rate by Separate Resolution

2.03 Rate Structure

- (A) For purposes of imposing the base and ERU charges, all lots and parcels within the Town shall be classified into the following four customer classes:
- (i) Exempt: including State of Wisconsin, WI DOT, federal, and municipal land.
 - (ii) Residential and Farmstead 1: including all residential and farmstead properties with lot size under 2 acres.
 - (iii) Residential and Farmstead 2: including all residential and farmstead properties with lot size over 2 acres.

- (iv) Commercial Properties: including all commercial development and churches.
- (B) The Stormwater Utility shall prepare a list of lots and parcels within the Town of Holland 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 21,780 square feet.
- (D) ERUs shall be calculated as follows:
 - (i) Exempt: No ERU charge.
 - (ii) Residential and Farmstead 1: 1 ERU
 - (iii) Residential and Farmstead 2: 0.5 ERU
 - (iv) Productive Farmland, Wooded Properties, Undeveloped Residential Lots: No ERU charge.
 - (v) Commercial Properties: The charges imposed for the properties, as defined herein, shall be the rate for one ERU, multiplied by the numerical factor obtained by dividing the total impervious area of property by the square footage of one ERU. The ERU value factor shall be rounded to the nearest 1/10.

$$\frac{\text{total impervious area in square feet}}{21,780 \text{ square feet}} = \text{ERU rate factor}$$

Commercial properties ERUs shall be calculated, for example, as follows:

$$\frac{296,180 \text{ square feet}}{21,780 \text{ square feet}} = 13.598 \text{ or } 13.6 \text{ ERUs}$$

Where:

296,180 square feet is the measured impervious surface within the developed parcel, and 21,780 square feet is the impervious area of one ERU.

- (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 the property owner's written notification and request, the Stormwater Utility/consultant shall review impervious area for possible reductions.
- (F) New construction. For all classifications other than single-family residential, the construction of new or expanded buildings, driveways or other structures shall be subject to an increase in the number of ERUs assigned to a lot or parcel. The Town shall recalculate the number of ERUs upon completion of new construction.

2.04 Billing and Payment

The user fee is a special charge to be billed on the taxpayers' tax bill. The special charge is due by January 31 of each year.

2.05 Lien

All user fees established hereunder shall be a lien upon the property served pursuant to sections 66.076 (7) and 66.069 of the Wisconsin Statutes and shall be collected in the manner therein provided.

SECTION 3.0 CREDIT POLICIES

The Town Board shall adopt a system of stormwater utility credits and shall operate as follows. In general, no credit shall be given for the installation of stormwater management facilities required by the Town, La Crosse County, or state stormwater regulations.

3.01 Credit

- (A) 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 treatment of pollutants in stormwater runoff. The designed features shall exceed La Crosse County standards and be able to maintain or reduce from the pre-developed rates for 50-year 24-hour storm events and safely pass 100-year 24-hour storm events without overtopping. Credit shall be determined on a case-by-case basis up to a maximum of 50%.
- (B) No credit shall be considered for structural or nonstructural best management practices that are required in order to comply with any local, state, or federal regulation including but not necessarily limited to the La Crosse County Stormwater Management Ordinance, and state regulations such as NR 151, 216, Chapter 30 and NR 103.
- (C) No credit shall be considered for any "natural" features such as but not limited to wetlands, lakes and floodplains or water impoundment of any kind in existence prior to passage of this Ordinance.

3.02 Adjustment of Fee

- (A) Requests for Adjustment. Requests for adjustment of the user fee shall be submitted to the Stormwater Utility Commission, who is hereby given the authority to develop and administer the procedures and standards for the adjustment of fees as established herein. All requests shall be judged on the basis of the amount of impervious area on the site. Requests for adjustment shall be limited to nonresidential property owners. However, the Town retains the right to grant stormwater user fee credits to individual properties within the Town that exhibit benefits to the stormwater management system. The following procedure shall apply to all adjustment requests of the user fee.
 - (i) Any nonresidential customer who has paid a user fee and believes the user fee to be incorrect, may, within thirty (30) days of the payment and subject

to the limitations set forth in this section, submit an adjustment request to the Stormwater Utility Commission.

- (ii) Adjustment requests shall be in writing and set forth in detail, the grounds upon which relief is sought.
- (iii) The customer requesting the adjustments will be required, at his own expense, to provide supplemental information to the Stormwater Utility Commission, including, but not limited to, survey data approved by a Registered Land Surveyor (R.L.S.) and engineering reports approved by a Professional Engineer (P.E.). Failure to provide such information may result in the denial of the adjustment request.
- (iv) The Stormwater Utility Commission shall issue a written determination as to whether the request for adjustment shall be granted. For adjustments that are granted, a credit shall be applied to the customer's account. Denials of adjustment requests shall be made, in writing.

3.03 Appeal Procedure

- (A) Upon receipt of the written denial of an adjustment request, the customer who initially requested the adjustment may, within thirty (30) days of receipt of such denial, appeal to the Town Board.
- (B) The Town Board shall complete its review within forty-five (45) days of the receipt of said request for review. The Town Board determination shall be in writing and set forth in detail, the reason or reasons for its decision.
- (C) In reviewing denials of adjustment requests, the Town Board shall apply the standard and review criteria contained in subsection 3.02(A) of this section.

3.04 Public Service Commission Complaint

Notwithstanding subsections 3.01 and 3.02, any user may file a complaint with the Public Service Commission claiming that rates, rules and practices herein are unreasonable or unjustly discriminatory pursuant to section 66.0821(5), Wis. Stats.

SECTION 4.0 LANDOWNER RESPONSIBILITY FOR DRAINAGE EASEMENTS

As stated in Town Ordinance #1-2008, Land Division and Subdivision, subsection 7.08(C): All drainage easements shall have inspection and maintenance plans including the entity responsible for the maintenance. Each landowner is responsible for any drainage easements located within that landowner's lot. For purposes of this ordinance and for all future maintenance, all Town right-of-way areas that affect drainage are considered "drainage easements" for the possible conveyance of water.

- (A) Every landowner whose property contains a drainage easement, or such person's lessee, shall keep and maintain that part of the property free of soil erosion, trash, debris, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the land in the drainage easement. In addition, the landowner or lessee shall maintain existing privately owned structures within or adjacent to the land in the drainage easement so that structures will not become a

hazard to the use, function, physical integrity of the land in the drainage easement. There shall be no fences, sheds, walls, trails or buildings, and planting trees should be avoided on the land in the drainage easement.

- (B) The Town shall be permitted to enter and inspect properties subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance.
- (C) The requirements of subsection (A) do not preempt more stringent stormwater management requirements that may be imposed by:
 - (i) Wisconsin Department of Natural Resources administrative rules, permits or approvals, including those authorized under sections 281.16 and 283.33, Wis. Stats.
 - (ii) Targeted performance standards promulgated in rules by the Wisconsin Department of Natural Resources under section NR 151.004, Wis. Adm. Code.
 - (iii) La Crosse County Stormwater Ordinance.
- (D) Violations of subsection (A) shall be remediated by the landowner promptly upon written notification of the violation that explains the problem and indicates the specific actions to be taken. If the landowner fails to respond with a good faith effort within thirty (30) days, the Town will again provide written notification that indicates the specific actions to be taken. If the landowner fails to respond to the second notification within fifteen (15) days, the Town will perform the work. The costs for the work performed by the Town pursuant to subsection (A), plus interest, and an administrative fee at a rate authorized by the Stormwater Utility Commission, shall be billed to the responsible party. In the event the responsible party fails to pay the amount due, the clerk shall enter the amount due on the tax rolls and collect as a special assessment against the property pursuant to subchapter VII of Chapter 66, Wis. Stats.

SECTION 5.0 EFFECTIVE DATE

Following passage by the Town Board, this ordinance shall take effect the day after the date of publication or posting as provided by section 60.80, Wis. Stats.

Adopted by the Holland Town Board of the Township of Holland, La Crosse County, Wisconsin, this 8th day of September, 2021.

By: Robert Stupi, Town Chair

Attest: Marilyn Pedretti, Town Clerk

Posted: 9/16/21