

CHAPTER 100

STORM WATER UTILITY

100.01 Purpose and Findings	100.07 Adjustment of Equivalent Residential Unit Determination
100.02 Definitions	100.08 Billing
100.03 Storm Water Utility Established	100.09 Delinquency, Collection, Interest and Penalties
100.04 Charges and Fees in General	100.10 Request for Service, Disconnection From Service, Termination of User Charges
100.05 Storm Water Utility User Charge	100.11 Adoption of Rules, Interpretations and Appeals
100.06 Calculation of Equivalent Units and Amount of Charge	

100.01 PURPOSE AND FINDINGS.

1. The purpose of this chapter is to establish the Storm Water Utility; authorize charges, rates and fees for use of, and discharge to, the public storm and surface water drainage system; to provide a process for appeals from certain decisions of the Council relating to such charges; and to provide for collection of delinquent charges.
2. The Council finds that the construction, operation and maintenance of the City's storm water system should, in part, be funded through user charges imposed for the discharge of storm and surface water to the storm water drainage system, thereby charging those persons and activities using or receiving service from that system.
3. The City may be required to provide increased quantity or quality controls to mitigate those impacts of pollutants from discharging storm and surface waters into the storm water system. Therefore, it is appropriate to impose a storm and surface water user charge upon all users of property which may discharge, directly or indirectly, into the storm water system.

100.02 DEFINITIONS. The following words shall have the following definitions when used in this chapter, and any resolution and order adopted pursuant hereto, unless the context requires otherwise or unless such word is expressly defined otherwise:

1. "Connection" means the physical act or process of directing or allowing the flow of storm and surface waters to the storm sewer or drainage line, or joining onto an existing side sewer, for the purpose of connecting private impervious surface or other storm and surface water sources or systems to the public storm and surface water system. It also includes creation or maintenance of impervious surface that causes or is likely to cause an increase in the quantity or decrease in quality or both

from the natural state of storm water runoff, and which drains, directly or indirectly, to the storm and surface water system.

2. "Date of imposition" or "imposition date" means the first day of each month or such other date designated by the Council at which time a charge is imposed and becomes the legal obligation of the user. The obligation may include the cost of services to be provided during the billing period or for services previously provided to the same person under this chapter.

3. "Days" means calendar days unless otherwise specified.

4. "Equivalent residential unit" or "ERU" means a measurement unit based on the surface area of an average improved single-family dwelling lot or parcel within the City (as determined by a statistical sampling performed by the City). Except as provided otherwise, one equivalent service unit shall be deemed to be 15,000 square feet.

5. "Impervious surface area" means all land area that has been altered from its natural state such that it does not allow the infiltration and retention of water equivalent to that of undisturbed soil. This includes, but is not limited to: pavement, buildings, decks, parking areas, and compacted gravel areas. "Impervious surface" does not include improved streets, roads and sidewalks within the public right-of-way; bike paths; railroad beds or quarry excavation areas and temporary service roads in the excavation areas. Rather such facilities are deemed to be part of the public surface water drainage conveyance system or to constitute non-impervious surfaces.

6. "Multi-family dwelling unit" means a residential unit located within a building that accommodates more than one (1) residential living unit and in which each residential living unit shall have a separate water meter.

7. "Occupant" means the person residing or doing business on the property. In a family or household situation, the occupants responsible for the obligation herein imposed are the adult heads of the household, jointly and severally. In a dwelling or office sharing situation, the adult occupant legally responsible for the management or condition of the property shall be responsible.

8. "Other developed user" means any parcel, lot or property other than a single-family dwelling unit or a multi-family dwelling unit.

9. "Owner" means the legal owner(s) of record as shown on the tax rolls of Linn County, or where there is a recorded land sale contract, the purchaser thereunder.

10. "Person" means any individual, public or private corporation, political subdivision, governmental agency, municipality, partnership, association, trust, or any other legal entity whatsoever.
11. "Rule" means any written standard, directive, interpretation, policy, regulation, procedure or other provision, adopted by the Council as a resolution and order to carry out the provisions of this chapter.
12. "Single-family dwelling unit" means a lot or parcel on which a single-family dwelling or a duplex with a single water meter exists at any time as the imposition of the charge.
13. "Storm and surface water drainage system" means any combination of publicly owned storm and surface water quantity and quality facilities, pumping, or lift facilities, storm and secondary drain pipes and culverts, open channels, creeks, ditches and rivers, force mains, laterals, manholes, catch basins and inlets, including the grates and covers thereof, detention and other retention facilities, laboratory facilities and equipment, and any other publicly owned facilities for the collection, conveyance, treatment and disposal of storm and surface water within the City, to which sanitary sewage flows are not intentionally admitted.
14. "Student" means each individual enrolled at the beginning of the school year at Cornell College and living in college provided housing not charged as a residential unit.
15. "User" means any person who uses property which maintains connection to, discharges to, or otherwise receives services from the City for surface water management. The occupant of occupied property is deemed the user. If the property is not occupied, the person who has the right to occupy it shall be deemed the user.

100.03 STORM WATER UTILITY ESTABLISHED. Pursuant to the authority of Section 384.84 of the Code of Iowa, as amended, the Council hereby establishes a storm water utility in the City. The entire City, as increased from time to time, shall constitute a single storm and surface water drainage system district. The provisions of this chapter shall become effective on June 1, 2004.

100.04 CHARGES AND FEES IN GENERAL. The Council may adopt by rule charges, rates, and fees for the use of the City's storm and surface water system, and for services provided by the City relating to that system. Such rules may include delinquency and interest charges and penalties. Such charges and fees shall be just and equitable based upon the actual costs of operation, maintenance, acquisition, extension and replacement of the City's system, the costs of bond repayment, regulation, administration, and services of the City. Except as

specifically provided in this chapter or by resolution and order, all charges and service fees shall be due and payable in advance of provision of service. All billing procedures shall be the same as for water usage and may be billed on the same bill, as part of a combined service account, which means a customer service account for two or more utility services.

1. Service Charge. Each customer shall pay for public storm water drainage:

A. \$3.00 per month per equivalent residential unit or (ERU);
or

B. \$1.25 per student in residence as defined in this chapter. Effective July 1, 2014, the charge per student in residence as defined in this chapter increases to \$1.50.

(Ord. 5-20-2013A – July-13 Supp.)

2. The City may from time to time amend this chapter to change the amount of rates to be charged for the Storm Water Drainage System.

100.05 STORM WATER UTILITY USER CHARGE.

1. There is hereby established a storm water utility system user charge. This charge hereby is imposed on every user within the City of the storm and surface water drainage system on the imposition date. The charge may be required to be paid in advance of the provision of service for the billing period. The charge due for the billing period shall be the obligation of the user of the public storm system on the imposition date, notwithstanding whether the user is the addressee of the bill.

2. The charge shall be the personal obligation of the user on the imposition date, regardless of whether that person has any ownership interest in the property. This charge shall constitute a debt due the City as of the date of imposition.

3. Any person who has paid the full amount due in advance of receiving service shall be entitled to a refund if the person ceases to be the user. The refund shall be effective on the date the property is vacated or sold and based on the number of days remaining in the billing period. The refund is waived unless a written request for refund is filed within thirty (30) days of vacating or selling the property. The request shall include documentation reasonably deemed adequate by the City. Notwithstanding any other provision, the new user shall be responsible for the remaining balance of the service charge, which may be billed immediately or added to the bill for the next period.

4. There shall be a rebuttable presumption that the owner of the real property, as shown in the records of the County Assessor, is the occupant.

5. The storm water utility user charge shall be imposed upon any person who uses or discharges to the public storm and surface water drainage system by:

- A. Maintaining impervious surface connected to (directly or indirectly) and capable of discharge to the public surface water management systems; or
- B. Actually discharging storm or surface water into the system; or
- C. Making a specific request for storm and surface water management service.

Said charge shall be charged for all users of properties within the boundaries of the City. A property, whether unimproved or containing impervious surface, is presumed to discharge storm water to the storm and surface water drainage system, and to generate a demand for storm and surface water drainage services.

100.06 CALCULATION OF EQUIVALENT UNITS AND AMOUNT OF CHARGE. This section shall be used to determine the number of equivalent residential units (ERUs) for a property for purposes of determining the amount of the storm water utility (SWU) service charges.

- 1. Single-family residential dwelling units shall be charged at a rate of one (1) ERU per water meter.
- 2. Multi-family residential dwelling units shall be charged at the rate of one (1) ERU per water meter or one (1) per dwelling unit, whichever is larger.
- 3. Each student in residence shall be charged at the student rate and shall be paid monthly by Cornell College. The number of students in residence at the beginning of the school year shall be used throughout the entire calendar year to calculate the monthly charge.
- 4. Each water service registered to Cornell College shall be charged as one (1) ERU.
- 5. Other developed users shall be charged at a rate of the number of ERU's for the property. The ERU shall be calculated based on the size of the property in square feet divided by 15,000 square feet and rounded to the nearest whole number.
- 6. Any agricultural use of land or other user that does not have a water account with the City shall be considered exempt from the storm water utility (SWU) service charges.

100.07 ADJUSTMENT OF EQUIVALENT RESIDENTIAL UNIT DETERMINATION. Any other developed user may request an adjustment of the storm water utility service charge.

1. The request for adjustment shall be submitted to the City in writing on forms provided by the City requesting an adjustment of the applicable number of equivalent residential units.
2. The request for adjustment shall be submitted within ninety (90) days of the receipt of the first billing of the storm water utility service charge to that user.
3. Any request for adjustment shall include sufficient documentation to allow the City to determine from the documentation provided the total surface area.
4. Within twenty (20) days after receipt of the request for adjustment, the City shall review the adjustment. If the City determines the total area is different than the area used for the basis of charge, the parcel shall be recharged at the revised rate. The City shall adjust for any previous payments. If the City determines there is insufficient information to complete the evaluation, the City shall notify the applicant and request additional information.
5. If the City requests additional information, the applicant shall submit additional information within twenty (20) days after the determination by the City. If additional information is not submitted within twenty (20) days, the request for the adjustment shall be considered to have been withdrawn.

100.08 BILLING.

1. The City shall send a bill for the amount due by regular mail to every user in the City. Mailing to the user of record as shown in the City water billing records shall satisfy this requirement. The billing period shall be the same as for water usage.
2. The recipient has twenty (20) days from the billing date to file a notice of non-occupancy. The notice shall indicate the relationship of the recipient to the property (e.g. owner, lessor, mortgagee), whether on the imposition date the property was occupied, and if so, by whom.
3. Upon receipt of the notice, the City shall determine who is obligated for payment. Based on this determination, the City shall:
 - A. Issue a new bill to the occupant if the property was occupied by someone other than the original recipient;

- B. Reissue the bill to the recipient if it is found that the person was the occupant;
- C. Issue a bill to the owner as the user, if the property was not occupied.

The City may take into account any reasonably reliable information available to it, including utility records.

4. Failure to file the notice so that it is actually received by the City within the twenty (20) days of the mailing date of the bill shall conclusively establish that the original addressee was the user on the imposition date.

5. Notwithstanding any other provision of this chapter, any person may agree in writing to be responsible for payment of the charge. Upon filing of such a writing with the City, subsequent bills shall be sent to that person, and that person shall be deemed to be the user.

6. It is a violation of this chapter to knowingly provide false information to the City regarding any fact related to billing of a storm water utility service charge or other charge of the City.

100.09 DELINQUENCY, COLLECTION, INTEREST AND PENALTIES.

1. Charges imposed under this chapter are deemed delinquent when not paid in full by the due date provided in a billing for the charge.

2. It is unlawful and a violation of this chapter for any person to discharge wastewater into the City's storm water utility system. It is also unlawful and a violation of this chapter to maintain a connection to or use the City's storm water utility system without paying the appropriate charges and fees established in this section or any rule adopted pursuant hereto. Even if no billing is received, such charges shall be due and owing and the user is obligated to pay any charges in a timely fashion.

3. Delinquent charges may be collected pursuant to the same procedure as with delinquent water bills by the City, with the assistance of City legal counsel, without further action or authorization by the Council.

4. Delinquent charges may be recovered by the City in the same manner as provided in the water billing procedure.

5. In addition to remedies provided for collection of a debt, the City may seek a temporary or permanent injunction prohibiting continued occupancy of premises, requiring disconnection of the premises from the

public storm water utility system, and termination of water and sewer service to the user's premises.

6. The Council may prescribe, by resolution and order, a schedule of interest and penalty charges to be imposed upon delinquent charges.

7. In a collection action under this chapter, the City shall be entitled to its costs and reasonable attorney fees, including at trial and on appeal, if it is the prevailing party.

8. In addition to the right of the City to bring a civil action to collect any delinquent charges or enforce any provision of this chapter, the City may take any of the following actions to secure payment:

A. The City may refuse to issue any permit to any person who is delinquent in any payment due under this chapter.

B. The City may terminate provision of storm and surface water service to premises used by the user.

C. The City may terminate sanitary sewer service to premises used by the user.

D. The City may terminate water service to the premises used by the user.

If the City terminates service as provided in this subsection, the cost of such disconnection shall be added to the amount of any other delinquent charges and shall be recoverable in the same manner as are such charges.

9. Where a lien against property can be imposed when the owner is liable, it shall exist from the date the bill was last brought current in the same manner as with a lien for water service.

100.10 REQUEST FOR SERVICE, DISCONNECTION FROM SERVICE, TERMINATION OF USER CHARGES.

1. The opening of a water billing account shall be deemed to be a specific request for provision of storm and surface water service to that property.

2. Any user of the public storm water utility system may disconnect property served by the system from service and terminate further user charges by terminating an active water billing account to the property.

100.11 ADOPTION OF RULES, INTERPRETATIONS AND APPEALS.

1. Adoption of Rules.
 - A. The Council may, by resolution and order, promulgate rules pertaining to matters within the scope of this chapter.
 - B. Any rule adopted pursuant to this section shall require a public hearing. Not less than four (4) or more than twenty (20) days before such hearing, public notice of such hearing shall be given by publication in a newspaper of general circulation within the City. Such notice shall include the place, time and purpose of the hearing and the location at which copies of the full text of the proposed rules may be obtained.
 - C. At the public hearing, the Council shall hear testimony concerning the proposed rules. At the conclusion of the public hearing, the Council shall either adopt the proposal, modify or reject it. If a modification is made, an additional public hearing shall be held but no additional notice shall be required if such additional hearing is announced at the meeting at which the modification is made. All rules shall be effective upon adoption by the Council and shall be filed in the office of the City.
 - D. Notwithstanding paragraphs B and C of this subsection, a rule maybe adopted without prior notice upon a finding that failure of the Council to act promptly will result in serious prejudice to the public interest or the interest of the affected parties, including the specified reasons for such prejudice.
2. Appeals.
 - A. The following may be appealed to the Council:
 - (1) A determination that the person is obligated to pay the service charge imposed herein.
 - (2) A dispute as to the proper calculation of the amount due from the person. This does not include, however, an objection to the overall establishment of the storm water utility charge or the amount per ERU established by the Council.
 - (3) A discretionary decision implementing a rule adopted by the Council if an appeal is provided in the order adopting the rule.
 - B. The appeal shall be filed in writing and must be actually received by the City no later than the thirtieth (30th) day after the

action appealed. The thirty (30) days shall be calculated from the due date of the original or reissued bill in response to a notice of non-occupancy, whichever is later.

C. The appeal shall be heard by the City Engineer and City Administrator in an informal proceeding. The appellant shall be provided a reasonable opportunity to submit written and oral support for the appellant's position. The City Engineer and City Administrator shall issue a written decision within ten (10) days of the proceeding. The written decision of the City Engineer and City Administrator may be appealed to the Council. Failure to properly exhaust the administrative remedy provided for herein shall constitute a bar to judicial relief.

D. The appeal from the City Engineer and City Administrator shall be heard by the Council in an informal proceeding. The appellant shall be provided a reasonable opportunity to submit written and oral support for the appellant's position. The Council shall issue a written decision within thirty (30) days of the proceeding. The written decision of the Council may be appealed to the Circuit Court of Linn County by writ of review. Failure to properly exhaust the administrative remedy provided for herein shall constitute a bar to judicial relief.

(Ch. 100 - Ord. 3-8-2004B - Apr. 04 Supp.)

[The next page is 525]