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**ORDINANCE NO. 2147****AN ORDINANCE TO REPEAL ORDINANCE NO. 2133 AND CREATE AN ORDINANCE  
ESTABLISHING A STORMWATER UTILITY**

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WHEREAS, the Common Council on 3/13/01 adopted Ordinance No. 2133 which established a stormwater utility ordinance; and

WHEREAS, Ordinance No. 2133 did not address the rate structure for the stormwater utility,

THEREFORE, the City Council repeals ordinance No. 2133 and creates Ordinance No. 2147 to establish a Stormwater Utility for the City of New Berlin as follows:

The City Council of the City of New Berlin, Waukesha County, do ordain as follows:  
**263-7 OPERATION OF STORMWATER UTILITY**

A. **Findings and Necessity.** The management of stormwater and other surface water discharges within and beyond the City of New Berlin is a matter that affects the health, safety and welfare of the City, its citizens and businesses, and others in the surrounding area. Failure to effectively manage stormwater affects the sanitary sewer utility operations of the City by, among other things, increasing the infiltration and inflow to the sanitary sewer. In addition, surface water runoff creates erosion of lands, damages to businesses and residences, and creates sedimentation and other environmental damage within the City of New Berlin. In order to protect the health, safety and welfare of the public, the City of New Berlin is exercising its authority to establish a stormwater utility. The City is acting under the authority of Chapters 62 and 66 of the Wisconsin statutes, including, but not limited to the following statutes: Sections 62.04, 62.11, 62.16, 62.175, 62.18, 66.0621, 66.0809, 66.0811, and 66.0821.

B. **Management.** There is hereby established a City of New Berlin Stormwater Utility to be managed and operated by the City Engineer as part of the City Engineering Department, subject to the supervisory control of the Stormwater Committee. The City shall separately account for the Stormwater Utility finances. The Stormwater Utility shall prepare an annual budget, which is to include all operation and maintenance costs, costs of borrowing and other costs related to the operation of the stormwater utility. The budget is subject to approval by the City Council. Any excess of revenues over expenditures in a fiscal year will be deposited into a stormwater maintenance fund, which will be used to defer the costs of capital improvements and/or to retire debt.

C. **Authority.** 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 Utility to be proper and reasonably necessary for a system of storm and surface water management. These facilities may include, without limitation by enumeration, surface and underground drainage facilities, sewers, watercourses, retaining walls and ponds, and such other facilities as will support a stormwater management system.

D. **Definitions and Word Usage.** For the purpose of this Ordinance, the following definitions shall apply: words used in the singular shall include the plural; words used in the present tense shall include the future tense; the word “shall” is mandatory and not discretionary; the word “may” is permissive. Words not defined herein shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster’s Dictionary. Unless the context specifically indicates otherwise, the meaning of terms used in the context of the Stormwater Utility shall be as follows:

**Director.** The term “Director” means the City Engineer, or his designee.

**Equivalent Runoff Unit (ERU).** The term “ERU” means the statistical average horizontal impervious area of “single family homes” within the City of New Berlin which on the date of the adoption of this Ordinance, is, based upon study, established to be 4,000 square feet. The horizontal impervious area includes, but is not limited to, all areas covered by structures, roof extensions, patios, porches, driveways and sidewalks.

**Impervious Area or Impervious Surface.** The terms “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 gravel or clay, as well as streets, roofs, sidewalks, parking lots and other similar surfaces. The Director shall be responsible for determining the impervious area based on the best available information, including, but not limited to, data supplied by the City Assessor, aerial photography, the property owner, tenant or developer. The Director may require additional information as necessary to make the determination. The number of ERUs determined applicable to a property shall be updated by the Director based on any additions to the impervious area.

**Duplex Unit.** The term “duplex unit” means any residential space identified for habitation attached to only one other residential space or as classified by the City Building Code.

**Dwelling Unit.** The term “dwelling unit” means any residential space identified for habitation by the City Building Code. A dwelling unit includes, but is not limited to, all duplexes, apartments, residential condominiums and townhouse living units.

**Multifamily Unit.** The term “multifamily unit” means any residential space identified for habitation attached to two or more residential spaces or as classified by the City Building code.

**Residential Property.** The term “residential property” means any lot or parcel developed exclusively for residential purposes including, but not limited to, single family homes, manufactured homes, multifamily apartment buildings and condominiums, and agricultural property that contains a farm residence.

**Non-residential Property.** The term “non-residential property” means any developed lot or parcel not exclusively residential as defined herein, including, but not limited to, transient rentals (such as hotels and motels), commercial, industrial, institutional, governmental property and parking lots.

**Undeveloped Property.** The term “undeveloped property” means that which has not been altered from its natural state by the addition of any improvements such as a building, structure, or impervious surface. Vacant land currently in agriculture shall be considered undevelopable property.

**E. Stormwater Service Charges.** The charges to be imposed for stormwater service pursuant to these rate classifications, shall be made by Resolution duly adopted by the Common Council following the recommendation of the Stormwater Committee. The rates, following approval by the City Council, will be on file with the City Engineer. The charges for stormwater service shall be calculated on a Equivalent Charge (EC) basis. The EC shall be imposed on all property with an impervious surface. The EC will be calculated on the basis of a typical single family property (an ERU). Other classifications of property will be charged multiples of the EC based on the ERU calculation for that property.

**F. Stormwater Service Charge; Payment.** The charges established hereunder shall be billed to the Stormwater Utility customer, at the same time and in the same manner as the sanitary sewer or water bill. The property owner shall be the ultimate responsible party for payment of the Stormwater Utility charge. A stormwater invoice shall be sent in a like manner to any property not taking service from the sanitary sewer or water utility. Failure to pay the charges when due will subject the owner to such penalties as are established by State law and/or the Council, including those penalties set forth in Section 267-3(D), and may result in the charges being assessed as a lien against the property pursuant to sec. 66.0821, Wis. Stats.

**G. Stormwater Customer Classification.** For purposes of imposing the Stormwater charges, all lots and parcels within the City are classified into the following five (5) customer classes:

1. Customer Classifications

(a) Residential - Single Family, which by definition is one ERU and which shall be charged one equivalent charge (EC)

(b) Residential - Duplex. The equivalent charge (EC) imposed for a duplex residential property shall be the fee for seven-tenths (0.7) of one EC per each individual dwelling unit existing on the property, i.e. Duplex Charge (per building) = EC fee X (sum of number dwelling units X .7).

(c) Residential – Multifamily - The equivalent charges (**EC**) imposed for a multifamily residential properties shall be the fee for one EC, multiplied by the numerical factor obtained by dividing the total square footage of impervious area of the property by the square footage of one ERU. The factor shall be rounded down to the nearest one-tenth (0.1), i.e. Multifamily Charge (per building) = EC fee X (total impervious area ÷ 4,000 square feet)

(d) Residential - Condominium —The equivalent charges (**EC**) imposed for a condominium residential properties shall be an equal allocation of the charge assigned to the entire condominium development determined by multiplying the fee for one EC, by the numerical factor obtained by dividing the total square footage of impervious area of the property by the square footage of one ERU. The factor shall be rounded down to the nearest one-tenth (0.1), i.e. Condominium Charge (per unit) = EC fee X ((total impervious area ÷ 4,000 square feet) ÷ the number of condominium dwelling units in the complex)

(e) Non-residential - The equivalent charges (**EC**) imposed for non-residential properties as defined herein shall be the fee for one EC, multiplied by the numerical factor obtained by dividing the total square footage of impervious area of the property by the square footage of one ERU. The factor shall be rounded down to the nearest one-tenth (0.1), i.e. Non-residential Charge (per property) = EC fee X (total impervious area ÷ 4,000 square feet)

2. Minimum Charge. The minimum ERU calculations for any customer other than undeveloped properties shall be not less than the rate of three-tenths (3/10) of one ERU.

#### **H. Appeal of Charge-Adjustment.**

(1) The City Council shall adopt, by separate resolution, criteria recommended by the Stormwater Committee for providing adjustments so as to account for stormwater management facilities that are properly maintained and which;

- (i) Reduce the storm water runoff rate to the municipal stormwater system-
- (ii) Reduce the amount of pollutant loading to the municipal stormwater system.

(2) No Adjustments shall be considered for structural or nonstructural Best Management Practices that are required in order to comply with any local, state, or federal regulation, such as New Berlin Storm Water Ordinance, NR 216, Chapter 30 and NR 103.

(3) No Adjustments 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.

(4) City Engineer’s Review Procedure

- (i) A customer may request an informal review of classification and ERU determination with the City Engineer who shall meet with the customer per the Resolution regarding adjustments duly adopted by the Council.

- (ii) Following informal review with the City Engineer, a customer may request an adjustment to classification and/or ERU determination under subsection (G) within thirty (30) days of receipt of the City Engineer's classification and ERU determination by submitting a written request to the Stormwater Committee asking for a review of the classification and/or ERU determination.
- (iii) The City Engineer shall provide to the Stormwater Committee a written explanation as to the customer's classification and ERU determination within thirty (30) days of receipt of the request for an adjustment. The explanation shall be sent to the customer requesting an adjustment.
- (iv) Within thirty (30) days of receipt of the City Engineer's explanation, the customer may appeal the City Engineer's classification and ERU determination to the Stormwater Committee by filing with the City Clerk a written request for appeal.
- (v) The Stormwater Committee shall hear the appeal within forty-five (45) days of the receipt of the written request for appeal. The Stormwater Committee shall hold a contested case hearing to determine whether the classification and/or ERU determination is fair and reasonable or whether a modification to the classification and/or ERU is warranted. The Stormwater committee shall determine whether the City Engineer's determination shall be approved, modified or rejected. The determination of the Stormwater Committee shall be filed within ten (10) days of the hearing, in writing, and set forth in detail the reason or reasons for its decision and shall inform the customer.

(5) **Application of Adjustment.** There shall be no retroactive adjustment for user charges imposed prior to the granting of the request.

(6) As a condition precedent to challenging any stormwater classification, all charges must be paid under protest to the City. Failure to comply with Section H(4) waives all right to challenge the classification.

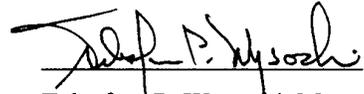
**I. Liberal Interpretation.** This ordinance shall be interpreted liberally to secure the ends sought hereby.

**J. Severability.** If any provision of this ordinance is found to be unlawful or unenforceable, the remaining provisions shall remain in effect.

**K. Effective date.** This ordinance shall take effect and be in full force and effect the first full month after adoption by the Common Council.

**PASSED AND ADOPTED** by the Common Council this 14<sup>th</sup> day of August, 2001.

APPROVED:

  
Telesforo P. Wysocki, Mayor

Countersigned/Certified:

  
Nancy Hoffmann, Deputy City Clerk