

ORDINANCE No. 1574

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to surface water management, adding and codifying new sections to chapter 11.12 DMMC applying Findings and Authority and adopting by reference the "Final Report for the Stormwater Rate Structure Study - July 2013"; amending DMMC 11.12.010 to revise the definition of the equivalent billing unit (EBU); amending DMMC 11.12.020 to replace the property classification base rates in Appendix A attached to this Ordinance; amending DMMC 11.12.060 to eliminate the 70% discount for private streets; and amending 11.12.080 for rate adjustments to provide for adjustment in service charges for non-single family properties that provide water quality and/or water quantity mitigation to that required under the current development standards.

WHEREAS, the City Council of the City of Des Moines first established surface water utility rates and charges in Ordinance No. 860, enacted October 11, 1990, and

WHEREAS, Ordinance No. 860 was amended by Ordinance No. 990, enacted November 19, 1992, to apply a cost of living increase of approximately 3.15 percent, effective in 1993, and

WHEREAS, Ordinance No. 990 was amended by Ordinance No. 1065, enacted November 18, 1993, to apply a cost of operation increase of approximately 2 percent, effective in 1994, and

WHEREAS, Ordinance No. 1065 was amended by Ordinance No. 1173, enacted November 21, 1996, to apply a cost of operation increase of approximately five percent (5%), effective in 1997, and

WHEREAS, Ordinance No. 1173 was amended by Ordinance No. 1220-A, enacted October 29, 1998, to apply a cost of operation adjustment to charges for surface water drainage services to be consistent with the Surface Water Management Financial Forecast, and

WHEREAS, Ordinance No. 1220-A was amended by Ordinance No. 1246, enacted November 18, 1999, to apply a cost of operation adjustment to charges for surface water drainage services and to add participation charges for new development permits, and

WHEREAS, on October 13, 2005, the City Council of the City of Des Moines considered the findings and recommendations of the Surface Water Management Rate Study presented by John Ghilarducci of Financial Consulting Solutions Group, Inc., and

WHEREAS, Ordinance No. 1368 was enacted on November 13, 2005, to adjust surface water drainage service charges, to amend participation charges for development permits, and to apply an inflation adjustment, and

WHEREAS, Ordinance No. 1437 was enacted on September 25, 2008, to adjust surface water drainage services charges, to revise the annual inflation rate calculation, and to specify an effective date for applying the drainage service charges to new development, and

WHEREAS, Ordinance No. 1441 was enacted on November 13, 2008, imposing a six percent (6%) Surface Water Management Utility Tax, and

WHEREAS, Ordinance No. 1496 was enacted on November 18, 2010, to revise the annual inflation index calculation to a minimum rate increase of zero percent, and

WHEREAS, the City Council finds that surface water management is an essential service of the City of Des Moines, and

WHEREAS, on May 23, 2013, the City Council of the City of Des Moines considered the findings and recommendations of the Surface Water Management Rate Structure Study presented by John Ghilarducci of Financial Consulting Solutions Group, Inc., and the City Council having considered, and

WHEREAS, on July 25, 2013, the City Council heard the first reading of the Draft Ordinance, and moved to pass Draft Ordinance 13-123 (Alternate A) to a Second Reading on August 8, 2013; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:

Sec. 1. A new section shall be added to chapter 11.12 DMMC to read as follows:

The following Findings and Authority shall apply to this Ordinance.

The City has prepared a study for determining an equitable method for calculating the Surface Water Management Service Fees for the rate classes as set forth in Appendix A of this Ordinance. The "Final Report for the Stormwater Rate Structure Study - July 2013", by FCS Group, complies with RCW 35.67.020 by applying three uniform rates for small, medium, and large single-family properties and a measured rate for single-family properties exceeding 7,500 square feet of impervious surface and a measured rate for all multi-family, commercial and non-profit properties. The measured rate charge shall be based on per billing unit per 3,450 square feet of impervious surface area. A copy of the rate study, Appendix B of this Ordinance, shall be kept on file with the City Clerk and is available to the public for review.

Sec. 2. A new section shall be added to chapter 11.12 DMMC to read as follows:

The following is adopted by reference:

The "Final Report for Stormwater Rate Structure Study - July 2013", is hereby adopted as set forth in Appendix B, which is attached to the Ordinance codified in this chapter and incorporated herein by reference.

Sec. 3. DMMC 11.12.010 and section 1 of Ordinance No. 860 as amended by section 1 of Ordinance No. 1000 as amended by section 2 of Ordinance No. 1211 as amended by section 1 of Ordinance No. 1246 are each amended to read as follows:

Definitions.

(1) Use of words and phrases. As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases

defined in this section shall have the indicated meanings.

(2) "Commercial property" means: (a) all property in the City, private or public, used for a purpose other than single-family, multifamily, or nonprofit uses; and (b) for the purposes of this chapter, "mixed uses" as defined in the zoning code of the City and nonprofit homes for the aging as that expression is used in chapter 84.36 RCW.

(3) "Development permit charge" means a one time payment made at the time of development or redevelopment of a property to compensate the City for the costs previously incurred by the City in providing the surface water system serving the property at the time of development.

(4) "Developed property" means a property that has been changed from the natural state, resulting in 500 square feet or more of impervious area occurring on the property.

(5) "Development permit" means, for the purposes of this chapter, a required permit leading to a project that will result in 500 square feet or more of new impervious area on previously undeveloped or developed property.

(6) "Disabled person" means a person who has been granted special parking privileges for disabled persons under RCW 46.16.381 as presently constituted or as may be subsequently amended.

(7) "Equivalent billing unit (EBU)" means a measure of the impact of commercial/multifamily properties on the surface water system. It is equal to each 3,450 square feet of impervious

area that has been determined to be the average amount of impervious area on single-family properties in the City.

(8) "Impervious surface" or "area" means a hard surface area which either prevents or retards the entry of water into the soil mantle as it entered under natural conditions prior to development, and/or a hard surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roofs, walkways, patios, driveways, parking lots, storage areas, areas which are paved, graveled or made of packed or oiled earthen materials, or other surfaces which similarly impede the natural infiltration of surface and storm water. Open, uncovered retention/detention facilities shall not be considered as impervious surfaces for the purpose of this chapter.

(9) "Multifamily property" means all property zoned and/or used for purposes of multifamily housing. For the purposes of this chapter, trailer parks are considered multi-family property, and "mixed uses" are not considered multifamily property.

(10) "Nonprofit property" means property upon which a facility exists that is owned and operated by a governmental agency or by an organization that has been granted nonprofit status under the rules of the Internal Revenue Code of the United States.

(11) "Nonprofit residential property" means multifamily residential developments or nonprofit homes for the aging, owned and operated by a governmental agency or by an organization that has been granted nonprofit status under the rules of the Internal Revenue Code of the United States.

(12) "Private streets" means tracts of land, not publicly owned, that are generally open to the public in the same manner as public rights-of-way and that serve residential developments, but shall not include driveways or paved surfaces providing vehicle access within a multifamily or commercial development.

(13) "Rate Structure Study" means the rate study identified in Section 2 of this Ordinance.

(14) "Single-family unit" means those properties on which one dwelling unit is established, and that unit is used for dwelling purposes and not commercial activity, except for approved home occupations. "Single-family unit" also means an individually owned dwelling unit in planned unit developments (hereinafter "PUD" or "PUDs"), except for condominiums therein.

(15) "Surface water system" means the surface water utility system of the City.

Sec. 4. DMMC 11.12.020 and section 2 of Ordinance No. 860 as amended by section 1 of Ordinance No. 927 as amended by section 1 of Ordinance No. 990 as amended by section 1 of Ordinance No. 1065 as amended by section 1 of Ordinance 1083 as amended by section 1 of Ordinance 1173 as amended by section 1 of Ordinance No. 1220-A as amended by section 2 of Ordinance No. 1246 as amended by section 1 of Ordinance No. 1368 as amended by section 1 of Ordinance No. 1437 as amended by section 1 of Ordinance 1496 are each amended to read as follows:

Service charge established for surface water service.

There is established a system of service charges for surface water drainage service against all developed properties in the City.

(1) Monthly surface water utility rates shall be established on the basis of whether the developed property is used for a single-family unit, multifamily units, commercial properties, or nonprofit properties. Rates for all other surface water goods and services shall be established by executive order of the City manager and published at the office of the Planning, Building, and Public Works Department.

(2) The rates for surface water drainage service shall be as reflected on Appendix "A" attached to the Ordinance codified in this section, which is incorporated herein by this reference. The baseline rates contained in Appendix "A" shall take effect January 1, 2014. Effective January 1, 2015 and January 1st of each succeeding year thereafter, rates for surface water drainage service shall be established by, first, taking the rate service charge for the previous year (this figure is hereinafter referenced as the "base sum"); second, multiplying the base sum by a combination index of the Engineering News Record (ENR) Construction Cost Index (CCI) for the City of Seattle on March 31st of the current year and the Seattle Consumer Price Index (CPI-Urban Consumers), as measured for the 12-month period ending in June of the previous year as published by the U.S. Bureau of Labor and Statistics. The applicable index shall be calculated for the upcoming year as 30 percent

of the ENR CCI for Seattle plus 70 percent of the Seattle CPI; and, third, adding the results to the base sum. Beginning January 1, 2010, and on January 1st of each succeeding year, the rates shall be established by applying updated CCI, CPI, and the end figures in like manner to the rates of the previous year. Beginning January 1, 2011, and on each succeeding year, should the combined CCI/CPI inflation index as calculated above be less than zero, then the base sum shall remain the same as the previous year.

(3) The monthly surface water service charge as applied to new development activity resulting in 500 square feet or more impervious area shall become effective on the date the land was cleared, graded or modified for the development as documented by the Planning, Building and Public Works Director. For new subdivisions, the effective date shall be approval date of the plat.

Sec. 5. DMMC 11.12.060 and section 6 of Ordinance No. 860 as amended by section 2 of Ordinance No. 1187 as amended by section 1 of Ordinance No. 1230 are each amended to read as follows:

Service charges for private streets. The monthly service charge for private streets shall be computed on the same basis as commercial property. Where private streets are not in single ownership, but subject to a maintenance agreement, residential properties served by the private street shall be billed equally on a pro rata basis.

Sec. 6. DMMC 11.12.080 and section 8 of Ordinance No. 860 as amended by section 3 of Ordinance No. 1083 as amended by section 3 of Ordinance No. 1211 are each amended to read as follows:

Rate adjustments.

(1) Any person billed for service charges may file a "Request for Rate Adjustment" with the surface water management division within three years of the date from which the bill was sent. However, filing of such a request does not extend the period for payment of the charge.

(2) Requests for rate adjustment may be granted or approved only when the Planning, Building and Public Works Director determines that one or more of the following conditions exist:

(a) The rate or service charge bill was not calculated in accordance with the terms of this chapter or the amount charged is in error;

(b) The request is for a private street or a non-single family residential parcel, which includes a constructed or natural on-site storm water mitigation facility that meets all of the following conditions:

(i) The constructed or natural facility provides storm or storm water detention, retention, water quality treatment, and/or conveyance; and,

(ii) The Planning, Building and Public Works Director has determined that the property owner is capable of maintaining and operating the facility; and,

(iii) The facility is maintained by the property owner to the City's design specifications; and,

(iv) The facility is available for inspection by the City; and,

(v) Excess capacity, if not used by the property owner, is accessible and available for other related public purposes; and

(vi) The rate adjustment is revocable under conditions where the facility no longer operates at the design level established during the drainage plan review/approval process.

(3) The property owner shall have the burden of proving that the rate adjustment sought should be granted.

(4) Decisions on requests for rate adjustments shall be made by the Planning, Building and Public Works Director based on information submitted by the applicant and by the division within 30 days of the adjustment request except when additional information is needed. The applicant shall be notified in writing of the Planning, Building and Public Works Director's decision. If an adjustment is granted which reduces the charge for the current year or two prior years, the applicant shall be refunded the amount overpaid in the current and two prior years.

(5) Rate adjustments granted for on-site mitigation as set forth in DMMC 11.12.080(2)(b) shall not exceed 30% of the unadjusted service charge: 14% of the unadjusted service charge for full water quality mitigation and 16% of the unadjusted service charge for full water quantity mitigation. The percentage of the rate adjustment to be granted up to the maximum amount will be the percentage achievement of on-site

facilities against current development requirements as determined by the Planning, Building and Public Works Director.

(6) If the Planning, Building and Public Works Director finds that a service charge bill has been undercharged, then either an amended bill shall be issued which reflects the increase in the service charge or the undercharged amount will be added to the next year's bill. This amended bill shall be due and payable under the provisions set forth in DMMC 11.12.020. The Planning, Building and Public Works Director may include in the bill the amount undercharged for two previous billing years in addition to the current bill.

Sec. 7. Codification. Sections 1 and 2 of this Ordinance shall be codified as new sections in chapter 11.12 DMMC.

Sec. 8. Severability - Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

(2) If the provisions of this Ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this Ordinance is deemed to control.

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Sec.9. Effective date. This Ordinance shall take effect and be in full force five (5) days after its passage and approval in accordance with law.

PASSED BY the City Council of the City of Des Moines this 8thth day of August, 2013 and signed in authentication thereof this 8th day of August, 2013.



M A Y O R

APPROVED AS TO FORM:



Assistant City Attorney

ATTEST:



City Clerk

Published: August 13, 2013

LEGAL NOTICE
SUMMARY OF ADOPTED ORDINANCE
CITY OF DES MOINES

ORDINANCE NO. 1574, Adopted August 8, 2013.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This ordinance relates to surface water management, adds new sections to chapter 11.12 DMMC applying Findings and Authority and adopting by reference the "Final Report for the Stormwater Rate Structure Study - July 2013"; amends DMMC 11.12.010 to revise the definition of the equivalent billing unit (EBU); amends DMMC 11.12.020 to replace the property classification base rates in Appendix A attached to this Ordinance; amends DMMC 11.12.060 to eliminate the 70% discount for private streets; and amends DMMC 11.12.080 for rate adjustments to provide for adjustment in service charges for non-single family properties that provide water quality and/or water quantity mitigation to that required under the current development standards.

The full text of the Ordinance will be mailed without cost upon request.

Bonnie Wilkins
City Clerk

Published: August 13, 2013

APPENDIX "A"
ORDINANCE NO. 1574

Effective January 1, 2014, the following baseline rates shall be charged for goods and services provided by the utility for the City of Des Moines:

(1) Single-family Developed Properties.

(a) The monthly service charge for all single-family developed properties with impervious surface area between 500 square feet and 2,800 square feet on the property are charged \$10.82.

(b) The monthly service charge for single-family developed properties with impervious surface area between 2,800 square feet and 4,350 square feet on the property are charged \$14.24.

(c) The monthly service charge for single-family developed properties with impervious surface area between 4,350 square feet and 7,500 square feet on the property are charged \$20.31.

(d) The monthly service charge for single-family properties with impervious surface area greater than 7,500 square feet on the property is computed in accordance with the following formula:

$$\begin{array}{r} \text{Monthly Service} \\ \text{Charge} = \end{array} \qquad \begin{array}{r} \$14.24 \times \text{Square Footage of} \\ \text{Impervious Area} \\ \hline 3,450 \text{ sq. ft.} \end{array}$$

(2) Multi-family Properties. The monthly service charge for all multi-family properties is based on the impervious surface area on the property in accordance with the following formula:

$$\begin{array}{r} \text{Monthly Service} \\ \text{Charge} = \end{array} \qquad \begin{array}{r} \$14.24 \times \text{Square Footage of} \\ \text{Impervious Area} \\ \hline 3,450 \text{ sq. ft.} \end{array}$$

(3) Commercial Properties. The monthly service charge for all commercial properties is based on the impervious surface area on the property in accordance with the following formula:

$$\begin{array}{r} \text{Monthly Service} \\ \text{Charge} = \end{array} \qquad \begin{array}{r} \$14.24 \times \text{Square Footage of} \\ \text{Impervious Area} \\ \hline 3,450 \text{ sq. ft.} \end{array}$$

(4) Nonprofit Properties. The monthly service charge for all nonprofit properties is based on the impervious surface area on the property in accordance with the following formula:

$$\begin{array}{r} \text{Monthly Service} \\ \text{Charge} = \end{array} \qquad \begin{array}{r} \$14.24 \times \text{Square Footage of} \\ \text{Impervious Area} \\ \hline 3,450 \text{ sq. ft.} \end{array}$$