

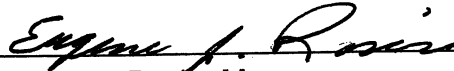
**ORDINANCE NO. 1624**

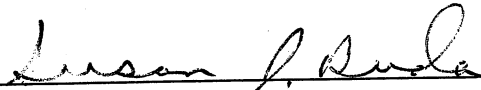
**ORDINANCE REPEALING AND RECREATING ORDINANCE NO. 1621  
CREATING CHAPTER 22.03, STORM WATER UTILITY  
OF THE CITY OF KAUKAUNA**

The Common Council of the City of Kaukauna, Outagamie County, Wisconsin, do ordain that Chapter 22.03, Storm Water Utility of the City of Kaukauna, Kaukauna Municipal Code, be created.

See Exhibit A which is attached.

This ordinance shall be in force and effect beginning July 1, 2009.

APPROVED:   
Eugene J. Rosin, Mayor

ATTEST:   
Susan J. Duda, Clerk/Treasurer

Adopted: 7-21-09  
Published: 8-01-09

## EXHIBIT A

### Subchapter III

#### STORM WATER UTILITY

**22.03(1) Establishment.** The City of Kaukauna finds that the management of storm water and other surface water discharge within and beyond the Fox River, Apple Creek, Garners Creek, Konkapot Creek, and Plum Creek (the "City's Waterways") 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 storm water affects the sanitary sewer utility operations of the City and the Heart of the Valley Metropolitan Sewerage District by, among other things, increasing the likelihood of infiltration and inflow in the sanitary sewer. In addition, surface water runoff may create erosion of lands, threaten businesses and residences with water damage, and create sedimentation and other environmental damage in the City's Waterways. Those elements of the system that provide for the collection of and dispose of storm water and regulation of groundwater are of benefit and provide services to all properties within the City of Kaukauna, including property not presently served by the storm elements of the system. The cost of operating and maintaining the City storm water management system and financing necessary repairs, replacements, improvements and extensions thereof should, to the extent practicable, be allocated in relationship to the benefits enjoyed and services received therefrom.

There is hereby established a City of Kaukauna Storm Water Utility. The operation of the Storm Water Utility shall be under the supervision of the Common Council. The Director of Public Works shall be in charge of the Storm Water Utility.

**22.03(2) Authority.** The City, through the Storm Water Utility, may acquire, construct, lease, own, operate, maintain, extend, expand, replace, clean, dredge, repair, conduct, manage and finance such real estate and facilities as are deemed by the City 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, water courses, retaining walls and ponds, detention basins, and such other facilities as will support a storm water management system.

**22.03(3) Definitions.** For the purpose of this ordinance, the following definitions shall apply: Words used in the singular shall include the plural, and the plural, the singular; words used in the present tense shall include the future tense; the word "shall" is mandatory and not discretionary; the word "may" is permissive. Terms not specifically defined herein shall have the meaning defined in NR 216.002, Wisconsin Administrative Code, and as the same may be amended from time to time, if defined therein; or if not therein defined, shall be construed to have the meaning given by common and ordinary use, as defined in the latest edition of Webster's Dictionary.

- (a) **DIRECTOR.** The term "Director" means the Director of Public Works, or his/her designee.
- (b) **DEVELOPED PROPERTY.** The term "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, change in grade or landscaping.
- (c) **EQUIVALENT RUNOFF UNIT (ERU).** The term "ERU" means the statistical average horizontal impervious area of "single family homes" within the City of Kaukauna on the date of adoption of this ordinance. The horizontal impervious area includes, but is not limited to all areas covered by structures, roof extensions, patios, porches, driveways and sidewalks.

- (d) **IMPERVIOUS AREA OR IMPERVIOUS SURFACE.** The term "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 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. Excluded from this definition are undisturbed land, lawn and fields.
- (e) **DUPLEX UNIT.** The term "duplex unit" means any residential space identified for habitation by members of the same household attached to only one other residential space or as classified by the City Building and Zoning Codes.
- (f) **DWELLING UNIT.** The term "dwelling unit" means any residential space identified for habitation by members of the same household or as classified by the City Building and Zoning Codes. A dwelling unit includes, but is not limited to, single family homes, manufactured homes, duplexes, multi-family apartments, residential condominiums and townhouse living units.
- (g) **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, duplexes, multi-family apartments, residential condominiums and townhouse living units.
- (h) **NON-RESIDENTIAL PROPERTY.** The term "non-residential property" means any developed lot or parcel not exclusively residential as defined herein, but not limited to, transient rentals (such as hotels and motels), mobile home park, commercial, industrial, institutional, governmental property and parking lots.
- (i) **RUNOFF.** The term "runoff" means the surface water, including rain and snow melt, which is inhibited by impervious surfaces from naturally infiltrating into soil.
- (j) **STORM WATER FACILITIES.** The term "storm water facilities" means all constructed facilities or natural features used for collecting, storing and conducting storm water to, through and from drainage areas to the point of final outlet. Storm water facilities collectively constitute a storm water system.
- (k) **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, impervious surface, change of grade or landscaping. For new construction, a property shall be considered developed pursuant to this ordinance at the time of water meter installation or upon review of the actual impervious area by January 1<sup>st</sup>.

#### **22.03(4) Rate Charges.**

- (a) By this ordinance, the Common Council is authorizing charges on properties within the City of Kaukauna for services and facilities provided by the Storm Water Utility. The actual charges to be imposed, the establishment of formulas for calculations of the charges, the establishment of specific customer classifications and any future changes in those rates, formulas, rate charges and customer classifications, may be made by resolution. All rates established pursuant to this ordinance will be fair and reasonable in accordance with the decision and judgment of the Common Council. The current rates will be on file with the City Clerk/Treasurer.
- (b) Rate charges shall be used to finance the costs of the Storm Water Utility. These rate charges may include:
1. **BASE CHARGE (BC).** The Base Charge may be imposed on all property in the City. The Base Charge will be designed to reflect the fact that all properties benefit from the storm water management activities of the City and that all property contribute in some way to the storm water discharge that must be managed by the City. The BC will be designed to collect the administrative costs of the storm sewer utility and the portion of the capital costs not covered by special assessment.

2. EQUIVALENT RUNOFF UNIT CHARGE (ERU). This charge shall be imposed on all property that has any developed impervious area. The ERU will be designed on the basis of a typical residential unit of property. Other units of property will be charged multiples of the ERU, based upon the impervious area contributing to surface water runoff.
  3. SPECIAL CHARGE (SC). This charge may be imposed on property that is in an area specially benefited by a particular storm water management facility. The SC will be developed to reflect the benefits/services in a particular area that may not be appropriate to spread to property throughout the City. The SC will be calculated on an ERU basis.
- (c) The Common Council may make such other adjustments or customer classifications as will be likely to provide reasonable and fair distribution of the costs of the Storm Water Utility. In so doing, the Council may provide credits against certain portions of the charges set forth above for facilities installed and maintained by the property owner for the purpose of lessening the storm water flow or pollutant load from that given property.
  - (d) The City's Finance Department is hereby appointed as the collection agency for the City of Kaukauna Storm Water Utility. Bills shall be prepared by the City or its agent. The City shall allocate the actual cost of billing and collecting as a charge upon the Storm Water Utility.
  - (e) The bills for Storm Water Utility charges shall be provided to the designated water utility bill recipient, but this notification shall not relieve the owner of the property from liability for rental property in the event payment is not made as required in this article. The owner of any property served which is occupied by tenants shall have the right to examine collection records of the City for the purpose of determining whether such rates and charges have been paid for by such tenants, provided that such examination shall be made at the office at which the records are kept and during the hours that such office is open for business.
  - (f) Storm Water Utility charges shall be paid monthly. If Storm Water Utility charges remain unpaid after a period of twenty (20) days from the date of utility bill, such bill shall become a delinquent special charge and shall become a lien as provided in ss. 66.0809 and 66.0821. Said charges shall automatically be extended upon the current or next tax roll as a delinquent tax against the property, and all proceedings in relation to the collection, return and sale of property for delinquent real estate taxes shall apply to such special charges. Unpaid charges shall be assessed the same as the water utility bills.
  - (g) All delinquent charges shall be subject to a ten (10) percent penalty in addition to all other charges and prior penalties or interest when the delinquent charge is extended upon the tax roll.

**22.03(5) Customer Classification.**

- (a) For purposes of imposing the storm water charges, all lots and parcels within the City are classified into the following five (5) customer classes:
  1. Residential - Single-Family.
  2. Residential - Duplex.
  3. Residential - Multi-Family and Condominium.
  4. Non-Residential.
  5. Undeveloped.
- (b) The Director of Public Works shall prepare a list of lots and parcels within the City of Kaukauna, and assign a classification to each lot or parcel.

- (c) The average square footage of impervious area of the ERU is established to be equivalent to 2,944 square feet.
- (d) The charges imposed for single-family residential properties shall be the rate for one (1) ERU.
- (e) The charges imposed for duplex residential properties shall be the rate for six-tenths (0.6) of one (1) ERU per each individual dwelling unit existing on the property (ERU rate multiplied by the number of dwelling units).
- (f) The charges imposed for multi-family apartment, condominium and townhouse residential properties shall be the same as non-residential properties.
- (g) The charges imposed for non-residential properties shall be the rate for one (1) ERU, multiplied by the numerical factor obtained by dividing the total impervious area of a non-residential property by the square footage of one (1) ERU. The numerical factor shall be rounded down to the nearest one-tenth (0.1), i.e.:

$$\frac{\text{ERU rate multiplied by impervious area (square feet)}}{\text{divided by 2,944 square feet}}$$

- (h) No ERU charge is imposed for undeveloped properties.
- (i) The Director of Public Works shall be responsible for determining the impervious area, based upon the best available information, including, but not limited to, data supplied by the Building Inspector, aerial photography, the property owner, tenant or developer. The Director of Public Works may require additional information, as necessary, to make the determination. The impervious area calculation shall be updated no less than annually by the Director of Public Works on any additions to the impervious area. Upon property owner's written notification and request, the Director of Public Works shall review impervious area for possible reductions.
- (j) The minimum charges for any developed property shall be equal to the rate for one (1) ERU.

**22.03(6) New Construction.** The owner shall also be liable for storm water charges, under this ordinance, for the improvement from the date of water meter installation or upon determination of the actual impervious area.

**22.03(7) Method of Appeal.**

- (a) The amount of Storm Water Utility charge may be appealed, as follows:
- (1) A written appeal shall be filed with the Director of Public Works prior to the utility charge due date; or
  - (2) Within thirty (30) days of payment, a written challenge to the storm water charge must be filed with the Director of Public Works on behalf of the customer, specifying all bases for the challenge and the amount of the storm water charge the customer asserts is appropriate. Failure to file a challenge within ninety (90) days of payment waives all right to later challenge the charge.
- (3) A property owner not satisfied with the Director of Public Work's decision may appeal to the Board of Public Works for their review and action.
- (4) Following review by the Board of Public Works, the Common Council will determine whether the amount of storm water charge is fair and reasonable, or whether a refund and/or adjustment is due the customer. The Common Council may act with or without a hearing, and will inform the customer in writing of its decision.

- (5) If the Common Council determines that a refund is due the customer, the refund will be applied as a credit on the customer's next storm water billing, if the refund will not exceed the customer's next storm water billing, or will be refunded at the discretion of the Finance Director without interest.

**22.03(8) Special Assessment Authority.** In addition to any other method for collection of the charges established pursuant to this ordinance for storm water utility costs, the Common Council finds that these charges may be levied on property as a special charge pursuant to s. 66.0627, Wis. Stats. The charges established hereunder reasonably reflect the benefits conferred on property and may be assessed as special charges. The billing for such charges to the owner will serve as notice to the owner that failure to pay the charges when due may result in them being charged pursuant to the authority of s. 66.0627, Wis. Stats. In addition, the City may provide notice each October of any unpaid charges to the Storm Water Utility, which charges, if not paid by November 15, may be placed on the tax roll under s. 66.0627, Wis. Stats.

**22.03(9) Budget Excess Revenues.** The Storm Water Utility finances shall be accounted for in a separate Storm Water Utility Fund by the City. The Utility shall prepare an annual budget, which is to include all operation and maintenance costs, administrative costs, depreciation costs, debt service and other costs related to the operation of the Storm Water Utility. The budget is subject to approval by the Common Council. The costs shall be spread over the rate classifications as determined by the Common Council. Any excess of revenues over expenditures in a year will be retained by the Storm Water Utility Fund for subsequent years' needs.

**22.03(10) Severability.** If a court of competent jurisdiction judges any section, clause, provision or portion of this ordinance unconstitutional or invalid, the remainder of the ordinance shall remain in force and not be affected by such judgment.