

**ORDINANCE 852**

**AN ORDINANCE ENACTING CHAPTER 103 TITLED “STORM WATER MANAGEMENT UTILITY” ESTABLISHING THE STORM WATER MANAGEMENT UTILITY, ESTABLISHING THE STORM WATER MANAGEMENT DISTRICT, PROVIDING FOR IT’S MANAGEMENT AND OPERATION, AND ESTABLISHING AND IMPOSING RATES; AND PROCEDURES FOR COLLECTING RATES FOR STORM WATER MANAGEMENT WITHIN THE CORPORATE LIMITS OF THE CITY OF JOHNSTON, IOWA.**

**WHEREAS**, pursuant to 384.84 Code of Iowa (2005) the City may establish a stormwater drainage system utility and impose rates and charges for the operation, maintenance and extension of the Storm Water Drainage system, which in the City of Johnston shall be known as the Johnston Storm Water Management Utility; and

**WHEREAS**, it is the best interests of the City of Johnston that the Storm Water Management Utility be established so as to provide for the proper operation and maintenance of the utility facilities and to provide for rates for the purposes of assuring sufficient funds for the same; and

**WHEREAS**, the City of Johnston declares the entire area within the Corporate Limits of the City of Johnston as the Storm Water Drainage System District pursuant to 384.84(5) Code of Iowa (2005) which shall be the area governed by the Johnston Storm Water Management utility.

**BE IT ORDAINED** by the City Council of the City of Johnston, Iowa:

**SECTION 1.** That the Municipal Code of the City of Johnston, Iowa, 2007, is hereby amended by enacting Chapter 103 Storm Water Management Utility as follows:

**103.01 Definitions.**

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. *Bonds* means revenue bonds, notes, loans or any other debt obligations issued or incurred to finance the costs of construction.
2. *Customers of stormwater utility* include all persons, properties, and entities served by and/or benefiting from the utility’s acquisition, management, maintenance, extension and improvement of the public stormwater management systems and facilities.

1. *User* means any person owning, operating, or otherwise responsible for property within the city which directly or indirectly discharges stormwater or surface or subsurface waters to any portion of the stormwater management system, including direct or indirect discharges to the city's stormwater drainage system, or which is directly or indirectly protected by the city's flood protection system or stormwater drainage system. The term "user" means any person responsible for the direct or indirect discharge of stormwater or surface or subsurface waters to the city's stormwater drainage system.
2. *Director* means the Public Works Director as director of the stormwater management utility.
3. *Equivalent residential unit* or *ERU* means the average impervious area of residential developed property per dwelling unit located within the city as periodically determined and established as provided in this division, which has been determined by the City to be 4,000 square feet of impervious surface area.
4. *Operating budget* means the annual operating budget for the stormwater management utility adopted by the city council for the succeeding fiscal year.
5. *Revenues* means all rates, fees, assessments, rentals or other charges or other income received by the utility, 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 and any amounts contributed by the city, all as calculated in accordance with sound accounting practice.
6. *Stormwater drainage system* means the system of publicly or privately owned or operated rivers, creeks, ditches, drainage channels, pipes, basins, street gutters, and lakes within the city through which or into which stormwater runoff, surface water, or subsurface water is conveyed or deposited.
7. *Stormwater management utility* or *utility* means the enterprise fund utility created by this division to operate, maintain and improve the system and for such other purposes as stated in this division.

#### **103.02 Declaration of purpose; establishment of district.**

1. The city council finds, determines, and declares it to be conducive to the health, welfare, safety and convenience of the city and its residents that a stormwater management utility district be established within the city. Consequently, pursuant to I.C. § 384.84(1), a stormwater management utility district, to be known as The Johnston Stormwater Management Utility, is established, and it is ordained and declared that the property located within the City Limits of the City of Johnston shall be and constitute the stormwater management utility district, and that the utility shall comprise and include elements of the city's stormwater drainage and

flood protection systems which provide for the collection, treatment and disposal of stormwater, surface water, and groundwater. It is further found, determined, and declared that the elements of the stormwater management utility are of benefit and provide services to all real properties within the incorporated city limits, including property not directly served by the stormwater drainage system, and that such benefits and services may include but are not limited to the provision of adequate systems of collection, conveyance, detention, treatment and release of stormwater; the reduction of hazard to property and life resulting from stormwater runoff and flooding; improvement in general health and welfare through reduction of undesirable stormwater conditions and flooding; and improvement to the water quality in the stormwater and surface water system and its receiving waters.

2. It is further determined and declared to be necessary and conducive to the protection of the public health, welfare, safety and convenience of the city and its residents that charges be levied upon and collected from the owners or occupants of all lots, parcels of real estate, and buildings that discharge stormwater or surface or subsurface waters, directly or indirectly, to the city stormwater drainage system, and that the proceeds of such charges so derived be used for the purposes of operation, maintenance, repair, replacement and debt service for construction of the stormwater drainage and flood protection improvements comprising the stormwater management utility.

### **103.03 Powers, duties and responsibilities.**

The stormwater management utility shall have the following powers, duties, and responsibilities:

1. Prepare ordinances as needed to implement this division and forward the ordinances to the city council for consideration and adoption, and adopt such regulations and procedures as are required to implement this division and carry out its duties and responsibilities.
2. Administer the acquisition, design, construction, maintenance and operation of the utility system, including capital improvements designated in the comprehensive drainage plan.
3. Administer and enforce this division and all ordinances, regulations and procedures adopted relating to the design, construction, maintenance, operation and alteration of the utility system, including but not limited to the quantity, quality and/or velocity of the stormwater conveyed thereby.
4. Inspect private systems as necessary to determine the compliance of such systems with this division and any ordinances or regulations adopted pursuant to this division.

5. Prepare and revise a comprehensive drainage and flood protection plan for periodic review and adoption by the city council.
6. Review plans, approve or deny, inspect and accept extensions to the stormwater drainage system.
7. Establish and enforce regulations to protect and maintain water quality within the system in compliance with water quality standards established by state, regional and/or federal agencies as adopted or amended.
8. Annually analyze the cost of services and benefits provided, and the system and structure of fees, charges, fines and other revenues of the utility, and make recommendations regarding adjustments to such fees, charges, fines and other revenues.
9. Prepare an annual operating budget for the utility and make recommendations regarding the financing of the cost of extending and replacing the system.
10. Administer a homeowner grant program providing funding assistance for stormwater management improvements on single family residential lots.

#### **103.04 Organization.**

The city council shall be the governing body of the stormwater management utility. The stormwater management utility shall be under the direction, management and control of the Public Works Director who shall function as its director. In that capacity, the director shall supervise the day-to-day operation of the stormwater management utility, shall enforce this division and the provisions of all ordinances and regulations adopted pursuant to this division and shall carry out the policy directives of the city council acting in its role as governing body of the stormwater management utility.

#### **103.05 Stormwater Service Charges Required.**

Every customer whose premises is served by a connection with the stormwater management system and facilities of the City of Johnston, either directly or indirectly, shall pay to the City stormwater service charges hereinafter established and specified for the purpose of contributing towards the costs of construction, maintenance and operation of the stormwater management system and facilities and at least sufficient to pay the principal and interest related to Bonds issued for the purpose of financing all or part of those costs, and sufficient to comply with any covenants or conditions associated with any such Bonds so issued.

#### **103.06 Effective Date of Stormwater Service Charges.**

Stormwater service charges shall accrue beginning July 1, 2012 and shall be billed monthly thereafter to all customers. The city will conduct a review of the program by July 1, 2022 as provided for in section 103.12.

### **103.07 Basic Rate.**

Except as hereinafter noted, each customer whose property lies within the corporate limits of the City shall pay to the City, as a part of the customers combined service account with the Johnston Utility Billing Department, at the same time payment for other City utilities are made, the following charges per Equivalent Residential Unit (ERU) associated with the customer's property:

1. Undeveloped. A flat storm sewer availability charge at the rate of \$0.00 per month.
2. Single-Family and Townhome Residential: \$4.90 per ERU per month up to a maximum of 4 ERUs.
3. Commercial/industrial/multi-family: \$4.90 per ERU per month up to a maximum of 40 ERUs.

The monthly rate may be adjusted as a result of the Annual Review of Rates as detailed in Section 103.11 of this Ordinance; the Council may choose to adjust the monthly ERU rate as necessary. Such rate adjustments shall be approved by Resolution of the City Council.

The number of Equivalent Residential Units (ERU) on each property shall be calculated by the Community Development Department based on the most recent aerial photograph available to the City of Johnston and/or impervious surface data as prepared by a licensed engineer or surveyor for the property. Stormwater fee billing will begin upon water meter installation.

### **103.08 Rate Appeals.**

City staff will review all rate and ERU inquiries from customers to ensure the ERU has been correctly applied to a property. Following this review, any customer who believes the provisions of this chapter have been applied in error may appeal in the following manner:

1. An appeal must be filed in writing with the City of Johnston City Administrator and include all necessary information to support the request for an appeal.
2. If it is deemed necessary, the appeal shall include a survey prepared by a registered Iowa land surveyor or professional engineer containing information on the total property area, the impervious surface area and any other features or conditions which influence the hydrologic response of the property to rainfall events.

3. Using the information provided by the appellant, the City Administrator shall conduct a technical review of the conditions on the property and respond to the appeal in writing within thirty (30) days.
4. In response to an appeal, the City Administrator may adjust the stormwater service charge applicable to a property in conformance with the general purpose and intent of this chapter.
5. A decision of the City Administrator which is adverse to an appellant may be further appealed to the City Council within thirty (30) days of receipt of notice of the adverse decision. Notice of the appeal shall be served on the City Council by the appellant, stating the grounds for the appeal. The City Council shall schedule a public hearing within thirty (30) days. All decisions of the City Council shall be served on the appellant by registered mail, sent to the billing address of the appellant.
6. All decisions of the City Council shall be final.

#### **103.09 Exemption From Fees; Special Conditions.**

The stormwater management fee shall not apply:

1. If a written request is made, in special conditions the City Administrator of the City of Johnston may grant fee payment and collection variances after determining that granting the variance would be in the City's best interest, will improve efficiency, safety and is practical. Upon the granting of any variance, the City Administrator shall file notice with the City Council giving reason(s) for the variance.
2. The fee established in Subsection 103.07(3) for commercial/industrial/multifamily recognizes that these particular types of development are required to provide stormwater detention onsite. Having such stormwater detention, therefore, is not a basis for exemption. However, property owners may qualify for a reduction to their ERU provided they exceed the stormwater management requirements as determined by the Stormwater Utility Credit Policy as adopted by Resolution of the City Council.

#### **103.10 Billing for Stormwater Service.**

All stormwater management fees shall be due and payable under the same terms and conditions provided for payment of a combined service account as contained in Section 92.04 of this Code of Ordinances. Water service may be discontinued in accordance with the provisions contained in Section 92.05 if the combined service account becomes delinquent, and the provisions contained in Section 92.06 relating to lien notices shall also apply in the event of a delinquent account.

### **103.11 Annual Review of Rates.**

The City will review the stormwater service charges at least yearly and revise the stormwater service charges as necessary to ensure that such charges as herein established and specified generate adequate revenues to pay the costs of maintenance and operation (including replacement and debt service) of a stormwater management system and facilities and that the stormwater service charges continue to provide for the proportional distribution of maintenance and operation costs (including replacement costs and debt service) for a stormwater management system and facilities among the users and user classes. The liability of a stormwater service user to pay for charges as provided in this chapter shall not be contingent, however, upon any such review or revision.

### **103.12 Review of Stormwater Utility Program**

No later than July 1, 2022 the City shall conduct a thorough analysis and reevaluation of the stormwater service charge and stormwater management system and facilities to ensure that such charges as herein established and specified revenues are adequate and necessary for the annual ongoing needs and expenses of the utility including debt service. This utility and collection of stormwater service charges shall remain in place so long as there are outstanding debt obligations.

**SECTION 2. REPEALER.** All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

**SECTION 3. SEVERABILITY CLAUSE.** If any section, provision, or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

**SECTION 4. WHEN EFFECTIVE.** This ordinance shall be in full effect from and after its final passage, approval, and publication as provided by law.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
PAULA DIERENFELD, MAYOR

ATTEST:

\_\_\_\_\_  
CYNDEE RHAMES, CITY CLERK

1st Reading:  
2nd Reading:  
3rd Reading:

Passed:  
Signed:  
Published:

ROLL CALL VOTE:

|          | 1st Reading |       | 2nd Reading |       | 3rd Reading |       |
|----------|-------------|-------|-------------|-------|-------------|-------|
|          | Aye         | Nay   | Aye         | Nay   | Aye         | Nay   |
| Clabaugh | _____       | _____ | _____       | _____ | _____       | _____ |
| Culbert  | _____       | _____ | _____       | _____ | _____       | _____ |
| Hibbs    | _____       | _____ | _____       | _____ | _____       | _____ |
| Kallen   | _____       | _____ | _____       | _____ | _____       | _____ |
| Lindeman | _____       | _____ | _____       | _____ | _____       | _____ |