

STATE OF WISCONSIN VILLAGE OF HALES CORNERS MILWAUKEE COUNTY
AN ORDINANCE TO CREATE CHAPTER 13.12 OF THE MUNICIPAL CODE OF THE
VILLAGE OF HALES CORNERS ESTABLISHING A STORM WATER UTILITY

WHEREAS, the Federal Clean Water Act Amendment of 1987, the Federal Storm Water Management Program (40 CRF, Part 122), the National Pollution Discharge Elimination System (NPDES), and Wisconsin Administrative Code Chapter NR-216 require that the Village of Hales Corners comply with more stringent rules and regulations regarding storm water management, including a Storm Water Permit; and

WHEREAS, the costs of complying with the Village's Storm Water Permit are ongoing and may increase over time; and

WHEREAS, the Village Board has reviewed a Storm Water Utility Feasibility Report prepared by Earth Tech, Inc. (January 2007) that recommends the creation of a storm water utility to manage and finance the requirements for a Storm Water Permit under NR-216; and

WHEREAS, the Village Board held a public hearing on an ordinance to create a Storm Water Utility on November 12, 2007.

NOW, THEREFORE, the Village Board of the Village of Hales Corners, Wisconsin, do ordain as follows:

SECTION 1: Section 13.12 of the Municipal Code of the Village of Hales Corners, Wisconsin is hereby created to read as follows:

13.12 STORM WATER MANAGEMENT UTILITY.

(1) **Findings.**

- (a) The management of storm water and other surface water discharges within and beyond its border is a matter that affects the public health, safety, and welfare of the Village, its citizens and businesses, and others in the surrounding area.
- (b) Failure to effectively manage storm water and other surface water discharge from already developed and vacant property may create, among other things, erosion of lands, threaten businesses and residences with water damage, and create sedimentation and other environmental damage.
- (c) The Village's Storm Water Management System, which provides for the regulation, collection, and disposal of

storm and surface water discharge, is of benefit and provides services to all real property within the incorporated Village limits.

- (d) The costs of operating and maintaining the Village's Storm Water Management System, ensuring regulatory compliance and financing necessary plans, studies, repairs, replacement, improvements, and extension thereof should, to the extent practicable, be allocated among property classes in proportion to the contribution to the System from each property class.
- (e) The final report entitled "Stormwater Utility Feasibility Report" prepared by Earth Tech, Inc., is hereby declared to constitute the study and description of the analytical determinations that demonstrate a rationale basis for the enactment of this ordinance.

(2) **Establishment of Storm Water Management Utility.** In order to protect the health, safety, and welfare of the public, there is hereby established the Village of Hales Corners Storm Water Management Utility.

(3) **Definitions.**

- (a) Administrative Costs. The costs of general management and administration of the Storm Water Management Utility, development plan and erosion control plan review, and compliance with the requirements of Wisconsin Administrative Code Chapter NR 216, include, but are not limited to the following:
 - 1. Wages, salaries, and related employee expenses for management and administration of the Utility together with fringe benefits and premiums paid on such wages and salaries for the State Worker's Compensation coverage.
 - 2. Utility billing and accounting expenses.
 - 3. Office supplies.
 - 4. Permit fees.
 - 5. Consultant and legal fees.
- (b) Board. The Village Board of the Village of Hales Corners.
- (c) Capital Cost. The cost of acquiring, purchasing, leasing, planning, designing, constructing, extending, and improving all or any part of the Storm Water Management System and any principal, interest, or premiums on any indebtedness incurred for these purposes.

- (d) Debt Retirement. All annual principal and interest requirements and obligations of the Village that relate to storm water management system improvements.
- (e) Equivalent Runoff Unit (ERU). An amount of impervious surface area on a lot or parcel that is equivalent to the amount of impervious surface on a typical developed single family residential lot. The square feet of impervious surface area per ERU shall be as established by the Village Board from time to time by resolution and set forth in a Storm Water Utility Rate Schedule.
- (f) Impervious Area or Impervious Surface. 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, asphalt, concrete, streets, roofs, sidewalks, parking lots, and other similar surfaces.
- (g) Operation and Maintenance Costs (O&M). All direct and indirect costs, excluding debt service and other capital costs, necessary to ensure adequate drainage and control of storm and surface waters on a continuing basis and assure optimal long term function of storm water management system facilities. O&M costs may include expenses for, but not limited to, the following purposes.
 - 1. Wages and salaries and related employee expenses for operating and maintenance of the Storm Water Management System, and supervisory personnel, together with fringe benefits and premiums paid on such wages and salaries for the State Worker's Compensation coverage.
 - 2. Fuel and other operating supplies.
 - 3. Repairs to and maintenance of the equipment associated therewith.
 - 4. Premiums for hazard insurance.
 - 5. Premiums for insurance providing coverage against liability for the injury to persons and/or property.
 - 6. Rents and leasing costs.
 - 7. Operation, licensing, and maintenance costs for trucks and heavy equipment.
 - 8. Consultant and legal fees.
 - 9. Replacement costs.

- (h) Replacement Fund. Expenditures for obtaining and installing equipment, accessories, and appurtenances which are necessary during the useful life of the Storm Water Management System to maintain the performance for which such system was designed and constructed.
- (i) Storm Sewer. A sewer that carries storm and surface drainage but excludes domestic wastewater and industrial waste.
- (j) Storm Water Management Program. Any activities undertaken by the Village of Hales Corners for the collection, transportation, storage, treatment, and disposal of storm and surface water and for the reduction or elimination of pollutants in storm and surface water, including, but not limited to, administration, operation, and maintenance of the Storm Water Management System and Utility, constructing storm water sewerage facilities, and complying with the requirements of the Wisconsin Statutes and Administrative Code.
- (k) Storm Water Management System. Any plant, facilities, fixtures, or equipment owned or leased by the Village for the collection, transportation, storage, treatment, and disposal of storm water and surface water. Such facilities may include, without limitation by enumeration, surface and underground drainage conduits of any type, storm sewers, watercourses, retaining walls and ponds, and such other facilities as will support a storm water management system.
- (l) Storm Water Service Charges. Charges imposed on properties in the Village to recover the administrative, operating, maintenance, and capital costs relating to storm water management facilities benefiting properties in the Village. Storm Water Service Charges may include user charges or any other special fees and charges that may be required to provide for an equitable sharing of Utility costs by properties in the Village.
- (m) Utility. The Storm Water Management Utility of the Village of Hales Corners.
- (n) Village. The Village of Hales Corners.
- (4) **Application.** The application of this section, its rules, regulations, and rates shall apply to all real property within the incorporated limits of the Village.
- (5) **Powers and Duties of the Utility.**
 - (a) Facilities. The Village through the Storm Water Management 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 Village 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, storm sewers, watercourses, retaining walls and ponds, and such other facilities that will support a Storm Water Management System.

- (b) Rates and Charges. The Village through the Storm Water Management Utility may establish such rates and charges as are necessary to finance planning, design, construction, maintenance, and operation of the facilities, regulatory compliance, and administration of the Utility in accordance with the procedures set forth in this ordinance.
 - (c) Budgeting. The Village through the Storm Water Management Utility shall prepare an annual budget, which is to include all administrative, regulatory compliance, operation, and maintenance costs, debt service, and other costs related to the operation of the Storm Water Management Utility. All costs shall be allocated amongst users of the Storm Water Management System as recommended by the Public Works Commission and determined by the Village Board.
 - (d) The Village may utilize the full authority provided in §66.0821, Wis. Stats., with respect to financing methods, user charges, and other matters therein dealt with and shall have all legal authority permitted for municipal utilities to impose reasonable charges for service.
- (6) **Management of Utility.**
- (a) The oversight of the Storm Water Management Utility is hereby vested in the Village Board. The Board shall direct and delegate the management and operation of the Storm Water Management Utility to Village staff and shall prescribe the functions thereof as may be necessary to operate and manage the Storm Water Management Utility.
 - (b) The Public Works Commission, appointed in accordance with Village of Hales Corners Article VIII, Section (2), shall make recommendations to the Village Board concerning the operation of the Utility.
 - (c) The Committee of the Whole of the Village Board, in consultation with the Public Works Commission, shall

make recommendations to the Village Board concerning the Utility budget, service charge rates, and expenditures.

- (d) The Village Board shall establish a Storm Water Management Fund, which shall be used for collection of revenues and payments of expenses relating to the Utility. Any excess of revenues over expenditures in a year shall be retained by the fund for subsequent years' needs.
- (e) All utility receipts shall be collected and accounted for by the Village Treasurer.
- (f) The Village Board shall cause an annual audit of the financial records of the Storm Water Management Utility to be made and shall make the records relating to the Utility available for inspection during regular business hours.

(7) **Purpose.** There is hereby established a uniform system of storm water service charges that shall apply to each and every lot or parcel within the Village. It shall be the policy to establish storm water service charges in such amount in order to pay for all or a part of the following costs related to the Utility:

- (a) Administrative,
- (b) Operation and maintenance (O&M),
- (c) Contributions to a replacement and capital improvements fund, and
- (d) Debt service, including debt retirement, debt service reserves, and coverage requirements.

The Board may establish and modify storm water service charges as necessary so as to assure that the charges generate adequate revenues to pay the costs of the storm water management program and that costs are allocated fairly and proportionately to all parcels in the Village.

(8) **Charges.** Storm water service charges may include the following components.

- (a) User Charge. A user charge may be imposed on all property that has impervious surface area. The charge to each parcel shall be based upon the number of ERU's assigned to the parcel. The user charge for each parcel shall be equal to the product of the user charge rate in terms of dollars per ERU and the number of ERU's assigned to the parcel.
- (b) Special Charges. A special charge may be imposed on property that is in an area specially benefited by a particular storm water management facility. This charge will be developed to reflect the benefits in a particular

area that may not be appropriate to allocate to property throughout the Village.

- (c) All storm water service charge rates shall be established from time to time by resolution of the Village Board and set forth in a Storm Water Utility Rate Schedule attached thereto.

(9) **Customer Classification.**

- (a) For purposes of imposing the user charges, all lots and parcels in the Village shall be classified into the following four customer classifications:

- 1. Single Family and Two-Four Family Residential.
- 2. Condominium and Multi-family Residential.
- 3. Nonresidential.
- 4. Undeveloped.

- (b) ERU's shall be calculated for each classification as follows:

- 1. Single Family and Two-Four Family Residential. One (1) ERU per dwelling unit.
- 2. Condominium and Multi-family Residential. The Village Public Works Director shall be responsible for determining the impervious area of each multi-family residential parcel based on the best available information including, but not limited to, data supplied by the Village Engineer, Village Assessor, Building Inspector, or Planning and Zoning Administrator, aerial photography, the property owner, tenant, or developer, or actual on-site measurement. The total impervious area of the parcel shall be divided by the number of square feet per ERU as established by the Village Board and set forth in a Storm Water Utility Rate Table to determine the number of ERU's, except that in no case shall a multi-family parcel be assigned less than 0.50 ERU's per dwelling unit. The number of ERU's shall be rounded to the nearest 0.50 ERU's.
- 3. Nonresidential Property. The Village Public Works Director shall be responsible for determining the impervious area of each nonresidential parcel based on the best available information, including, but not limited to, data supplied by the Village Engineer, Village Assessor, Building Inspector, or Planning and Zoning Administrator, aerial photography, the

property owner, tenant, or developer, or actual on-site measurement. The total impervious area of the parcel shall be divided by the number of square feet per ERU as established by the Village Board and set forth in a Storm Water Utility Rate Table to determine the number of ERU's to assign to a parcel. The number of ERU's per parcel shall be rounded to the nearest 0.50 ERU's.

4. Undeveloped Property. For any lot or parcel that has no impervious surface area, no ERU's shall be assigned for purposes of imposing user charges under this ordinance.
- (c) New Construction. For all classifications other than single family and two-four family residential, the construction of new or expanded buildings, driveways, or other structures shall be subject to an increase in the number of ERU's assigned to a lot or parcel. The Village shall recalculate the number of ERU's upon completion of new construction.
- (10) **Determination of Storm Water Service Charges.** The amount of the charge to be imposed for each classification shall be made by resolution of the Village Board. The current rates will be set forth in a Storm Water Utility Rate Schedule and kept on file in the office of the Village Clerk. The rates shall be reviewed by the Village Board on an annual basis and adjusted as necessary.
- (11) **Adjustment.**
 - (a) The Village Board shall adopt, by separate resolution, criteria recommended by the Director of Public Works for providing adjustments.
 - (b) Adjustments may be considered for customers who own and properly maintain storm water management facilities, such as a retention or detention basin. In considering such a request, the Director of Public Works shall consider whether and to what extent the Village cost of providing service is or making service available to a property has been lessened by the retention or detention basin. If the Village's cost of providing service or making service available to a property has not been lessened by the retention or detention basin, the request for the lowered adjustment multiplier shall be denied. If the Village's cost of providing service or making service available to a property has been lessened by the retention or detention basin, the adjustment multiplier shall be reduced to reflect the approximate reduction in the

Village's costs. The Village's debt service costs and extension and replacement costs shall not be considered to be reduced unless the existence of a retention or detention basin results in a reduction of the size or scope of the Village's storm water collection system.

- (c) If all of the storm water from a nonresidential property discharges directly into a qualifying receiving stream without crossing the property of another and the discharge does not result in the exceedance of Federal, State, or local water quality standards, the customer is eligible for an adjustment multiplier less than one (1) but equal to or greater than the percentage equal to that portion of the Village's User Fee Revenue budgeted towards administrative and capital expenditures for the current year.
- (d) If all of the storm water from a nonresidential property discharges directly into a qualifying receiving stream without crossing the property of another and the nonresidential customer is a holder of or has filed a proper and complete application for a Municipal Storm Water Discharge Permit, as provided in §283.33, Wis. Stats., and as further detailed in Department of Natural Resources (NR) 216.01 through 216.11 of the Wisconsin Administrative Code, the customer is eligible for a lowered adjustment multiplier less than one (1) but equal to or greater than the percentage equal to that portion of the Village's User Fee Revenue budgeted toward administrative and capital expenditures for the current year.
- (e) If all the storm water from a nonresidential property discharges directly into a storm water collection system constructed and maintained by the Milwaukee Metropolitan Sewerage District (MMSD) without crossing the property of another, the customer is eligible for a lowered adjustment multiplier less than one (1) but equal to or greater than the percentage equal to that portion of the Village's User Fee Revenue budgeted toward administrative and capital expenditures for the current year.
- (f) If all the storm water from a nonresidential property discharges directly into a storm sewer constructed and maintained by the Village on the nonresidential customer's property pursuant to an easement and if, after the storm water travels through the easement area, it is

discharged as provided in (c) or (d), the customer is eligible for a lowered adjustment multiplier less than one (1) but equal to or greater than the percentage equal to that portion of the Village's User Fee Revenue budgeted toward administrative and capital expenditures for the current year.

- (g) In considering a request for an adjustment, the Director of Public Works may, in his or her discretion, separately examine multiple drainage areas on one piece of property and may recommend allowing an adjustment multiplier for a portion of the property if the characteristics of one or more drainage areas meet the criteria set forth in this section.
- (h) The Director of Public Works, at his or her discretion, may recommend allowing a lowered adjustment multiplier which may be as low as zero (0) for a nonresidential property for reasons other than as specifically set forth in this section, provided that the adjustment is reasonable and not unjustly discriminatory.
- (i) 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 the Village of Hales Corners Storm Water Management Ordinance, MMSD Chapter 13, Wis. Stats. Chapter 30, and Wisconsin Administrative Code Chapters NR-103 and NR-216.
- (j) 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.
- (k) Director of Public Works Review Procedure.
 1. The Director of Public Works shall issue a written determination as to whether a written request for adjustment will be granted, denied, or granted in part within 30 days of receipt of all materials and reports required by the Director of Public Works on the request for an adjustment. The determination shall be sent to the customer requesting the adjustment.
 2. A customer may appeal a determination under subsection (12)(b) within 30 days of receipt of the Director's determination by submitting a written request to the Public Works Commission asking to review the determination.

3. If no timely written request for appeal is received pursuant to subsection (12)(d), the determination of the Director of Public Works shall be final.
 4. The Public Works Commission review of the appeal to the determination shall be completed within 45 days of the receipt of the written request for appeal. The Public Works Commission shall review the appeal and determine whether the Director's determination should be approved, modified, or rejected. The determination of the Public Works Commission shall be in writing and set forth in detail the reason or reasons for its decision and shall inform the customer.
 - (l) Application of Adjustment. Any adjustment or adjustment multiplier granted shall thereafter be used to calculate the customer's user charges. The reduction shall only apply for the period of time subsequent the granting of the request for adjustment. There shall be no retroactive adjustment for user charges imposed prior to the granting of the request.
 - (m) Recertification. Recipients of adjustment shall, every five (5) years, file a recertification of the conditions under which the adjustment was granted. Failure to do so may result in revocation of the adjustment.
- (12) **Method of Review.**
- (a) As a condition precedent to challenging any storm water utility charge, the charge must be paid under protest to the Village.
 - (b) Within 30 days of payment, a written challenge to the storm water charge must be filed with the Village Clerk 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 30 days of payment waives all right to later challenge the charge.
 - (c) The Public Works Commission will determine whether the storm water charge is fair and reasonable or whether a refund is due to the customer. The Public Works Commission may act with or without a hearing and will inform the customer in writing of its decision.
 - (d) The customer has 30 days from the decision of the Public Works Commission to file a written appeal to the Village Board.

- (e) If the Village Board determines that a refund is due to the customer, the refund will be applied as a credit on the customer's next storm water bill.
- (13) **Special Charge and Assessment Authority.** In addition to any other method for collection of the charges established pursuant to this ordinance for storm water utility costs, the Village Board finds that these charges may be levied on property by special charge pursuant to §66.0627, Wis. Stats. The charges established by the special charge must reasonably reflect the benefits conferred on property. The mailing of the bill 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 §66.0627, Wis. Stats. In addition, the Village 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 upon the tax roll under §66.0627, Wis. Stats. In addition to the foregoing special charge authority, charges may be established and collected under this ordinance by way of special assessment pursuant to §66.0701 or §66.0703, Wis. Stats.
- (14) **Billing and Payment.**
- (a) User charges for residential users shall be billed in advance on an annual basis as a special charge on the annual property tax bill. All other users shall be billed on a quarterly basis. Payment of quarterly bills shall be made within 25 days of mailing by the Village. In the event that such bill is not paid when due, a penalty of 1.5% per month on the unpaid balance shall be added thereto. All bills shall be payable to the office of the Village Treasurer, 5635 S. New Berlin Road, Hales Corners, Wisconsin 53130.
 - (b) The property owner is held responsible for all storm water service charges on real property that he or she or it owns. All storm water bills and notices of any nature relative to the storm water management program will be addressed to the owner and delivered to the addressee by first class mail.
 - (c) Reasonable care will be exercised in the delivery of Storm Water Service Charges bills. A failure to receive a Storm Water Service Charges bill, however, shall not relieve any person of the responsibility for payment of Storm Water Service Charges within the prescribed period nor exempt any party from any penalty imposed for delinquency in the payment thereof.

(d) Unpaid storm water service charges shall be a lien upon the property served and shall be enforced as provided in §66.0809(3), Wis. Stats.

SECTION 2: The terms and provisions of this ordinance are severable. Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

SECTION 3: All ordinances and parts of ordinances in contravention to this ordinance are hereby repealed.

SECTION 4: This ordinance shall take effect and be in force from and after its passage and publication.

PASSED AND ADOPTED this 12th day of November, 2007.

Robert G. Ruesch, President Pro Tem

Countersigned:

(VILLAGE SEAL)

Michael F. Weber, Administrator/Clerk