

ORDINANCE NO. 383

AN ORDINANCE ESTABLISHING CHAPTER 13 OF TITLE VI  
OF THE MUNICIPAL CODE, CREATING A STORM WATER UTILITY  
WITHIN THE CORPORATE LIMITS OF THE CITY OF BUFFALO

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF BUFFALO, IOWA:

Section One. Chapter 13 of Title VI of the Municipal Code entitled, "Storm Water Utility" is hereby enacted as follows:

ARTICLE FOUR - STORM WATER UTILITY

Division I. Findings.

Section 6.13.0404. Purpose and Findings

- (1) The purpose of this Article is to establish a policy and procedure for managing and controlling the quantity and quality of storm water runoff, wherever it may be found, within the city limits of Buffalo, Iowa. The management shall include the establishment of a storm water utility to provide revenues for whatever aspects of this requirement are deemed appropriate by the City Council of Buffalo.
- (2) The storm water needs in the City of Buffalo include, but are not limited to, protecting the public safety, health, and welfare of its citizens. The service and benefit rendered or resulting from provision of storm water management systems and facilities may differ depending on many factors and considerations, including, but not limited to, location, demands, and impacts imposed on the storm water systems and programs and risk exposure.
- (3) The City of Buffalo presently owns and operates numerous storm water management systems and facilities which have been developed over many years. The future usefulness of the existing storm water systems owned and operated by the City, and of additions and improvements thereto, rests on the ability of the City to effectively manage, protect, control, regulate, use, and enhance storm water systems and facilities in Buffalo in concert with the management of other water resources in the City. In order to do so, the City must have adequate and stable funding for its storm water management program operating and capital investment needs.
- (4) The City Council of Buffalo finds, concludes, and determines that a utility provides the most practical and appropriate means of properly delivering

and funding storm water management services in Buffalo.

- (5) The City may be required under Federal and State mandates to provide increased quantity or quality controls to mitigate the impacts of pollutants that may be discharged from the storm water collection system. Therefore, it is appropriate to impose a storm water user charge upon all users of property that may discharge, directly or indirectly, into the storm sewer system, whether private or public in nature.

#### Section 6-13.0102. Establishment of a Storm Water Utility.

- (1) There is hereby established a Storm Water Management Utility within the City of Buffalo, Iowa which shall be responsible for storm water management throughout the City's corporate limits, and shall provide for the management, protection, control, regulation, use, and enhancement of storm water systems and facilities. Such Utility shall be under the direction of the Public Works Director. The corporate limits of the City, as increased from time to time, shall constitute the boundaries of the storm water utility district.
- (2) The City shall establish a storm water Enterprise Fund in the City budget and accounting system, separate and apart from its General Fund, for the purpose of dedicating and protecting all funding applicable to the purposes and responsibilities of the utility, including but not limited to, rentals, rates, charges, fees, and licenses as may be established by the City Council. All revenues and receipts of the storm water utility shall be deposited promptly upon receipt into the Storm Water Enterprise Fund, to be held and invested in trust for the purposes dedicated, and expended exclusively for purposes of the utility, including, but not limited to capital project construction, or payment of bonds funding capital projects. No other funds of the City shall be deposited in the storm water enterprise fund or commingled with dedicated storm water revenues, except that other revenues, receipts, and resources not accounted for in the storm water enterprise fund, including grants, loans, and bond proceeds may be combined with and applied to storm water management capital projects as deemed appropriate by the City Council upon recommendation of the Public Works Director.

#### Section 6-13.0103. Definitions.

- (1) CUSTOMERS OF THE STORM WATER UTILITY shall include all persons, properties, and entities serviced by and/or benefiting the utility's acquisition, management, maintenance, extension, and improvement of the public storm water management systems and facilities and regulation of public and private storm water storm water systems, facilities, and activities related thereto, and person, properties and entities which will

ultimately be served or benefited as a result of the storm water management program.

- (2) **HYDROLOGIC RESPONSE.** The hydrologic response of a property is the manner and means whereby storm water collects, remains, infiltrates, and is conveyed from a property. It is dependent on several factors including, but not limited to, the presence of impervious area, the size, shape, topographic, vegetative, and geologic conditions of a property, antecedent moisture conditions, and groundwater conditions on a property.
- (3) **IMPERVIOUS SURFACE.** Impervious surfaces are those areas which prevent or impede the infiltration of storm water into the soil as it entered natural conditions prior to development. Common impervious areas include, but are not limited to, rooftops, sidewalks, walkways, patio areas, driveways, parking lots, storage areas, compacted gravel and soil surfaces, awnings and other fabric or plastic coverings, and other surfaces which prevent or impede the natural infiltration of storm water runoff which existed prior to development.
- (4) **STORM WATER MANAGEMENT SYSTEMS** address the issues of drainage management (flooding) and environmental quality (pollution, erosion, and sedimentation) of receiving rivers, streams, creeks, lakes, ponds, and reservoirs through improvements, maintenance, regulation and funding of plants, works, instrumentalities and properties used or useful in the collection, retention, detention, and treatment of storm water or surface water drainage.
- (5) **UNDEVELOPED LAND.** Land in its unaltered natural state or which has been modified to such minimal degree as to have a hydrologic response comparable to land in an unaltered natural state shall be deemed undeveloped. Undeveloped land shall have no pavement, asphalt, or compacted gravel surfaces or structures which create an impervious surface that would prevent infiltration of storm water or cause storm water to collect, concentrate, or flow in a manner materially different from that which would occur if the land was in an unaltered natural state. For purposes of this Article, undeveloped land shall also include property altered from its natural state by the creation or installation of less than 200 square feet of impervious surface.
- (6) **DETACHED DWELLING UNIT** shall mean developed land containing one structure which is not attached to another dwelling and which contains one or more bedrooms, with a bathroom and kitchen facilities, designed for occupancy by one family. Detached dwelling units may include houses, manufactured homes, and mobile homes located on one or more individual lots or parcels of land. Developed land may be classified as a detached dwelling unit despite the presence of incidental structures

associated with residential uses such as garages, carports, or small storage buildings, or the presence of a commercial use within the dwelling unit so long as such use does not result in additional impervious areas, such as parking spaces, playgrounds, or structures or additions to the building which are used as offices, storage facilities, meeting rooms, classrooms, houses of worship, or similar non-residential uses. Detached dwelling unit shall not include developed land containing: structures used primarily for non-residential purposes, manufactured homes, and mobile homes located within manufactured home or mobile home parks where the land is owned by others than the owners of the manufactured homes or mobile homes, or multiple dwelling unit residential properties.

- (7) **DEVELOPED LAND** shall mean property altered from its natural state by construction or installation of more than 200 square feet of impervious surface as defined in this chapter.
- (8) **DUPLEXES and TRIPLEXES** shall mean developed land containing two (duplex) or three (triplex) attached residential dwelling units located on one or more parcels of land.
- (9) **MULTIPLE DWELLING UNIT RESIDENTIAL PROPERTIES** shall mean developed land whereon four or more attached residential dwelling units are located and shall include, but not limited to, apartment houses, condominiums, town homes, attached single-family homes, boarding houses, group homes, hotels and motels, retirement centers, and other structures in which four or more family groups commonly and normally reside or could reside. In the application of storm water service charge rates, multiple dwelling unit properties shall be treated as other developed lands.
- (10) **OTHER DEVELOPED LAND** shall mean, but shall not be limited to, multiple dwelling unit residential properties, manufactured home and mobile home parks, commercial and office buildings, public buildings and structures, industrial and manufacturing buildings, storage buildings and storage areas covered with impervious surfaces, parking lots, parks, recreation properties, public and private schools, research stations, hospitals and convalescent centers and agricultural uses covered by impervious surfaces.
- (11) **SERVICE CHARGES** shall mean the periodic rate, fee or charge applicable to a parcel of developed land, which charge shall be reflective of the service provided by the City of Buffalo storm water utility.
- (12) **OCCUPANT** shall mean the person residing or doing business on the property. In a family or household situation, the person responsible for the obligation imposed shall be the adult head of the household. In a shared

dwelling or office situation, the adult legally responsible for the management or condition of the property shall be responsible.

- (13) OWNER shall mean the legal owner(s) of record as shown on the tax rolls of Scott County except where there is a recorded land sale contract, the purchaser thereunder shall be deemed the owner.
- (14) USER shall mean any person who uses property which maintains connection to, discharges to, or otherwise receives services from the City for storm water management. The occupant of any habitable property is deemed the user. If the property is not occupied, then the owner shall be deemed the user.

#### Section 6-13.0104. Scope of Responsibility for the Drainage System.

- (1) The city drainage system consists of all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage ways, channels, ditches, swales, storm sewers, culverts, inlets, catch basins, pipes, head walls and other structures, natural or man-made, within the political boundaries of the City of Buffalo which control and/or convey storm water through which the City intentionally diverts surface waters from its public streets and properties. The City owns or has legal access for purposes of operation, maintenance and improvements to those segments of this system which (1) are located within public streets, rights-of-way, and easements; (2) are subject to easements of rights-of-entry, rights-of-access, rights-of-use, or other permanent provisions for adequate access for operation, maintenance, and/or improvement of systems and facilities; or (3) are located on public lands to which the City has adequate access for operation, maintenance, and/or improvement of systems and facilities. Operation and maintenance of storm water systems and facilities which are located on private property or public property not owned by the City of Buffalo and for which there has been no public dedication of such systems and facilities for operation, maintenance, and/or improvement of the systems and facilities shall be and remain the legal responsibility of the property owner.
- (2) It is the intent of this Article to protect the public health, safety and general welfare of all properties and persons in general, but not to create any special duty or relationship with an individual person or to any specified property within or without the boundaries of the City of Buffalo. The City of Buffalo expressly reserves the right to assert all available immunities and defenses in any action seeking to impose monetary damages upon the City, its officers, employees and agents arising out of any alleged failure or breach of duty or relationship as may now exist or hereafter be created. To the extent any permit plan approval, inspection, or similar act is required by the City as a condition precedent to any

activity by or upon property not owned by the City, pursuant to this or any other regulatory ordinance, regulation or rule of the City or under Federal or State law, the issuance of such permit, plan approval, or inspection shall not be deemed to constitute a warranty, express or implied, nor shall afford the basis for any action, including any action based on failure to permit or negligent issuance of a permit, seeking the imposition of money damages against the City, its officers, employees or agents.

**Section 6-13.0105. Requirements for On-Site Storm Water Systems, Enforcement and Inspections.**

- (1) All property owners and developers of developed real property within the City of Buffalo shall provide, manage, maintain, and operate on-site storm water systems sufficient to collect, convey, detain, and discharge storm water in a safe manner consistent with all City, State, and Federal laws and regulations.
- (2) Pursuant 364.12(3) or successor section of the State Code, any failure to meet this obligation may constitute a nuisance and may be subject to an abatement action filed by the City. In the event a nuisance is found to exist, which the owner fails to properly abate within such reasonable time as allowed by the City, the City may enter upon the property and cause such work as is reasonably necessary to be performed, with the actual cost thereof assessed against the owner in the same manner as a tax levied against the property. The City shall have the right, pursuant to the authority of this Article, for its designated officers and employees to enter upon private and public property owned by entities other than the City, upon reasonable notice to the owner thereof, to inspect the property and conduct surveys and engineering tests thereon in order to assure compliance.

**Section 6-13.0106. Determination and Modification of Storm Water Service Charges or Fees.**

Storm water service charges or fees shall be determined and modified from time to time by action of the City Council. In setting or modifying such rates it shall be the objective of the Council to establish rates, fees and charges that are fair and reasonable, reflect the value of storm water management services and facilities to those properties who benefit therefrom and, which together with any other sources of revenue that may be made available to the storm water utility, will be sufficient to meet the cost of budgeted programs, services and facilities, including, but not limited to, the payment of principal and interest on revenue bond obligations incurred for construction and improvements to the storm water system, as applicable.

**Section 6-13.0107. Storm Water Service Charge Billing, Delinquencies, Collections.**

- (1) A storm water service charge bill will be sent through the United States mail or by alternative means, notifying the customer of the amount of the bill, the date the payment is due, and the date when past due and will be added to the monthly electric bill. Failure to receive a bill is not justification for non-payment. Regardless of the party to whom the bill is initially directed, the owner of each parcel of developed land, as shown from public land records of Scott County, shall be ultimately obligated to pay such fee. If a customer is underbilled or if no bill is sent for developed land, the City may back bill for a period of up to four years, but shall not assess penalties for any delinquency.
- (2) Suits for collection shall be commenced by the City in the Iowa District Court for Scott County. No lien shall be imposed for delinquent collections unless a judgement is first obtained from a court of competent jurisdiction. The City may employ any lawful means to collect funds owed, and is not restricted to filing a lawsuit.
- (3) The storm water utility service charge may be billed on a common statement and collected along with other city utility services, usually on a monthly basis.

**Section 6-13.0108. Appeals.**

Any person who believes the provisions of this Article have been applied to such person in error may appeal in the following manner:

- (1) An appeal shall be filed in writing with the City of Buffalo Public Works Director.
- (2) Using the information provided by the appellant, the Director shall conduct a technical review of the conditions on the property and respond to the appeal within thirty (30) days.
- (3) In response to an appeal, the Director may adjust the storm water service charge applicable to a property in conformance with the general purpose and intent of this Article.
- (4) A decision of the Director 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 Clerk by the appellant, stating the grounds for appeal. The City Council shall issue a written decision on the appeal within thirty (30) days. All decisions of the City Council shall be mailed to appellant at the address the appellant lists on the notice of appeal.

(5) There shall be no further administrative appeal beyond the City Council.

Section 6-13.0109. Storm Water Service Charges/Fees.

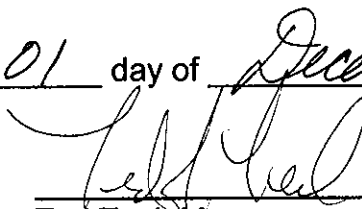
Storm water service charges shall accrue beginning <sup>Jan. 01, 2004</sup> ~~July 1, 2003~~ and shall be billed periodically thereafter to customers, except as specific exemptions and credits may apply.

Section Two. Severability. The provisions of this ordinance are declared to be severable and if any provision of this ordinance is declared unconstitutional or held invalid by a court of competent jurisdiction, this determination shall not affect, impair, or invalidate the remainder of this ordinance, but shall be confined to its operation to the section, paragraph, subparagraph, clause or phrase of this ordinance in which such a determination has been made.

Section Three. Repealer. All ordinances or parts of ordinance inconsistent or in conflict with this ordinance are hereby repealed.

Section Four. Full Force and Effect. This ordinance shall be in full force and effect from the date of passage and publication as required by law.

Passed, Approved and Adopted this 01 day of December, 2003.

  
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Ted Teel, Mayor

Attest:

  
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Carol Bernauer, City Clerk

*Date of: 1st reading 10-6-03  
2nd reading 11-03-03  
3rd reading & adopted 12-01-03  
Posted 12-10-03*