

**DRAFT ORDINANCE TO BE CONSIDERED
BY THE CITY COUNCIL ON NOVEMBER 15, 2022**



COUNCIL ORDINANCE No.

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING MILWAUKIE MUNICIPAL CODE (MMC) BY ADDING A NEW CHAPTER 3.70 – CLIMATE FEE AND AMENDING CHAPTER 13.14 STORMWATER MANAGEMENT TO CLARIFY THE USE OF STORMWATER FUNDS.

WHEREAS the City of Milwaukie has formally adopted a Climate Action Plan (CAP) that includes strategies and actions for the city to conserve our natural resources, encourage sustainable neighborhoods and behaviors, and promote resiliency, and

WHEREAS the City Council declared on January 21, 2020 that a climate and ecological emergency exists that threatens the city, region, state, nation, civilization, humanity, and the natural world, and

WHEREAS the City Council has set goals to take aggressive steps to minimize climate change and increase climate-related resilience by implementing specific actions identified in the city’s CAP, and

WHEREAS the City Council has determined that to achieve these goals it is necessary to provide a dedicated revenue source.

Now, Therefore, the City of Milwaukie does ordain as follows:

Section 1. Amendments. The Milwaukie Municipal Code (MMC) is amended as described in Exhibit A (Chapter 3.70 Climate Fee)), and Exhibit B (Chapter 13.14 Stormwater Management).

Section 2. Effective Date. This ordinance will become effective on March 1, 2023.

Read the first time on _____ and moved to second reading by _____ vote of the City Council.

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

ATTEST:

Scott S. Stauffer, City Recorder

Mark F. Gamba, Mayor

APPROVED AS TO FORM:

Justin D. Gericke, City Attorney

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Exhibit A

Climate Fee

3.70.010 PURPOSE

The purpose of this fee to provide funding for the city's climate and sustainability related programming to meet the goals outlined in the city's Climate Action Plan.

3.70.020 DEFINITIONS

"Carbon Free Electricity" means electricity that at the time of generation produces no carbon emissions.

"Climate Action Plan" means the city's detailed and strategic framework for measuring, planning, and reducing greenhouse gas (GHG) emissions and related climatic impacts.

"Greenhouse Gas (GHG)" means any gas that has the property of absorbing infrared radiation (net heat energy) emitted from Earth's surface and reradiating it back to Earth's surface, thus contributing to the greenhouse effect.

"Greenhouse Gas Emissions" means the production and discharge of a greenhouse gas.

"Multi-family Residential" means residential property consisting of two (2) or more dwelling units. For the purposes of this chapter, condominiums and individual mobile home units are also classified as multi-family residential properties.

"Responsible party" means the person or persons who by occupancy or contractual arrangement are responsible to pay for utility and other services provided to an occupied unit or property.

"Single-family Residential" means a residential property that has only detached dwelling units.

3.70.030 ADMINISTRATIVE OFFICERS

A. Except as provided in subsection B of this section, the City Manager or designee will be responsible for the administration of this chapter. The City Manager will be responsible for developing administrative procedures for the chapter, and consideration and assignment of categories of use subject to appeal to the City Manager.

B. The Finance Director will be responsible for the administration and collection of fees under this chapter.

3.70.040 DEDICATION OF REVENUES

All funds and all proceeds from funds collected pursuant to this chapter will be used to support the strategies and programs identified in the city's Climate Action Plan.

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3.70.050 ANNUAL REPORT

A. A report will be prepared and presented to City Council on an annual basis detailing the city's progress towards achieving the goals outlined in the Climate Action Plan.

3.70.060 CLIMATE FEE

A. A fee is imposed and levied upon the responsible party for all developed property within the city unless otherwise exempted (MMC 3.70.100, MMC 3.70.120). The fee will be based on estimated GHG emissions of development type and the customers estimated average daily vehicle trip generation as determined by MMC 3.25.060. The fee is to be calculated as described below in Section 3.70.070.

B. The fee will be imposed and levied on the property owner of the developed property in the event of nonpayment by the responsible party.

3.70.070 DETERMINATION OF CLIMATE FEE

A. Category Assignment

1. Each developed property in the City will be assigned to a customer GHG category reflecting business type or property use. The customer GHG category is determined based on the property's assigned SSMP category (MMC 3.25.060) as outlined in Table 1.

Table 1. SSMP Category and GHG Category.

SSMP Category	GHG Category
C2A, C3A	Industrial
C1A, C1B, C2B, C2D, C3B, C3C, C4A, C5C, C7A, C8A, C9A	Services
C5A, C6A, C6B, C7C, C8B	Retail
MFR	Multifamily
RESID	Residential

B. The determination of category of use will not be considered a land use decision as that term is defined in ORS 197.015.B. Billing units will be based on the responsible party's calculated SSMP unit as determined in MMC 3.25.060, except for residential and multi-family properties, which will be determined as follows:

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1. Multifamily residential: Billing units for multi-family will be determined by multiplying the total multi-family SSMP units by 0.75 or as determined by the master fee schedule.

2. Residential: Billing units for single-family residential will be determined by multiplying the total residential SSMP units by 1.10 or as determined by the master fee schedule.

C. Greenhouse Gas Emissions Ratio: The GHG emissions ratio for each land use category is calculated by using energy consumption data and an industry standard emissions calculator. The calculated GHG emissions ratios are as follows:

- Industrial: 51.00%
- Services: 6.00%
- Retail: 1.00%
- Multifamily: 10.65%
- Residential: 31.35%

The GHG emissions ratio is used to allocate revenue requirements to the appropriate customer category. The ratio and calculation methodology may be adjusted as determined by City Council resolution.

D. Fee Calculation

Fees will be calculated by multiplying billing units by the monthly charge for the assigned customer category to establish the monthly fee to be billed, or as determined by the master fee schedule. Fee calculations will reflect the proportional community emissions contributions for each GHG category customer type.

E. Fee Indexed

All fees will be adjusted for inflation annually according to the 12-month Consumer Price Index -West Region published by the Bureau of Labor Statistics.

F. Fee Reduction

1. A reduction in an assigned fee may be requested using forms prescribed by the city. The criteria for fee reductions as it applies to a property may include infrastructure installation that results in permanent emission reductions for the property. Proof of emission reduction potential and completion of infrastructure installation must be submitted by the responsible party before fee reductions are applied on the next billing cycle. Approved fee reductions may be partially or fully rescinded if the city can demonstrate that the responsible party is not complying with the conditions of approval on the approved fee reduction application.

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2. If a fee reduction application is denied, the responsible party may file an appeal to the City Manager using forms prescribed by the city. Appeals must be filed within 14 days from the date of the fee reduction application determination. The City Manager will consider the application against the applicable review criteria, taking into consideration information provided by the applicant and city staff. The City Manager may affirm, reverse, or modify with changes the decision of the Public Works Director or designee. The appeal decision of the City Manager is final and may not be appealed to another review body within the City.

3.70.080 ADMINISTRATION OF FEE

A. Under the supervision of the Finance Director, the climate fee will be billed and collected with and as part of the monthly city utility bill for those lots or parcels utilizing city water and sewer, as provided for in Section 13.04.100, and billed and collected separately for those developed properties not utilizing city water and sewer. In the event of nonpayment, the city may bill the property owner or take other action as authorized by law to collect from the responsible party.

B. In the event payments received are insufficient to satisfy a customer's applicable fees, the funds received will be proportionately divided amongst the climate fee, bicycle and pedestrian fee, street maintenance fee, sanitary sewer service charges, storm sewer service charges, and water service charges.

3.70.090 WAIVER OF FEE IN CASE OF VACANCY

A. When any property within the city becomes vacant and water service is discontinued, a waiver of the fee may be granted by the Finance Director upon written application of the responsible party, including a signed statement affirming under penalty of perjury that the property is vacant, and upon payment of all outstanding water, sanitary sewer, storm sewer, street maintenance, bicycle and pedestrian, and climate fees.

B. For purposes of this section, "vacant" means that an entire building or utility billing unit has become vacant or continuously unoccupied for at least thirty (30) days. "Vacant" does not mean that only a portion of a property without a separate water meter has become vacant or unoccupied.

C. Fees will be waived in accordance with this section only while the property remains vacant. The responsible party must notify the city within five (5) days of the premises being occupied, partially occupied, or used, regardless of whether water service is restored.

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3.70.100 RELIEF FOR LOW INCOME RESIDENTIAL CUSTOMERS FROM FEE

The climate fee will not be billed to residential customers enrolled in the city's low-income utility program.

3.70.110 FEE APPEAL PROCEDURE

A. Any responsible party that disputes any interpretation given by the city regarding the GHG category of use assigned to a property pursuant to this chapter may request a review and appeal such interpretation in accordance with this section. The dispute must first be presented to the Public Works Director or designee for review and thereafter may be appealed to the City Manager. Failure to appeal an interpretation made under this chapter within the time and in the manner provided will be sufficient cause to deny the relief requested. Except in cases of hardship as determined by the City Manager, disputes that result in changes to the fee charged under this chapter will become effective with the next billing cycle.

B. A responsible party who disputes an interpretation made by the Public Works Director or designee regarding the assigned GHG category of use under this chapter must submit a written appeal to the City Manager within fourteen (14) days from the date of notice of the Public Works Director or designee determination under subsection A of this section, together with a filing fee in the amount determined by City Council resolution. The application for appeal must include a detailed explanation of the grounds for the appeal. Appeals are limited to the issue of whether the appropriate GHG category has been assigned to the property.

C. The City Manager will review the application and consider the appeal taking into consideration information provided by the applicant and City staff. The City Manager may affirm, reverse, or modify with changes the decision of the Public Works Director or designee. The appeal decision of the City Manager is final and may not be appealed to another review body within the City.

3.70.140 SEVERABILITY

In the event any section, subsection, paragraph, sentence, or phrase of this chapter is determined by a court of competent jurisdiction to be invalid or unenforceable, the validity of the remainder of the chapter will continue to be effective. If a court of competent jurisdiction determines that this chapter imposes a tax or charge, which is therefore unlawful as to certain but not all affected properties, then as to those certain properties, an exception or exceptions from the imposition of the fee will be created and the remainder of the chapter and the fees imposed thereunder will continue to apply to the remaining properties without interruption.

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Nothing contained herein will be construed as limiting the City's authority to levy special assessments in connection with public improvements pursuant to applicable law.

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Exhibit B

13.14.010 PURPOSE

The City finds and declares that absent effective maintenance, operation, regulation, and control, existing stormwater drainage conditions in all drainage basins and subbasins within the City constitute a potential hazard to the health, safety, and general welfare of the City. The City Council further finds that natural nature-based and manmade stormwater facilities and conveyances together constitute a stormwater system and that the effective regulation and control of stormwater can best be accomplished through formation, by the City, of a stormwater utility. (Ord. 2013 § 1, 2010; Ord. 1755 § 6, 1994)

13.14.020 DEFINITIONS

“City” means the City of Milwaukie, a municipality, and its authorized employees.

“City Council” means the City Council of Milwaukie.

“Customer” means a person in whose name service is rendered as evidenced by the signature on the application/contract for stormwater, sanitary sewer, or water service or, in the absence of a signed instrument, by the receipt and payment of bills regularly issued in their name.

“Developed” means an area which has been altered by grading or filling of the ground surface, or by construction of any improvement or other impervious surface area, which affects the hydraulic properties of the location.

“Equivalent service unit (ESU)” means a configuration of development or impervious surface estimated to contribute an amount of runoff to the City’s stormwater system which is approximately equal to that created by the average developed single-family residence within Milwaukie. One ESU is equal to two thousand seven hundred six (2,706) square feet of impervious surface area.

“Impervious surface” means that hard surface area which either prevents or retards the entry of water into the soil mantle and/or causes water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions. Impervious surfaces may include, but are not limited to, rooftops, concrete, or asphalt paving, walkways, patios, driveways, parking lots, or storage areas, trafficked gravel, and oiled, macadam, or other surfaces which similarly impede the natural infiltration or runoff of stormwater.

“Improved premises” means any area which the Public Works Director determines has been altered such that the runoff from the site is greater than that which could historically have been expected. Improved premises do not include public roads under the jurisdiction of the City, County, State or federal government.

“Manager” means the City Manager or designee of the City stormwater management system.

“Nature-based stormwater facilities” means strategies used to maintain or mimic a site's natural hydrology and capacity to collect, soak in and filter stormwater runoff. These may

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include but are not limited to rain gardens, vegetated swales, permeable pavement, green roofs, rainwater harvesting, urban forest canopy, tree trenches and green streets.

“One- or two-family residential” means an area which is improved with one or two (2) attached single-family dwelling units for occupancy each by a single family or a similar group of people, provided each dwelling has a separate billing within the City’s utility billing system.

“On-site mitigation control system” means a stormwater drainage facility which the Public Works Director has determined prevents the discharge, or substantially reduces the discharge, of stormwater or nonpoint source pollution into a receiving water or public stormwater system facility.

“Person responsible” means the occupant, lessee, tenant, contract purchaser, owner, agent, or other person having possession of property, or if no person is in possession, then the person in control of the use of the property, or in control of the supervision of development on the property.

“Public Works Standards” mean the City of Milwaukie Public Works Standards and the referenced City of Portland Stormwater Management Manual that the City requires be complied with for the design and construction of on-site mitigation facilities including stormwater detention, retention, and water quality treatment facilities.

“Stormwater” means water from precipitation, surface or subterranean water from any source, drainage, and nonseptic wastewater.

“Stormwater service” means the operations of the City’s stormwater utility in providing programs and facilities for maintaining, improving, regulating, collecting, and managing stormwater quantity and quality within the City’s service area.

“Stormwater system” means any structure or configuration of ground that is used or by its location becomes a place where stormwater flows or is accumulated, including, but not limited to, pipes, sewers, curbs, gutters, manholes, catch basins, ponds, creeks, underground injection control (UIC) facilities, open drainageways, their appurtenances and nature-based facilities. Stormwater system does not include the Willamette River.

“Street wash water” means water that originates from publicly financed street cleaning activities consistent with the City’s National Pollutant Discharge Elimination System (NPDES) municipal stormwater permit.

“Toxic substances” mean any chemical listed as toxic under Section 307(a)(1) of the Federal Clean Water Act (CWA) or Section 313 of Title III of Superfund Amendments and Reauthorization Act (SARA).

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“Undeveloped” means any area which has not been altered by grading or filling of the ground surface, or by construction of any improvements or other impervious surface area, which affects the hydraulic properties of the location. (Ord. 2013 § 1, 2010; Ord. 1755 § 6, 1994)

13.14.025 REGULATIONS AND REQUIREMENTS

A. Compliance with Industrial NPDES Stormwater Permits

Any industrial discharger, discharger associated with construction activity, or other discharger subject to any NPDES permit issued by the Oregon DEQ, from which pollutants may enter the public or private stormwater system, shall comply with all provisions of such permits, including notification to and cooperation with local entities as required by federal regulations. Proof of compliance with said permits may be required in a form acceptable to the Manager of the City stormwater management system prior to issuance of any grading, building, or occupancy permits or business license.

B. Compliance with State, Local, and Federal Regulations

All users of the public stormwater system, and any person or entity whose actions may affect the system, shall comply with all applicable federal, State, and local laws, including Section 19.402 Natural Resources. Compliance with the requirements of this chapter shall in no way substitute for, or eliminate the necessity for compliance with, applicable federal, State, and local laws.

C. Conflicts with Existing and Future Regulatory Requirements of Other Agencies

Any provisions or limitations of this chapter, and any rules adopted pursuant hereto, are superseded and supplemented by any applicable federal, State, or local requirements existing or adopted subsequent hereto which are more stringent than the provisions and limitations contained herein. Any provision of this chapter and rules adopted pursuant hereto which are more stringent than any such applicable federal, State, or local requirement shall prevail and shall be the standard for compliance by the connectors to and the discharges to the public stormwater system.

D. Accidental Spill Prevention and Control

Dischargers who are not required to obtain an NPDES permit; but who handle, store, or use hazardous or toxic substances or discharges prohibited under Section 13.14.105.E General Discharge Prohibitions, on their sites; shall prepare and submit to the Manager, at the Manager’s request, an Accidental Spill Prevention Plan within sixty (60) days of notification by the City. If other laws or regulations require an Accidental Spill Prevention and Control Plan, a plan that meets the requirement of those other laws and regulations will satisfy the requirement of this section.

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E. Notification of Spills

As soon as any person in charge of a facility, or responsible for emergency response for a facility, becomes aware of any suspected, confirmed, or unconfirmed release of material, pollutants, or waste creating a risk of discharge to the public stormwater system, such persons shall:

1. Begin containment procedures;
2. Notify proper emergency personnel in case of an emergency;
3. Notify appropriate City and/or State officials regarding the nature of spill;
4. Follow up with the City regarding compliance and modified practices to minimize future spills, as appropriate.

The notification requirements of this section are in addition to any other notification requirements set forth in federal, State, or local regulations and laws. The notification requirements do not relieve the person of necessary remediation.

F. Requirement to Eliminate Illicit Connections

1. The Manager may require by written notice that a person responsible for an illicit connection to the public stormwater system comply with the requirements of this chapter to eliminate the illicit connection or secure approval for the connection by a specified date.

2. If, subsequent to eliminating a connection found to be in violation of the chapter, the responsible person can demonstrate that an illicit discharge will no longer occur, that person may request approval to reconnect. The reconnection or reinstallation of the connection shall be at the responsible person's expense.

G. Requirement to Remediate

Whenever the Manager finds that a discharge of pollutants is taking place, or has taken place, which will result in, or has resulted in, pollution of stormwater or the public stormwater system, the Manager may require by written notice to the responsible person that the pollution be remediated and the affected property restored, to the standards established by the Manager, within a specified time.

H. Requirement to Monitor and Analyze

Whenever the Manager determines that any person is engaged in any activity, and/or owns or operates any facility, which may cause or contribute to stormwater pollution or illicit discharges to the public stormwater system, the Manager may, by written notice, order that such person

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undertake such monitoring activities and/or analyses, and furnish such reports, as the Manager may deem necessary to demonstrate compliance with this chapter. The written notice shall be served either in person or by certified or registered mail, return receipt requested, and shall set forth the basis for such order and shall particularly describe the monitoring activities and/or analyses and reports required. The burden to be borne by the owner or operator; including costs of these activities, analyses, and reports; shall bear a reasonable relationship to the need for the monitoring, analyses, and/or reports and the benefits to be obtained. The recipient of such order shall undertake and provide the monitoring, analyses, and/or reports within the time frames set forth in the order.

I. Stormwater Treatment

The quality of stormwater leaving the site after development shall be equal to or better than the quality of stormwater leaving the site before development, based on the following criteria:

1. On-site mitigation facilities for water quality required for development shall be designed, installed, and maintained in accordance with the Public Works Standards.
2. Land use activities of particular concern as pollution sources shall implement additional best management practices for pollution control including, but not limited to, those management practices specified in the Public Works Standards.
3. Development in a watershed that drains to streams with established total maximum daily load (TMDL) limitations; as provided under the CWA, Oregon Law, Administrative Rules, and other legal mechanisms; shall assure that on-site mitigation facilities for water quality control meet the requirements for pollutants of concern.

J. Design and Performance Criteria for Stormwater Detention and Water Quality Treatment Facilities Constructed on Private Property

1. All on-site mitigation facilities; including stormwater detention, retention, and water quality treatment facilities required by the City; shall be designed and constructed to meet the Public Works Standards.
2. Except as permitted by the Engineering Director, as provided by the Public Works Standards, on-site mitigation facilities shall be located on private property and shall not be located on property that will become a public right-of-way, public stormwater easement, or future street plan.
3. Except as permitted by the Manager, as provided by the Public Works Standards, once constructed, the on-site mitigation facilities shall be privately owned, operated, and maintained. Maintenance responsibility shall include all elements of the stormwater detention and water quality treatment system up to the point of connection with a drainage structure or waterway of the public stormwater system. Such connection shall be subject to City approval.

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4. Maintenance as required by the Public Works Standards shall be specified in an operation and maintenance plan submitted to and approved by the Manager prior to issuance of a notice to proceed with public improvements. Prior to the time of project acceptance, the developer or applicant shall enter into an agreement with the City to ensure the implementation of the operation and maintenance plan, and a memorandum of agreement shall be recorded with Clackamas County. Private stormwater detention and water quality treatment facilities are subject to periodic inspection by the City to ensure proper maintenance and performance.

5. Failure to properly operate or maintain on-site mitigation facilities for stormwater detention, retention, and water quality treatment according to the operation and maintenance plan of the adopted City of Portland Stormwater Management Manual in effect on the date of the ordinance codified in this chapter is a violation.

(Ord. 2036 § 3, 2011; Ord. 2025 § 3, 2011; Ord. 2013 § 1, 2010)

13.14.030 REQUEST FOR SERVICE, INITIATION OF BILLING

A request for water service constitutes a request for stormwater service and will initiate appropriate billing for stormwater services as established in this chapter. If development of a parcel does not require initiating water service, the creation of an improved premises from which stormwater may be discharged into the public stormwater system shall constitute a request for service and initiate the obligation to pay the fees and charges authorized in this chapter. (Ord. 2013 § 1, 2010; Ord. 1755 § 6, 1994)

13.14.040 CHARGES FOR STORMWATER SERVICE

A. Except as the charges may be reduced under subsection C of this section, the obligation to pay stormwater service charges arises whenever there is a request for stormwater service for an improved premises. Unless another person responsible has agreed in writing to pay and a copy of that writing is filed with the City, the person receiving the City's water utility charge bill shall pay the stormwater charges as set by City Council resolution. If there is no water service to the property or if water service is discontinued and the property is an improved premises, the stormwater charges shall be paid by the person responsible for the property. The person required to pay the charge is hereafter referred to as the customer.

B. The City Council may by resolution establish fees and charges necessary to provide and operate a stormwater system and service.

C. Upon completion of the on-site mitigation credit application package available from the City's Public Works Department, a customer of the utility may request a reduction of the stormwater service charge. The service charge will be reduced in relation to the customer's ability to demonstrate that on-site stormwater facilities meet or exceed the City's standards for stormwater quantity and quality control at that site.

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Any reduction given shall continue until the condition of the property is changed or until the Public Works Director determines the property no longer qualifies for the credit given. Upon change in the condition of the property, another application may be made by a person responsible.

D. Service charge avoidance may be requested through the application package available from the Public Works Department. The criteria for waiver of the service charge as it applies to a specific customer includes total retention of stormwater with no effective discharge to the City's stormwater system; the petitioner's ability to demonstrate through hydrologic/hydraulic analysis that the site receives no stormwater service from the City's stormwater system; and proof that stormwater facilities are constructed and maintained to City standards.

E. For the purposes of this chapter, dry wells are not an on-site mitigation control system eligible for service charge reduction or service charge avoidance because of the potential water quality impact that dry wells may have on the City's groundwater resources. (Ord. 2013 § 1, 2010; Ord. 1755 § 6, 1994)

13.14.050 STORMWATER CHARGES—BILLING

A. Charges for stormwater service supplied by the City to any customer shall be charged for and billed to each such customer in accordance with rates established by the City Council. Prior to the establishment of stormwater service fees and charges by the City Council, the Milwaukie Citizens Utility Advisory Board shall prepare and deliver a report and recommendation on rates to the City Council. The Committee shall prepare and deliver its recommendation to City Council on an annual basis, according to the rules established by City Council. Stormwater service fees and charges as established by the City Council shall be added to and made a part of the billings for water and sewer service.

B. The customer shall be responsible for all stormwater service fees and charges, except as allowed by Section 13.14.040. The City may require deposits prior to providing stormwater service or in lieu of a deposit, obtain a signed agreement from the property owner, whether the customer or not, that they will be ultimately liable for the charges and that the City may use a lien as one method to secure payment if the charges are not paid. However, the City may not require a property owner to sign such an agreement.

C. Billings may be prorated. The proration shall be a daily rate determined by dividing the annual minimum billing by three hundred sixty-five (365) days times the number of days of occupancy from last meter reading and/or billing date.

D. A reduced stormwater service charge may be charged for customers who qualify as low income utility customers under the provisions of Chapter 13.20 of this code.

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E. All money collected through stormwater fees and charges shall be deposited in the stormwater utility account as established and maintained by the City's Finance Director. (Ord. 2013 § 1, 2010; Ord. 1755 § 6, 1994)

F. Funds collected under this chapter shall be used for the purpose of maintaining and operating stormwater control facilities both manmade and nature-based, planning, designing, establishing, acquiring, developing, constructing, maintaining and improving the stormwater program and drainage facilities.

13.14.055 PUBLIC INVESTMENT OF STORMWATER FUNDS

A. Funds collected under this chapter shall not be used for maintaining, operating or improving stormwater facilities on private property, or direct financial assistance for private tree removal except when:

1. Providing non-federal grant match funding to projects that reduce or eliminate the risk of repetitive flood damage to buildings insured by the National Flood Insurance Program.

2. The facility is a nature-based stormwater facility or component of and it can be demonstrated to the satisfaction of the City Engineer, using a science based approach, that the facility provides stormwater and public benefits that extend beyond the boundaries of the property or development.

3. It can be demonstrated that a private tree, using a science based approach, that the tree provides stormwater and public benefits that extend beyond the boundaries of the property or development to the satisfaction of the City Engineer in consultation with the Urban Forester.

4. The facility has been dedicated to the city and is within a public easement.

13.14.060 STORMWATER CHARGES—WHEN DELINQUENT

A. The City shall prepare and mail billings for stormwater fees and charges on the last business day of each month. Payment is due on the 15th of the month following the billing date. Accounts are delinquent if the City does not receive full payment by 5:00 p.m. on the last business day of the month immediately following the billing date.

B. A delinquent fee, in an amount established by resolution of the City Council, shall be added to all delinquent accounts.

C. The Finance Director or designee is authorized to determine what constitutes a de minimis account balance and to waive the penalties in subsections B and D of this section in de minimis or extenuating circumstances.

D. In addition to other lawful remedies, the Finance Director may enforce the collection of charges authorized by this chapter by withholding delivery of water to any premises where the stormwater service fees and charges are delinquent or unpaid, following the procedures and

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standards for shutting off water service for nonpayment of water bills as provided in Chapter 13.04. However, the Finance Director shall not deny or shut off water service to any subsequent tenant based upon an unpaid claim for services furnished to a previous tenant who has vacated the premises. (Ord. 2013 § 1, 2010; Ord. 1895 § 4, 2001; Ord. 1755 § 6, 1994)

13.14.070 DELINQUENT CHARGES—LIEN

If the property owner elects pursuant to Section 13.14.050.B to authorize the use of a lien on real property to secure stormwater charge payment in lieu of a security deposit, all stormwater charges shall be a lien against the premises served from and after the date of billing and entry on the ledger or other records of the City pertaining to its municipal stormwater system, and such ledger record or other record shall be made accessible for inspection by anyone interested in ascertaining the amount of such charges against the property. Whenever a bill for stormwater service remains unpaid sixty (60) days after it has been rendered, the lien thereby created may be foreclosed in the manner provided for by ORS 223.610 or in any other manner provided by law or City ordinance. (Ord. 2013 § 1, 2010; Ord. 1755 § 6, 1994)

13.14.080 APPEAL

Any customer aggrieved by any decision made with regard to the customer's account or a decision on charge reduction or avoidance may appeal to the Manager by filing with the City a written request for review no later than ten (10) days after receiving the decision. The Manager's decision shall be subject to review by the City Council upon filing of an appeal within fifteen (15) days of the notice of decision. (Ord. 2013 § 1, 2010; Ord. 1755 § 6, 1994)

13.14.090 RIGHT OF ACCESS

Employees of the City shall be provided access during regular business hours to all parts of the premises which include portions of the City's stormwater drainage system for the purpose of inspecting the condition of the pipes and fixtures and the manner in which the system is used. Should there be no one available on the premises, notice will be provided to the owner, tenant, occupant, or their agent that arrangements must be made to allow the inspection. (Ord. 2013 § 1, 2010; Ord. 1755 § 6, 1994)

13.14.100 TAMPERING WITH SYSTEM

- A. No unauthorized person shall damage, destroy, uncover, deface, or tamper with any conduit, structure, appurtenance, or equipment which is a part of the stormwater system.
- B. The Manager may adopt such rules and regulations as are necessary to protect the stormwater system and the public health, safety, and welfare. Violation of said rules or regulations is deemed a violation of this chapter and shall be punished accordingly.
- C. Portions of Johnson Creek, Kellogg Creek, and their natural tributaries are within the boundaries of the city and are considered waters of the United States pursuant to the CWA.

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In order to protect the waters the City has a comprehensive enforcement program to comply with:

1. The 1987 Amendments to the CWA, as implemented by the Environmental Protection Agency (EPA) NPDES regulations adopted November 16, 1990, make necessary the adoption of plans and programs for stormwater management meeting specified criteria.
2. Section 402(p) of the CWA (33 U.S.C. 1251 et seq.), as amended by the Water Quality Act of 1987, requires that municipalities must:
 - a. Prohibit nonstormwater discharge into the public stormwater system; and
 - b. Require controls to reduce the discharge of pollutants from stormwater to the maximum extent practicable.
3. Section 303(d) of the CWA requiring states and the EPA to identify certain substandard waters and to set total maximum daily loads (TMDLs). The Oregon Department of Environmental Quality has and will continue to establish TMDLs for some water bodies within the city. The City seeks to comply with all TMDL requirements.
4. The Endangered Species Act (ESA) and associated 4(d) rules covering protection of West Coast salmon and steelhead.
5. All provisions of the federal law by implementing a stormwater management plan, in conjunction with other co-permittees.
6. The Safe Drinking Water Act and Divisions 40 and 44 of Chapter 340 of the Oregon Administrative Rules pertaining to UIC facilities.

(Ord. 2013 § 1, 2010; Ord. 1755 § 6, 1994)

13.14.105 DISCHARGE REGULATIONS

A. Discharge of Pollutants

The commencement, conduct, or continuance of any nonstormwater discharge to the public stormwater system is prohibited and is a violation of this chapter, except as described below.

1. The prohibition shall not apply to any nonstormwater discharge permitted or approved under an Industrial or Municipal NPDES permit, waiver, or discharge order issued to the discharger and administered by the DEQ, provided that the discharger is in full compliance with all requirements of the permit, waiver, or discharge order and other applicable laws or regulations and provided that written approval has been granted by the City for any discharge to the municipal separate storm wastewater system (MS4).

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2. Except as provided in subsection A.3, the prohibition shall not apply to the following nonstormwater discharges to the public stormwater system: municipal water line flushing, landscape irrigation, diverted stream flows, rising groundwater, uncontaminated groundwater infiltration (as defined in 40 CFR 35.2005(20)) to the municipal separate storm sewer system (MS4), uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water, and flows from fire fighting activities.

3. The Manager may require best management practices to reduce pollutants, or may prohibit a specific discharger from engaging in a specific activity identified in subsection A.2, if at any time the Manager determines that the discharge is, was, or will be a significant source of pollution.

B. Discharge in Violation of Permit

Any discharge that would result in or contribute to a violation of an existing or future Municipal NPDES permit and any amendments, revisions, or reissuance thereof, either separately considered or when combined with other discharges, is a violation of this chapter and is prohibited. Liability for any such discharge shall be the responsibility of the person(s) causing or responsible for the discharge, and such persons shall defend, indemnify, and hold harmless the City in any administrative or judicial enforcement action against the permit holder relating to such discharge.

C. Illicit Connections and Illicit Discharges

It is prohibited to establish, use, maintain, or continue illicit connections to the public stormwater system, or to commence or continue any illicit discharges to the public stormwater system.

D. Waste Disposal Prohibitions

1. No person may throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, catch basin, inlet, or other component of the public stormwater system, materials that may cause or contribute to pollution, including, but not limited to, any refuse, rubbish, garbage, litter, yard debris, landscape materials, compost, topsoil, bark, gravel, sand, dirt, sod, sediment or sediment-laden runoff from construction or landscaping activities, hazardous materials, or other discarded or abandoned objects, articles, and accumulations.

2. Runoff from commercial or industrial operations or businesses that wash or detail vehicles, engines, transmissions, equipment, interior floors, or parking lots, shall not discharge directly to a private or public stormwater system; this includes, but is not limited to, outdoor

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commercial, industrial, or business activities that create airborne particulate matter, process by-products or wastes, hazardous materials or fluids from stored vehicles, where runoff from these activities discharges directly or indirectly to a private or public stormwater system.

E. General Discharge Prohibitions

1. Discharge to Sanitary Sewer System

No person shall discharge or contribute to the discharge of any stormwater or other unpolluted water into the City's sanitary sewer system.

2. Discharge to Public Storm Sewer System

It is unlawful to discharge or cause to be discharged directly or indirectly into the public stormwater system any of the following:

- a. Any discharge having a visible sheen, or containing floating solids or discoloration (including, but not limited to, dyes and inks);
- b. Any discharge having a pH of less than 6.5 or greater than 8.5 or that contains toxic substances;
- c. Any discharge which causes or may cause damage, interference, nuisance, or hazard to the public stormwater system or the City personnel;
- d. Any discharge containing human sanitary waste or animal feces.

(Ord. 2013 § 1, 2010)

13.14.110 COMPLIANCE REQUIRED

The provisions of this chapter must be strictly complied with in every instance, and service must be paid for by all premises supplied, according to the rates established by the City Council. Exceptions to these provisions shall be made only upon the written authorization of the Manager. (Ord. 2013 § 1, 2010; Ord. 1755 § 6, 1994)

13.14.115 INSPECTION AND ENFORCEMENT

A. Authority to Inspect

1. Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the Manager has reasonable cause to believe that there exists in any building or upon any premises any condition which may constitute a violation of the provisions of this chapter, the Manager may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed upon the Manager by this chapter; provided that: (a) if such building or premises is occupied, he or she first shall present proper credentials

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and request entry; and (b) if such building or premises is unoccupied, he or she first shall make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry.

2. The property owner or occupant has the right to refuse entry but, in the event such entry is refused, the Manager is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry and performing such inspection.

3. As used in this section, inspection includes, but is not limited to, the physical inspection of a facility, and the review and copying of records relating to compliance with Sections 13.14.025 to 13.14.130.

B. Authority to Sample, Establish Sampling Devices, and Test

With the consent of the owner or occupant, or with court consent, the Manager may establish on any property such devices as are necessary to conduct sampling or metering operations. During all inspections as provided herein, the Manager may take any samples deemed necessary to aid in the pursuit of the inquiry or to record the on-site activities.

C. Continuing Violation

Unless otherwise provided, a person shall be deemed guilty of a separate offense for each and every day during any portion of which a violation of this chapter is committed, continued, or permitted by the person.

D. Concealment

Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall constitute a violation of the chapter.

E. Acts Resulting in Violation of Federal Law

Any person who violates any provision of this chapter, or any provision of any stormwater-related permit issued by DEQ, or who discharges waste or wastewater which causes pollution, or who violates any cease and desist order, prohibition, or effluent limitation, also may be in violation of the CWA, Safe Drinking Water Act, or the ESA and may be subject to the sanctions of these Acts including civil and criminal penalties.

F. Violations Deemed a Nuisance

Any condition caused or permitted to exist in violation of any provision of this chapter is a threat to public health and safety. Any such condition is unlawful and constitutes a nuisance. In addition to any other remedies, the Manager may enforce this chapter by compliance order, stop work order, abatement proceedings, or civil action as provided in MMC 8.04.070, or as otherwise authorized by law. (Ord. 2013 § 1, 2010)

13.14.120 VIOLATION – PENALTY

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Violation of any provision of this chapter by any person, firm, or corporation is punishable by a fine of not more than one thousand dollars (\$1,000.00). Each day on which a violation occurs or continues is a separate offense. (Ord. 2013 § 1, 2010; Ord. 1755 § 6, 1994)

13.14.130 DISCLAIMER OF LIABILITY

The degree of protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific, engineering, and other relevant technical considerations. The standards set forth herein are minimum standards and the chapter does not imply that compliance will insure that there will be no unauthorized discharge of pollutants into the public stormwater system. This chapter shall not create liability on the part of the City, or any agent or employee thereof, for any damages that result from reliance on this chapter or any administrative decision lawfully made hereunder. (Ord. 2013 § 1, 2010)