

ORDINANCE NO. 18- 001

AN ORDINANCE TO CREATE SECTIONS 13.66 and 13.67
OF THE CODE OF ORDINANCES OF THE VILLAGE OF SOMERS
REGARDING STORMWATER UTILITY DISTRICT

The Village Board of Trustees of the Village of Somers, Kenosha County, Wisconsin, hereby creates Sections 13.66 and 13.67 of the Code of Ordinances of the Village of Somers to read as follows:

13.66 AUTHORITY.

(A) **Creation.** There is hereby created and established a stormwater ordinance for the Village of Somers. The implementation and oversight of the stormwater ordinance shall be under the supervision of the Village Administrator.

(B) **Authority.** The Village, acting through the Village Board, may with out limitation due to enumeration, acquire, construct, lease, own, operate, maintain, extend, expand, replace, clean, dredge, repair, conduct, manage and finance such facilities, operations and activities, as are deemed by the Village to be proper and reasonably necessary for a system of storm water and surface water management. These facilities may include, without limitation due to enumeration, surface and underground drainage facilities, sewers, watercourses, retaining walls, ponds, streets, roads, ditches and such other facilities as will support a storm water management system.

(C) **Definitions.** For purposes of this subchapter, the following definitions shall apply:

(1) Developed property means property that has been altered from its natural state by the addition of any improvement, such as a building, structure or impervious surface and where a certificate of occupancy has been issued, or upon completion of construction or final inspection if no such certificate is issued; or where construction of an improvement is at least fifty (50%) percent complete and construction is halted for a period exceeding three (3) months.

(2) Dwelling unit means any residential space identified for habitation by the building code. A dwelling unit includes, but is not limited to: single family residences, and two-family, three-family, or four-family apartments, condominiums, or townhouse living units.

(3) Equivalent runoff unit or ERU is defined as five thousand (5,000) square feet of impervious area. The impervious area includes, but is not limited to, all areas covered by structures, roof extensions, patios, porches, driveways and sidewalks.

(4) Impervious area or impervious surface means a surface that has been compacted or covered with a layer of material so that it is resistant to infiltration by rainwater. It includes, but is not limited to, paved streets, driveways, roofs, sidewalks, parking lots, brick pavers and other similar surfaces constructed of impervious materials such as concrete, asphalt, etc. Compacted gravel is considered impervious area.

(5) Residential property means any lot or parcel developed exclusively for residential purposes including, but not limited to, single-family homes, two-family homes, multi-family homes, manufactured homes, and condominiums.

(6) Single family property means a residential space identified as a habitation with exactly one (1) dwelling unit.

(7) Undeveloped property means property that has not been altered from its natural state by the addition of any improvements such as a building, structure, or impervious surface.

13.67 RATES AND CHARGES/APPEALS.

(A) Rates and charges.

(1) The basis for computation of the charge for storm water services to all lots and parcels of land within the Village is established under this section. The amount of charge to be imposed, the establishment of formulas for the calculation of charges, the creation of customer classifications for the imposition of charges, and changes in such charges, formulas and customer classifications may be made by further resolution of the Village Board. All charges established pursuant to this section shall be fair and reasonable. A schedule of current charges shall be maintained on file in the office of the Village Clerk/Treasurer.

(2) Charges shall be imposed to recover all or a portion of the costs of the storm water management activities. Such charges, which shall be established pursuant to further resolution of the Village Board, may include the following components:

(a) Equivalent Runoff Unit (ERU) Charge. The ERU charge shall be assessed for each developed property in the Village of Somers based upon the amount of impervious area as reasonably determined by the Village Administrator. The Village Administrator shall be responsible for determining the impervious area based on the best available information, including, but not limited to, data supplied by the Municipal Assessor,

aerial photography, satellite imagery, the property owner, tenant, or developer. The formula for the ERU charge shall reflect that of a typical single-family unit.

- (i) The charge imposed for a single-family structure shall be the rate for one ERU.
- (ii) Two-family and multi-family residential property will be charged multiples of the ERU based on the impervious area. The factor shall be rounded to the nearest 0.1.
- (iii) Other units of property will be charged multiples of the ERU based on the impervious area. The factor shall be rounded to the nearest 0.1.
- (iv) All unoccupied developed lots and parcels shall be subject to the Storm Water Management Utility charges.

(b) Special Charge (SC). A Special Charge may be imposed on property that is in a specific area benefitted by a particular storm water management facility pursuant to §66.0627, Wis. Stats. The special charge will be developed to reflect the benefits/services in a particular area that may not be appropriate to spread to property throughout the Village of Somers.

(3) The Village Board may establish rates and classifications by further resolution as will be likely to provide a reasonable and fair distribution of costs for storm water management. In the event the owner and non-owner users of a particular property are not the same; the liability for the charges attributable to that property shall be that of the owner.

(4) The charges established will be billed to the customer at the same time and in the same manner as the Village tax bill as an additional fee for storm water services. Such charges shall be payable in the same manner as a tax bill. Bills for storm water charges shall be mailed to the owner of the property to which the bill relates. Payment is due with the first tax installment.

(5) All storm water service charges shall be billed and collected, and shall be a lien upon the property served under the provisions of §66.0809, Wis. Stats., as amended and/or renumbered.

(B) Credits.

(1) A property owner may be eligible for a credit, in the form of a reduced ERU multiplier, for a property where all of the following conditions apply subject to the discretion, authority and approval of the Village Board.

- (a) The Village's cost of providing service or making service available to the property has been lessened.
- (b) The property conforms to all applicable codes and standards of the Village in effect at the time of parcel development.
- (c) Single-family residential properties are not eligible for credits.

(2) The maximum aggregate credit for any individual property is fifty (50%) percent of its ERU charge, regardless of how many credits the property may otherwise be qualified to receive.

(3) The following credits may be available for a property that meets all eligibility requirements:

- (a) Credits shall be considered for properties that discharge storm water directly into a water body not maintained in any way by the Village, or directly into a water body downstream of where it is maintained by the Village, or is otherwise contained entirely upon the property.
- (b) Credits shall be considered for owners who maintain private storm water management facilities such as retention or detention basins that exceed state and local discharge rate requirements applicable to the site.

(C) **Adjustments.**

(1) An owner may be eligible to have the number of ERUs assigned to the owner's property adjusted under the following conditions:

- (a) The owner of a property, except for single-family residential properties, who believes the number of ERUs allocated to such property to be incorrect may submit an adjustment request to the Village Administrator. The allocated ERUs may be adjusted if the owner can provide information showing that the impervious area measurement is incorrect.
- (b) The owner of any property that can show the property to be in an undeveloped natural state with no built impervious area may request that the property status be changed to exempt.

(c) No adjustment shall be considered for any natural features, such as but not limited to, wetlands, lakes and floodplains, or water impoundments of any kind in existence prior to passage of this subchapter.

(D) **Appeals procedures.**

(1) Adjustments for ERU charges.

(a) The Village elects not to be subject to the administrative review provisions contained within Chapter 68 of the Wisconsin Statutes, and establishes the following as a complete and final review procedure: Appeals shall be limited to the customer classification determination, a determination of ERU's, or ERU credits made for the calculation of total impervious area. There shall be no right of appeal as to the underlying findings and necessity of this subchapter or the single-family unit charge as applied to any single-family properties.

(b) The storm water management utility charge may be appealed as follows:

(i) A written appeal shall be filed with the Village Administrator prior to the storm water management utility charge due date; or

(ii) Within thirty (30) days of payment, a written challenge to the storm water management utility charge must be filed with the Village Administrator on behalf of the customer, specifying all bases for the challenge and the amount of the storm water management utility charge the customer asserts is inappropriate. Failure to file a challenge within thirty (30) days of payment waives all right to later challenge the charge.

(iii) The disputed charge shall be held in abeyance until the Village Board has made a determination pursuant to this subchapter.

(c) The Village Board will determine whether the storm water management utility charge is fair and reasonable, or whether a refund is due the customer. The Village Board may act with or without a hearing and will inform the customer in writing of its decision. The Village Board or their designee may, at its discretion, require access to the property to assist in its determination.

(d) The customer has thirty (30) days from the decision of the Village Board to file a written appeal to the Village Board.

(e) In the event of an appeal, the Village Board shall hold a hearing as provided in §68.11(2) and §68.11(3), Wis. Stats. The Village Board shall hold such hearing within thirty (30) days of the appeal request, and shall notify the appellant of the hearing date no less than ten days notice in advance of the hearing. Within twenty (20) days of the hearing and the filing of briefs, if any, the Village Board shall mail or deliver to the appellant its written final determination, setting forth, in detail, the reasons for its decision.

(f) If the Village Board determines that a refund is due the customer, the refund will be applied as a credit on the customer's next monthly storm water management billing, if the refund will not exceed the customer's next quarterly storm water management billing, or will be refunded at the discretion of the Village Administrator.

(g) Notwithstanding the above procedures, any user may file a complaint to the public service commission claiming that rates, rules and practices herein are unreasonable or unjustly discriminatory, pursuant to §66.0821(5), Wis. Stats.

Dated at Somers, Wisconsin, this 23 day of Jan., 2018.

VILLAGE OF SOMERS

By: George Stoner David Geertsen, Pres. Pro Tem
George Stoner, President David Geertsen, Pres. Pro Tem

Attest: Timothy Kitzman
Timothy Kitzman, Clerk/Treasurer

