

ORDINANCE #2010-05
AN ORDINANCE TO CREATE SECTION 106, ARTICLE IV, STORM WATER
MANAGEMENT UTILITY OF THE MUNICIPAL CODE OF THE VILLAGE OF
UNION GROVE, RACINE COUNTY, WISCONSIN

The Village Board of the Village of Union Grove does ordain as follows:

Section 1: Section 106 Utilities, Article IV Storm Water Management Utility of the Village of Union Grove Municipal Code is hereby created to read:

CHAPTER 106 UTILITIES
ARTICLE IV. STORM WATER MANAGEMENT UTILITY

DIVISION 1. GENERALLY

Secs. 106-349 – 106-400 Reserved.

DIVISION 2. STORM WATER MANAGEMENT UTILITY

Sec. 106-401 Purpose and Necessity

Whereas, the Village Board of the Village of Union Grove, Racine County, Wisconsin, does hereby find that the management of storm water and other surface water discharges to bodies of water within the Village of Union Grove and adjacent to the municipality is a matter that affects the public health, safety and welfare of the Village of Union Grove, its citizens and businesses and others in the surrounding area.

Whereas, failure to effectively manage storm water affects the operations of the Village of Union Grove Sanitary Sewer Utility by, among other things, increasing the likelihood of infiltration and inflow into the sanitary sewer system.

Whereas, surface water runoff may cause erosion of lands, threaten residences and businesses with water damage, and create environmental damage to the rivers, streams and other bodies of water within and adjacent to the municipality.

Whereas, a system for the collection and disposal of storm water provides services to all properties within the Village of Union Grove and surrounding areas, including those properties not currently served by the systems.

Whereas, the cost of operating and maintaining the Village of Union Grove's storm water management system and financing necessary repairs, replacements, improvements, and extensions thereof should, to the extent practicable, be allocated in relationship to the services received from the system.

Whereas, the Village Board of the Village of Union Grove, Racine County, Wisconsin finds that the provisions herein are required by and consistent with the Federal Clean Water Act (33 U.S.C.S. 1251 et seq.) and Wisconsin Statutes, both as amended from time to time and the regulations set out thereunder.

Whereas, in order to protect the health, safety and welfare of the public, the Village Board of the Village of Union Grove, Racine County, Wisconsin hereby exercises its authority to establish a Storm Water Management Utility and establish the rates for storm water management services.

Whereas, by adopting and publishing as required by law the regulations contained in this chapter, the Village Board of the Village of Union Grove, Racine County, Wisconsin is acting pursuant to authority granted by Chapters 61 and 66, Wisconsin Statutes.

Sec. 106-402 Authority

The Village Board of the Village of Union Grove, Racine County, Wisconsin, acting through the Storm Water Management Utility, may acquire, construct, lease, own, operate, maintain, improve, modify, extend, expand, replace, clean, dredge, repair, conduct and manage programs, finance, borrow monies, assess and/or levy fees for such facilities, operations, and activities, as are deemed by the Village Board of the Village of Union Grove, Racine County, Wisconsin to be proper and reasonably necessary for a system of storm and surface water management and to obtain compliance with applicable local, state and federal storm water management requirements with which the Village of Union Grove must comply. Facilities may include, without limitation due to enumeration, surface and underground drainage facilities, inlets, manholes, catch basins, sewers, channels, watercourses, retaining walls, ponds, detention and retention basins, infiltration facilities, streets, roads, ditches and such other facilities as will support a storm water management system.

Sec. 106-403 Establishment of Storm Water Management Utility

In order to protect the health, safety, and welfare of the public, the Village Board of the Village of Union Grove, Racine County, Wisconsin is exercising its authority to establish the Village of Union Grove Storm Water Management Utility and set the rates for storm water management services.

The Public Works Director shall be in charge of the day-to-day operation of the Storm Water Management Utility, subject to the supervision of the Village Board of the Village of Union Grove, Racine County, Wisconsin.

The Village Board of the Village of Union Grove, Racine County, Wisconsin is acting under the authority of Chapters 61 and 66 of the Wisconsin Statutes.

Sec. 106-404 Powers and Duties of Utility

- (1) Facilities. The Village of Union Grove 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 of Union Grove, Wisconsin 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, sewers, watercourses, retaining walls, and ponds and such other facilities as will support a storm water management system.
- (2) Rates and Charges. The Village of Union Grove 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 and to conduct necessary storm water programs and activities in accordance with the procedures set forth in this ordinance.
- (3) Budgeting Process. The Village of Union Grove through the Storm Water Management Utility shall prepare an annual budget, which is to include all operation and maintenance costs, debt service, and other costs related to the operation of the Storm Water Management Utility. The costs shall be spread over the rate classifications as determined by the Village Board of the Village of Union Grove, Racine County, Wisconsin.

(4) Excess Revenues. The Village of Union Grove will retain any excess of revenues over expenditures in a year in a segregated Storm Water Enterprise Fund which shall be used exclusively for purposes consistent with this ordinance.

Sec. 106-405 Definitions

Words not defined herein shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary. The word "shall" is mandatory and the word "may" is permissive.

Village Board. The Village Board of the Village of Union Grove, Racine County, Wisconsin or designee.

Condominium. Property subject to a condominium declaration established under Ch. 703, Wisconsin Statutes.

Duplex. A residential space containing two dwelling units.

Dwelling Unit. One or more rooms that are arranged, designed, or used as living quarters for occupancy by a single-family unit or as classified by the Village of Union Grove's Zoning Codes. Individual bathrooms and complete kitchen facilities, permanently installed, shall always be included for each dwelling unit.

Equivalent Runoff Unit or ERU. The basic unit by which the Storm Water Management Utility charge is calculated; it is based upon the average amount of impervious area on a single-family residential parcel as determined from a representative sample of fully developed single-family parcels within the municipality. An ERU is established as 4,000 square feet.

Farmstead Home Site. That portion of any agricultural property which contains one or more dwelling units, regardless of whether the dwelling units are on a separate lot or parcel.

Impervious Area or Impervious Surface. A horizontal surface that has been compacted or covered with a layer of material so that it is highly resistant to infiltration by rainwater or the runoff from snow melt. It includes, but is not limited to, semi-impervious surfaces such as compacted clay or gravel, as well as streets, roofs, roof extensions, patios, decks, porches, sidewalks, loading docks, parking lots, driveways and other similar surfaces.

Lot. A parcel of land having a width and depth sufficient for one principal building and its accessory building together with open spaces required by the Village of Union Grove's Zoning Ordinance and abutting a public street or access easement.

Multi-family Residential. A residential space consisting of three or more dwelling units.

Non-Residential Property. Any developed lot or parcel not exclusively residential property as defined herein, including, but not limited to, transient rentals (such as hotels and motels), mobile home parks, commercial, industrial, institutional, governmental property, and parking lots.

Person. Each and every property owner, including, but not limited to, natural persons, partnerships, corporations, limited liability companies, limited liability partnerships, joint ventures, and all other legal entities of any kind or nature.

Public Works Director. The duly appointed Public Works Director or designee.

Residential Property. Any lot, parcel, or farmstead home site developed exclusively for residential purposes including, but not limited to, single family homes, manufactured homes, duplex units, multifamily apartment and condominium units, but not including transient rentals (such as hotels and motels).

Single Family Home. Any residential property consisting of a single dwelling unit.

Storm Water Management Program. Activities required to control storm water runoff to protect the health, safety, and welfare of the public, and to comply with state and federal regulations. It includes construction and maintenance of physical infrastructure as well development, implementation and management of policies, procedures and programs necessary for regulatory compliance. It includes but is not limited to street sweeping, erosion control, storm water basin improvements and maintenance, culvert and storm sewer maintenance, storm water testing, storm water management planning and related public education.

Storm Water System. The system of streets, curbs, gutters, berms, swales, detention and retention ponds or basins, infiltration basins, pipes, outfalls, inlets, and other components of infrastructure owned and/or maintained by the municipality for the purpose of managing, gathering, transmitting, treating or conveying storm water. This term includes tributaries, creeks, rivers, and streams.

Storm Water Management Utility. The utility established under this ordinance for the purpose of managing storm water and imposing charges for the recovery of costs connected with such storm water management.

Storm Water Management Utility Charge. The fee imposed under this ordinance for the rendering of services by the Storm Water Management Utility.

Undeveloped Property. Property that has not been altered from its natural state by the addition of any improvements such as a building, structure, impervious surface, change of grade or landscaping; agricultural use of property; or property that has been graded for residential or commercial development but does not contain buildings, structures, or other improvements. For new construction, a property shall be considered developed upon issuance of a building occupancy permit.

Village. The Village of Union Grove, Racine County, Wisconsin.

Sec. 106-406 Utility Rates and Charges

- (1) By this Ordinance, the Village of Union Grove is establishing the basis for the rates that will be used to calculate and impose a charge upon each developed lot or parcel within the Village of Union Grove for services and facilities provided by the Village Board consistent with this ordinance.
- (2) The actual rate of charges to be imposed and any future changes in those rates for each customer classification shall be made by resolution. All rates established pursuant to this ordinance shall be fair and reasonable. A schedule of current charges shall be maintained and on file in the office of the Village Clerk.
- (3) Charges shall be imposed to recover all or a portion of the costs incurred by the Village of Union Grove for storm water management. Such charges 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 Union Grove based upon the amount of impervious area as reasonably determined by the Village Engineer. The Village Engineer 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.

1. The charge imposed for a single-family structure shall be the rate for one ERU.
2. The charge imposed for duplex residential properties shall be the rate of one-half (0.5) ERU for each individual dwelling unit existing on the property.
3. Multifamily residential property will be charged multiples of the ERU based on the impervious area. The factor shall be rounded to the nearest 0.1. The minimum charges for any nonresidential parcel shall be equal to the rate for one ERU.
4. Other units of property (Non-Residential, Commercial, Industrial and Tax Exempt) will be charged multiples of the ERU based on the impervious area. The factor shall be rounded to the nearest 0.1. The minimum charges for any nonresidential parcel shall be equal to the rate for one ERU.
5. Owners of multi-unit, non-residential properties wishing to have the utility fee billed to the individual units within the property shall provide the Village Union Grove with documentation demonstrating the equitable distribution of the fee to the individual units.
6. Farmstead home sites shall be classified as single-family residential parcels, and charged 1 ERU.

(b) Special Charge (SC). A Special Charge or Assessment may be imposed on property that is in a specific area benefited by a particular storm water management facility pursuant to Section 66.0627, Wisconsin Statutes. 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 Union Grove.

Sec. 106-407 Customer Classifications

- (1) For purposes of imposing the Storm Water Management Utility charges, all lots and parcels within the Village of Union Grove are classified into the following customer classes:
 - (a) Residential - Single-Family
 - (b) Residential - Duplex
 - (c) Residential - Multifamily
 - (d) Nonresidential
 - (e) Agricultural / Park / Undeveloped
- (2) The Village Engineer shall prepare a list of lots and parcels within the Village of Union Grove and assign such appropriate classification to each lot or parcel. The billing amount shall be updated by the Clerk/Treasurer based on any additions to the impervious area as approved through the building permit process.
- (3) The Village Board may make such other classifications in accordance with this ordinance as will be likely to provide reasonable and fair distribution of the costs of the Storm Water Management Utility.

Sec. 106-408 Billing

- (1) The Village Clerk/Treasurer shall take all steps necessary to invoice all charges and collect all Storm Water Management Utility payments for the Storm Water Management Utility. The Clerk/Treasurer may contract for the billing and collection of storm water fees. The Clerk/Treasurer shall allocate the actual cost incurred of billing and collecting to the expense of system-wide management and administration of the Storm Water Management Utility.

- (2) Storm Water Management Utility charges shall be allocated to the property served and included on the quarterly utility bill for each property. Billings for Storm Water Management Utility charges shall be mailed to the designated utility bill recipient, but this mailing shall not relieve the owner of the property from liability for rental property in the event payment is not made as required in this article. The owner of any property served which is occupied by tenants shall have the right to examine collection records of the Village for the purpose of determining whether such charges have been paid by such tenants, provided that such examination shall be made at the office at which the records are kept and during the hours that such office is open for business. Billings for Storm Water Management Utility charges shall be mailed to owners of record for tax-exempt property.

Sec. 106-409 Penalties; Lien

Storm Water Management Utility charges shall not be payable in installments. If Storm Water Management Utility charges remain unpaid after a period of 30 days from the date the utility bill was mailed, such bill shall be determined delinquent. The Village of Union Grove may collect delinquent charges under Wis. Stat. §§ 66.0821(4) and 66.0809(3). All delinquent charges shall be subject to a one and one-half (1-1/2%) percent penalty per quarter in addition to all other charges, including prior penalties or interest that exist when the delinquent charge is extended upon the tax roll as a delinquent tax against the real property. An additional 10% penalty shall be added to any delinquent charges added to the tax bill.

Sec. 106-410 Credits and Adjustments

Credits and adjustments may be available to individual nonresidential property owners. It shall be the burden of the nonresidential property owner to request such a credit and/or adjustment and to demonstrate to a reasonable degree of certainty with evidence that a fee credit and/or adjustment is warranted. All applications for credits and adjustments shall be reviewed by the Public Works Director.

A. Credits

1. Eligibility. 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 of Union Grove'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 of Union Grove in effect at the time of parcel development.
 - c. The property has been assigned a nonresidential or multi-family residential user classification by the Clerk/Treasurer. Single and Two-family residential properties are not eligible for credits.
2. Maximum Credit. The maximum aggregate credit for any individual property is 50% of its ERU charge, regardless of how many credits the property may otherwise be qualified to receive.
3. Credit Types. The following credits may be available for a property that meets all eligibility requirements.
 - a. Zero Discharge Credit. Credits shall be considered for properties that discharge storm water directly into a water body not maintained in any way by the Village of Union Grove, or directly into a water body downstream of where it is maintained by the Village of Union Grove, or is otherwise contained entirely upon the property.

- b. Peak Discharge Credit. 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. Water Quality Credit. Credits shall be considered for owners who maintain private storm water management facilities that improve the quality of runoff from the property to a degree that exceeds state and local water quality requirements applicable to the site.
- B. Adjustments. An owner may be eligible to have the number of ERUs assigned to the owner's property adjusted under the following conditions:
1. Nonresidential Property. The owner of a nonresidential property who believes the number of ERUs allocated to such property to be incorrect may submit an adjustment request to the Village Clerk/Treasurer. The allocated ERUs may be adjusted if the owner can provide information showing that the impervious area measurement is incorrect.
 2. Undeveloped Property. 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.
 3. 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 article.

Sec. 106-411 Exemptions

Public rights-of-way and railroad rights-of-way are considered part of the Village of Union Grove's storm water conveyance system and are therefore exempt from the Storm Water Management Utility Management fee. However, municipal and railroad facilities, including buildings, parking lot, storage yards, or other developed land are not exempt from the Storm Water Management Utility Management fee.

Sec. 106-412 New Construction

- (1) Except for single-family structures, a property owner shall be responsible for submitting a Storm Water Management Utility service application at the time a building permit application is submitted or a site plan review is conducted, whichever occurs sooner. The application shall be made on a form prescribed by the Village of Union Grove and provided with each application for a building permit or application for site plan review. No building permit shall be issued until such application is submitted and approved by the Public Works Director or his designee.
- (2) The property owner shall be responsible for submitting record drawings and/or site inspections to prove improvements have been constructed per approved plan. Any deficiencies may result in site improvements and/or revocation of Storm Water Management Utility credits.
- (3) The property owner shall be liable for all storm water charges attributable to such property from the date of commencement of construction.

Sec. 106-413 Method of Appeal

The Village elects not to be subject to the administrative review provisions contained in Wisconsin Statutes Ch. 68, except as set forth below, 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 for nonresidential properties. There shall be no right of appeal as to the underlying findings and necessity of this ordinance or the single-family unit charge as applied to any single-family, duplex, residential - multifamily, or residential condominium properties.

- (1) The Storm Water Management Utility charge may be appealed as follows:
 - (a) A written appeal shall be filed with the Village Clerk prior to the Storm Water Management Utility charge due date; or
 - (b) Within thirty (30) days of payment, a written challenge to the Storm Water Management Utility 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 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.
 - (c) The disputed charge shall be held in abeyance until the Water, Wastewater, & Storm Water/Streets Committee has made a determination pursuant to this section.
- (2) The Water, Wastewater, & Storm Water/Streets Committee will determine whether the Storm Water Management Utility charge is fair and reasonable, or whether a refund is due the customer. The Water, Wastewater, & Storm Water/Streets Committee may act with or without a hearing and will inform the customer in writing of its decision. The Water, Wastewater, & Storm Water/Streets Committee or their designee may, at its discretion, require access to the property to assist in its determination.
- (3) The customer has thirty (30) days from the decision of the Water, Wastewater, & Storm Water/Streets Committee to file a written appeal to the Village Board.
- (4) In the event of an appeal, the Village Board shall hold a hearing as provided in Secs. 68.11(2) and 68.11(3), Wis. Stats. The Village Board shall hold such hearing within 30 days of the appeal request, and shall notify the appellant of the hearing date no less than 10 days notice in advance of the hearing. Within 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.
- (5) If the Village Board or Water, Wastewater, & Storm Water/Streets Committee 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 Clerk.
- (6) Public Service Commission Complaint. 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 Statute Sec. 66.0821(5).

Sec. 106-414 Budget Excess Revenues/Reserves

The Storm Water Management Utility revenues shall be accounted for in a separate storm water special revenue fund and upon the completion of a detailed accounting of all assets in a separate storm water enterprises fund maintained by the Village. The utility shall prepare an annual budget, which is to include all administration, management, operation, maintenance, debt service, capital improvement, and other costs related to the operation of the Storm Water Management Utility. The budget is subject to approval by the Village Board. The costs shall be spread over the rate classifications as determined by the Village Board. Any excess of revenues over expenditures in a year will be retained in a segregated Storm Water Enterprise Fund which shall be used exclusively for purposes consistent with this ordinance for subsequent years' needs.

Sec. 106-415 Severability

If any provision of this ordinance is found to be illegal, the remaining provisions shall remain in effect. In the event any section, subsection, clause, phrase, or portion of this ordinance is for any reason held illegal, invalid, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remainder of this ordinance. It is the legislative intent of the Village Board that this ordinance would have been adopted if such illegal provision had not been included or any illegal application had not been made.

Sec. 106-416 Repeal

All ordinances or parts of ordinances and resolutions in conflict herewith are hereby repealed.

Sec. 106-417 Amendments

This Ordinance may be amended in accordance with the adopted rules of the Village Board. Amendments to this Ordinance shall take effect after a public hearing with a Class I notice is held before the Village Board and adopted by the Village Board.

Sec. 106-418 Effective Date

This Ordinance shall take full effect for all purposes on January 1, 2011.

Section 2: This amendment shall take effect upon passage and publication as required by law.

_____/s/_____
Michael E. Aimone
Village President

Attest:

_____/s/_____
Janice K. Winget, WCPC, CMTW
Village Clerk-Treasurer

Introduced: March 29, 2010
1st Reading: March 29, 2010
2nd Reading: August 23, 2010
3rd Reading: Rules Suspended
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