

Appendix I Rate Ordinance

ARTICLE II. STORMWATER UTILITY

§ 268-11. Legislative findings.

- A. Water quality in the watersheds within and surrounding the City, including but not limited to watersheds associated with the Penjajawoc Stream, Birch Stream, Arctic Brook, Capehart Brook, Shaw Brook, Sucker Brook, and Kenduskeag Stream, along with their tributaries, are potentially threatened by pollutants associated with existing land use and future development.
- B. Poor water quality in these watersheds can threaten public health, safety, and welfare.
- C. The existing stormwater management system is deteriorating and may be inadequate to meet existing and future needs, and flooding concerns may arise.
- D. The U.S. Environmental Protection Agency ("EPA") requires a comprehensive approach to municipal stormwater management, and the City desires to take a proactive approach to these requirements.
- E. The stormwater management needs of the City have been identified in the Updated Stormwater Utility Feasibility Analysis dated August 2009 by CH2M HILL, the Stormwater Funding Concept Study Final Report dated September 4, 2009 by AMEC Earth & Environmental, Inc., and watershed management plans for the Penjajawoc, Birch Stream, and Capehart Brook watersheds. These indicate how more effective stormwater management in the City would contribute to the health, safety and welfare of the residents, and show that stormwater facilities and activities associated with stormwater management provide services and benefits to all properties, property owners, residents and citizens of the City.
- F. Given the scope of stormwater management needs identified by the stormwater studies, it is appropriate and necessary to authorize the formation of a Stormwater Division as a Division comprised of dedicated staff and with dedicated funding components, along with personnel from the City's Public Works, Sewer, Engineering, and other Divisions, all under the City's Director of Infrastructure, and charged with the responsibility to establish, operate, maintain, control, and enhance stormwater management programs, services, systems, and facilities in the City.
- G. In order to establish, operate, and maintain the stormwater infrastructure of the City, ensure the future usefulness of the existing system through additions and improvements, and provide other services associated with stormwater and watershed management,

sufficient and stable funding is required for the operation, maintenance and improvement of the stormwater management programs, services, systems, and facilities of the City.

- H. A stormwater utility service fee schedule that efficiently takes into account impervious surface area, using intensity and nature of land use as the most appropriate and equitable method of allocating the cost of stormwater management programs, services, systems, and facilities of the City between and among rural and urbanized areas of the City and residential dwelling units, non-residential properties and other developed lands for governing assessments and collections of the Utility, is the most appropriate way of providing for the aforementioned sufficient and stable funding.

§ 268-12. Purpose.

Stormwater runoff is one of the largest contributors to water quality violations in urban and urbanizing areas of Maine. According to the US EPA, polluted stormwater runoff is a leading cause of impairment to the nearly forty (40) percent of surveyed U.S. water bodies which do not meet water quality standards (U.S. EPA, 1995). When polluted stormwater runoff is discharged directly into surface water bodies, several adverse effects can occur: public health can be threatened from contaminated drinking water sources, food sources, and recreational waters; aquatic habitats can be damaged or destroyed; and aesthetic values of waterways can decline. Management of stormwater is critical to ensuring the integrity of valuable surface water resources. An effective approach to managing stormwater and related impacts is creation of a utility that delivers stormwater management services to a community.

Therefore, the City hereby establishes a stormwater management utility for the following purposes:

- A. To determine the necessary level of municipal stormwater management services for the City.
- B. To maintain and improve the drainage facilities of the City, to ensure that they perform to design capacity while using best management practices to meet local, state, and federal water quality standards.
- C. To mitigate the damaging effects of uncontrolled and unmanaged stormwater runoff.
- D. To support and promote sound stormwater management practices that mitigate nonpoint source pollution, reduce flooding, and enhance area drainage within the City.
- E. To support the goals and objectives of the City ordinances addressing stormwater management in other sections of this Code of Ordinances and to comply with applicable law, including the Maine Department of Environmental Protection Stormwater Management Regulations.

§ 268-13. Authority and jurisdiction.

- A. Under the authority of the Maine Constitution, Article VIII, and Title 30-A M.R.S.A. § 3001, the City hereby establishes the Bangor Stormwater Utility (the "Utility") as a Division comprised of dedicated staff and with dedicated funding components, along with personnel from the City's Public Works, Sewer, Engineering, and other Divisions, all under the City's Director of Infrastructure, to provide stormwater management programs, services, systems, and facilities of the City. The City Manager will appoint a Stormwater Director to carry out the responsibilities of the Utility.
- B. The Utility or its designee is authorized to assess and collect service fees from all persons owning land within the municipality that benefit from the services provided by the Utility, including all persons that own land from which stormwater runoff discharges directly or indirectly to the stormwater management systems and facilities, streams, and other bodies of water in the City.
- C. The Utility will assume all responsibility for providing and managing the stormwater management programs, services, systems, and facilities of the City, including maintaining and improving stormwater infrastructure and BMPs; providing engineering services for stormwater management; regulating, in accordance with local, state and federal regulations, stormwater discharges from each parcel contributing to the stormwater management systems and facilities; and collecting Utility fees. The services and systems provided and managed shall include services and systems on private (i.e. non-City owned) land pursuant to any agreements or ordinances providing for the same. The Director of Stormwater Management, or his/her designated representative, is authorized to make recommendations for stormwater management plans during any required review process for new and/or existing development.
- D. The boundaries and jurisdiction of the Utility shall encompass all portions of the City of Bangor.

§ 268-14. Definitions.

The definitions contained in Maine's Stormwater Management Law and Regulations (38 M.R.S.A. § 420D; 06-096 CMR Ch. 500 (Oct. 30, 2005), are incorporated herein by reference. Additional terms used in this article are defined as follows:

BEST MANAGEMENT PRACTICES -- Best management practices, or BMPs, are stormwater management programs, services, systems, and facilities, including structural BMPs and administrative, engineering, operational, regulatory, and capital improvement activities and functions, plus all other activities and functions necessary to support the provision of such programs, services, systems, and facilities.

CREDIT -- Credit shall mean a conditional reduction in the amount of a stormwater service fee to an individual property based on the provision and continuing presence of an effectively maintained and operational on-site structural BMP that reduces the Utility's cost of providing services.

CUSTOMERS OF THE UTILITY -- Customers of the Utility shall include all persons, properties, and entities served by and/or benefiting from the Utility's acquisition, management, maintenance, extension, and improvement of the public stormwater management systems and facilities and regulation of public and private stormwater systems, facilities, and activities related thereto, and persons, properties, and entities which will ultimately be served or benefited as a result of the stormwater management program.

DEVELOPED LAND -- Developed land shall mean property altered from its natural state by removal of vegetation, construction, or installation of improvements such as buildings, structures, or other impervious surfaces, or by other alteration of the property that results in a meaningful change in the hydrology of the property during and following rainfall events (agricultural and forestry operations that do not create impervious surface area excepted).

EPHEMERAL STREAM -- A channel that flows only during wet weather following a precipitation event and typically flows no more than a few days after the storm.

EQUIVALENT RESIDENTIAL UNIT (ERU) -- A measure used to standardize the utility service fees for residential properties, or classes of residential properties, and based on the average amount of impervious area of a base residential parcel. The ERU shall also be used as the basis for standardizing and determining the equivalent size of non-residential properties and other developed lands. The staff of the Utility, together with consulting engineers, shall undertake an analysis to identify the amount of square feet of impervious surface area of an ERU and this will be identified as part of the stormwater service fee schedule policy.

EXEMPTION -- Exemption shall mean not applying to, or removing the application of the stormwater management utility service fee from, a property. No permanent exemption shall be granted based on taxable or non-taxable status or economic status of the property owner.

HYDROLOGIC RESPONSE -- The hydrologic response of a property is the manner whereby stormwater collects, remains, infiltrates, and is conveyed from a property.

IMPERVIOUS SURFACE -- An impervious surface is an area that prevents or impedes the infiltration of stormwater into the soil as it entered in natural conditions prior to development. Impervious areas include, but are not limited to, rooftops, sidewalks, walkways, patio areas, driveways, parking lots, storage areas, compacted gravel surfaces, awnings and other fabric or plastic coverings, and other surfaces that prevent or impede the natural infiltration of stormwater runoff which existed prior to development.

INTERMITTENT STREAM -- A stream or river that flows during both wet and dry weather only during the wettest part of the year and exhibits no flow during dry weather during at least a portion of the year, and is depicted as a thin solid line on United States Geological Survey (USGS) quadrangle maps.

OTHER DEVELOPED LANDS -- Other developed lands shall mean, but not be limited to, 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 and universities, colleges, research facilities and stations, hospitals and convalescent centers, airports, agricultural uses covered by impervious surfaces, water and wastewater treatment plants, and lands in other uses which alter the hydrology of the property from that which would exist in a natural state.

PERENNIAL STREAM -- A stream or river that flows during both wet and dry weather throughout the year and over multiple years in duration, and that is depicted as a bold line on USGS quadrangle maps.

POLLUTION -- The contamination or other alteration of the physical, chemical or biological properties of any natural waters of the City of Bangor, or the discharge of any liquid, gaseous, solid or radioactive or other substance into any such waters as will or is likely to create a nuisance, or render such water harmful, detrimental, or injurious to the public health, safety and welfare or to other beneficial uses. Pollution includes, but is not limited to, nutrients, sediment, temperature, oil, salt, and heavy metals.

RESIDENTIAL DWELLING UNIT -- Residential dwelling unit shall mean developed land containing one or more structures and which contains one or more bedrooms, with a bathroom and kitchen facilities, designed for occupancy for dwelling purposes. Dwelling units may include single-family houses, single duplex units under common ownership, manufactured homes, condominiums, townhouses, and mobile homes located on one or more individual lots or parcels of land. Developed land may be classified as a residential dwelling unit despite the presence of incidental structures associated with residential uses such as barns, garages, carports, or small storage buildings such as tool sheds or woodsheds.

STORMWATER -- Precipitation as it falls to the earth, surface runoff and drainage, and paths taken by such water.

STORMWATER SERVICE FEE -- Stormwater service fee shall mean the periodic service fee imposed pursuant to this article for the purpose of funding costs related to stormwater management programs, services, systems, and facilities.

STORMWATER SERVICE FEE SCHEDULE POLICY -- The policy approved by the City Council identifying the specific fee structure and formulas upon which stormwater service fees and credits will be based.

STRUCTURAL BEST MANAGEMENT PRACTICES -- Structural best management practices, or structural BMPs, are those natural and man-made channels, swales, ditches, swamps, rivers, streams, creeks, branches, reservoirs, ponds, drainage ways, inlets, catch basins, pipes, head walls, storm sewers, wetlands, filtration systems, plantings, lakes, city and state roads including Interstate 95 and other physical works, properties, and improvements which transfer, control, convey or otherwise influence the movement of stormwater runoff and its discharge to and impact upon receiving waters.

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 dirt or gravel surfaces or structures which create an impervious surface that would prevent infiltration of stormwater or cause stormwater to collect, concentrate, or flow in a manner materially different than that which would occur naturally.

UTILITY -- The program within the City of Bangor responsible for providing stormwater management programs, services, systems, and facilities pursuant to this Article.

§ 268-15. Establishment of stormwater fund.

- A. The City Manager shall establish a dedicated stormwater fund in the City budget and an accounting system for the purpose of managing all funds collected for the purposes and responsibilities of the Utility. All revenues and receipts of the Utility shall be placed in the stormwater fund, which shall be separate from all other funds, and only the expenses of stormwater management programs, services, systems, and facilities of the City shall be paid by the fund.
- B. The Utility and the stormwater fund may also accept loans, state, federal and private grants, and allocations of funds from the City's general fund or special purpose funds.
- C. Stormwater service fees will be set at a rate that covers the costs necessary to carry out the stormwater management programs, services, systems and facilities approved by the City as necessary to carry out the functions of the Utility.
- D. Expenditure of funds from the stormwater fund is limited to the following:
 - (1) Operating expenses;
 - (2) Non-operating expenses, such as equipment and supplies;
 - (3) Payment on principal and interest on debt obligations;
 - (4) Capital investments, including structural BMPs;

- (5) Reserve expenses; and
- (6) Others costs as deemed necessary by the City Council.

§ 268-16. Services provided.

- A. For the purposes of operating, maintaining and improving stormwater management systems and facilities, the City owns or has legal access to portions of the system that:
 - (1) Are located within public streets, easements, and rights-of-way of the jurisdiction; and/or
 - (2) Are subject to access provisions established by City for the purpose of operating, maintaining, and/or improving stormwater systems and facilities.
- B. Unless otherwise provided by separate agreement, stormwater systems located on private property or on public property for which no access provisions have been made shall be considered the legal responsibility of the property owner.
- C. The Utility may provide some or all of the following services in exchange for collecting a stormwater service fee:
 - (1) Administer the stormwater management program for the City;
 - (2) Perform necessary studies and analysis of the service area or potential service area(s);
 - (3) Acquire, construct, operate, maintain, manage, protect, and enhance stormwater infrastructure, including betterments and connections to the public drainage system;
 - (4) Provide mapping of natural and man-made features affecting stormwater management;
 - (5) Detect and eliminate illicit discharges to the stormwater management system;
 - (6) Periodically inspect properties to determine contribution to municipal stormwater load;
 - (7) Inventory stormwater management facilities;
 - (8) Maintain an up-to-date database of residential and non-residential properties in the service area, runoff contributions of each property to the stormwater system, and charges and payments for each account;

- (9) Determine compliance with applicable local, state and federal regulations of the stormwater discharges from parcels contributing to the stormwater system;
 - (10) Perform inspections of structural BMPs, both during and after development/construction;
 - (11) Perform master planning and engineering for watershed management and capital improvements;
 - (12) Recommend and provide advice for updating and revising local comprehensive plans with respect to stormwater management;
 - (13) Obtain federal and state permits necessary to conduct its duties;
 - (14) Obtain and administer grants and loans from public and private sources as authorized by the City Council;
 - (15) Receive and track stormwater service fees collected by the City;
 - (16) Review development plans and provide comment to the Planning and Code Enforcement Divisions of the City;
 - (17) Make recommendations regarding acquisition of property, easements and rights-of-way in critical areas serving as buffers, retention or infiltrating areas, or providing means to gain access to properties to perform Utility duties.
 - (18) Educate and inform the public about the impacts of stormwater runoff and the components of a stormwater management plan; and
 - (19) Perform any and all other necessary functions in connection with stormwater management programs, services, systems, and facilities of the City.
- D. The Utility will be responsible for addressing all applicable state and federal water quality and quantity standards for stormwater. This includes the responsibility for addressing all applicable state and federal stormwater permits required for the City, including National Pollutant Discharge Elimination System (NPDES) municipal separate storm sewer system (MS4) permits and other Phase I and Phase II industrial stormwater permits for applicable municipal activities, and carrying out applicable actions under all local stormwater ordinances. As the City of Bangor is regulated under Phase II of the NPDES permit program, the Utility will assume responsibility for meeting federal NPDES permit requirements for MS4s, including compliance with the six federally mandated minimum control measures:
- (1) Public education and outreach

- (2) Public participation/involvement
- (3) Illicit discharge detection and elimination
- (4) Construction site runoff control
- (5) Post-construction runoff control
- (6) Pollution prevention/good housekeeping

§ 268-17. Service area.

The service area of the Utility will include all areas within the municipal boundaries of the City of Bangor.

§ 268-18. Stormwater service fees.

- A. The City may determine and modify from time to time stormwater service fees of the Utility so that the funds generated correspond to the cost of the stormwater management programs, services, systems, and facilities of the City.
 - (1) In general, funding for the Utility shall be equitably derived based on methods that establish a link between a fee and the degree of impact imposed on water bodies and the stormwater management system and facilities. The primary such method shall be based on the amount of impervious cover of properties.
 - (2) Responsibility for payment of stormwater service fees shall generally fall upon the owner of a property, unless otherwise indicated by Council Order.
 - (3) Based on the average square footage, the ratio of impervious surface area contained within properties within the City and the impact on the stormwater system, and in order to minimize administrative burdens and expenses, the City may set a base rate for a certain number of square feet of impervious cover that will apply to all parcels.
 - (4) All properties with one and only one single-family residential structure and no more than the typical accessory structures for such a building shall pay the same flat rate, given the general uniformity of such properties and to aid in administration of the Utility.
 - (5) In addition to paying the base rate, all properties other than single-family residential properties as described in subsection (A)(4) shall be charged a fee for every square foot of impervious surface beyond that covered by the base rate.

- (6) Parcels with no impervious surface as determined by the City will not be subject to a fee.
- B. To the extent that other funding methods are employed by the City to manage stormwater both within and outside the service area, stormwater service fees shall support and be consistent with plan review and inspection fees, special fees for services, fees in lieu of regulatory requirements, impact fees, special assessments, and other fees. Fees collected to fund stormwater management activities of the Utility can also be supplemented by other revenues available to the City, most notably state, federal, and private grants or loans.
- C. After adoption of this ordinance, the Utility, guided by the City Manager and with the assistance of those consultants deemed necessary by the Utility and City Manager, shall set a rate schedule for properties served by the Utility based on the cost of stormwater management programs, services, systems, and facilities of the City. The recommendations of the Utility (and/or City Manager) shall be submitted for approval by the City Council by Council Order. The fee schedule approved by the City Council shall be designated as the stormwater service fee schedule. No bills will be issued to customers prior to City Council approval of the stormwater service fee schedule.
- D. Rate studies shall be conducted periodically by the Utility to determine all changes and future updates to the stormwater utility use fee schedule policy. Any revision to the stormwater service fee schedule policy will be approved by Council Order prior to implementation.

§ 268-19. Credits.

- A. Credits against service charges are an appropriate means of adjusting payments to the Utility. Credits against service charges may be granted on a sliding scale for properties providing on-site stormwater management measures that reduce the impact of the property on water bodies and therefore on the cost of providing stormwater management services, provided that such systems are adequately maintained and meet performance standards specified under Maine's Stormwater Management Law and regulations as well as any additional stormwater management performance standards imposed by this Code of Ordinances.
- B. A fee credit system for the Utility shall be developed by the Utility's staff specifying the stormwater system performance standards necessary for properties to qualify for a credit. The scale for credits shall reflect the extent to which the subject properties reduce the amount of critical pollutants entering water bodies or the stormwater management system through the creation of structural BMPs (e.g. infiltration or filtering systems). The fee credit system shall be approved by Council Order.
- C. A credit shall only be given if the owner of a property for which the credit is requested completes an application created for this purpose by Utility staff.

§ 268-20. Fee collection schedule.

Stormwater service fees shall be collected quarterly. To minimize administrative costs, notification and collection of Utility fees shall be coordinated, to the extent possible, with the collection of water and sewer service charges. A customer shall have 30 days from receipt of a stormwater service fee bill to make payment. Interest, at a rate determined by the City Council as part of the stormwater utility use fee schedule, shall be charged on delinquent accounts after 30 days.

§ 268-21. Right to enforcement and violations.

A. The City Manager, or his or her authorized designee, is the enforcement authority who shall administer, implement, and enforce the provisions of this article.

B. Delinquent fees.

(1) Any person that fails to pay a stormwater service fee when due shall be responsible for the amount of the unpaid service fee, interest on the unpaid amount at a rate determined by the City Council as part of the stormwater utility use fee schedule, a minimum penalty of \$200.00, and attorneys' fees and other costs of collection. Delinquent amounts may be collected by a civil action against the person.

(2) A customer of the Utility may request review of the amount of the service fee imposed on such customer by written request to the Stormwater Director within 30 days of the date the customer receives a service fee bill. The Director shall review the service fee and issue a determination, in writing, within 30 days. A customer may appeal the Director's decision to the City Council within 30 days of the date of the Director's decision. Aggrieved persons may appeal a decision of the Council to a court of competent jurisdiction within 30 days of the date of the Council decision.

§ 268-22. Limitation of liability.

Floods from stormwater may occasionally occur which exceed the capacity of the storm drainage facilities constructed, operated, or maintained by funds made available under this chapter. This chapter shall not be interpreted to mean that property subject to the fees and charges established herein will always (or at any time) be free from stormwater flooding or flood damage, or that stormwater systems capable of handling all storm events can be cost-effectively constructed, operated or maintained. Therefore the following limitations on liability are set forth:

A. It is the express intent of the City that this stormwater utility ordinance will protect the public health, safety and welfare of properties and persons in general. However, this

ordinance does not create any special duty or relationship with any individual person or specific property either within or outside the jurisdiction of the Utility.

- B. The City shall not be held liable for flood damage or assessing and removing pollution sources, and reserves the right to assert all available immunities and defenses in any action seeking monetary compensation from the City or its officers, agents or employees for alleged damages arising from alleged failure or breach of duties or relationship as may now exist or hereafter be created.
- C. The issuance of any permit, plan approval or inspection shall not constitute a warranty, express or implied, nor shall it afford the basis for any action seeking the imposition of monetary damages against the City or its officers, employees or agents.
- D. Operation of stormwater systems located on private property or public property not owned by the City of Bangor and for which there has been no separate agreement made with the City for operation, maintenance and/or improvements of the system by the City shall be the legal responsibility of the property owner, except as may be required by the laws of the State of Maine and the United States of America.

§ 268-23. Severability.

Each section of this ordinance is severable from all other sections. If any part of this ordinance is deemed invalid by a court or competent jurisdiction, remaining portions of the ordinance shall not be affected and shall continue in full force. Whenever this ordinance conflicts with any other ordinance of the City, State of Maine, or federal government, the stricter standard shall apply, except as limited by state or federal law.

§ 268-24. Applicability.

This ordinance and the fees, obligations and requirements identified herein shall apply to all use of and benefit from the City's stormwater management systems and facilities occurring on or after July 1, 2012. All persons owning land within the municipality that benefit from the services provided by the Utility shall be subject to service fees for their use of the stormwater management systems, facilities, and operations occurring on or after July 1, 2012.